

AIV's comments regarding Slovenia's TRIS notification 2023/0636/SI

The Romanian Vaping Industry Association (AIV- www.aivaping.ro) would like to express its alarm over the decision of the government of Slovenia to restrict flavours and ingredients in electronic cigarettes, and also propose other limiting measures regarding these products, through its proposed amendment to the *Act on Restriction of the Use of Tobacco and Related Products*, notified to the European Commission on 13/02/2023, notification number [2023/0636/SI](#).

The Vaping Industry Association (AIV) brings together some of the most relevant Romanian vaping companies – producers, distributors, specialists – in order to represent them in relation to state authorities and Romanian public opinion. The vision of AIV is to offer a voice to our industry in its dialogue with other stakeholders and responsibly promote vaping as a tool for harm reduction and public health improvement in Romania and all over the European Union.

Article 10 of the bill (amending Article 26 of the law on the use of tobacco) foresees the **prohibition to place, on the Slovenian market, liquids intended for vaping (both with nicotine and nicotine-free) containing any flavour other than tobacco or menthol**. This would in practice mean the end of the sale and availability of most vaping products on the Slovenian market.

According to the notification statement submitted by the Slovenian Ministry of Health, the Draft Act aims to “*protect everyone, especially children and adolescents, from accessing electronic cigarettes, thus also protecting their health*”. AIV believes the **proposed flavour ban is not proportionate to the objective** pursued, as the measure strongly fails to be:

- a. Appropriate, i.e. a suitable mean to attain the objective with a reasonable connection between the aim and the measure;
- b. Necessary, i.e. choosing the means which least restrict the free movement of goods.

Moreover,

- c. The ban will lead to a rise in black market activities.
- d. The current [law on the restriction of the use of tobacco products](#) already fully regulates the market and prevents adolescents under 18 years old from buying

Why do we think that this measure will not only not reach its intended objectives, but also cause much harm to adults accessing electronic cigarettes? Please find below the answers.

I. The proposed measure equates to an effective flavour ban on e-liquids

The Slovenian Ministry of Health intends to prohibit the placing on the national market of liquids for e-cigarettes (both with nicotine and nicotine-free) containing any flavour other than tobacco or menthol.

AIV considers that the foreseen flavour ban does not adequately serve the policy objectives targeted by the Slovenian government.

- a. Recent studies show that a substantial proportion of **smokers initiate electronic cigarette use consuming non-tobacco flavours and subsequently quit smoking** , you can find them [here](#) and [here](#).
- b. When it comes to the **role of flavoured e-liquids on youth uptake, publicly-financed scientific studies demonstrate there is no significant correlation**. According to a [study](#) from the Oxford Academy: “*Past-30-day adult e-cigarette users had the greatest interest in e-cigarettes, and their interest was most affected by flavour. Adults who never tried e-cigarettes had the lowest interest, yet still higher than non-smoking teens’ interest. The e-cigarette flavours tested appealed more to adult smokers than to non-smoking teens*”.

- c. Flavours different than tobacco and menthol are the main choice for adult vapers. An ASH UK 2023 survey shows that fruit flavours are now the most popular choice for adult vapers at 47%, followed by menthol at 17%. Tobacco flavour has fallen to third most popular at 12%.

The foreseen flavour ban appears to be unjustified as it is not an appropriate measure to reduce attractiveness of vaping products and youth uptake. AIV is respectfully asking the Slovenian government to reexamine their negative take on the role of flavours, as presented in the amendment, and look more in-depth at scientific evidence on the matter.

Moreover, the coming ban is not supported by any concrete evidence that particular flavours are actually more attractive to youngsters.

2. Restrictions to flavour availability could help increase black market trade

Restricting flavours could bring unintended consequences like an increase in the illicit trade of banned flavoured products, liquid tampering and a risk of relapsing by smokers left without their preferred vaping alternative

- a. A recent paper shows that if flavours were to be banned, almost 60% of vapers would either find a way to get their banned flavours, stop vaping and smoke instead or are unsure on what they would do. Unintended consequences of banning flavours were assessed in the following countries by the Tholos Foundation: Estonia, Netherlands, Sweden, Belgium, California, Denmark, Germany
- b. Young people access vaping products through other sources than vape shops, who generally implement age-controls. These sources are usually black-market ones. The growing illicit market is heavily focused on younger consumers, selling non-conforming products via social media (one of the main mediums where Slovenians see vaping advertisements). Undue restrictions on vaping products lead to a reinforcement of illicit markets, as it was the case in various countries such as Hungary.
- c. In its TRIS notification statement, the Slovenian ministry of Health mentions the flavour ban that is currently effective in Estonia. It is relevant to point out that the Estonian Parliament actually introduced a bill to roll back its ban on e-liquid flavours. The statement of grounds of the amendment bill states that due to the use of black-market products, *“the health risk of consumers has increased significantly, which was until then mitigated by the mandatory laboratory control of electronic cigarette liquid established in the EU Tobacco Product Directive”*.

A flavour ban will hamper legal markets, denying adults legal access to the tools they use (including flavoured e-liquids) to reduce their tobacco consumption. Tobacco products policy should focus instead on better enforcement, more efficient age controls, licences for selling vaping products and marketing restrictions, in order to keep the variation of flavours while making sure youth access remains persistently low.

3. Smoking cessation potential of vaping products

In its proposal, the Slovenian government makes the following claim: *“More and more research shows that among adolescents who otherwise do not smoke, the use of an electronic cigarette significantly increases the probability (up to four times) that they will also start smoking regular cigarettes.”*

The Slovenian authorities do not provide any source to back this assertion. Contrary to that claim, vaping represents an effective tobacco cessation method for many smokers and can play a positive role in helping users to switch from harmful traditional smoking, preventing or significantly reducing the risk of cancer.

- a. Peer reviewed studies by the American Journal of Public Health and research led by the University of Oxford show the effectiveness of vaping products in quitting traditional tobacco.

- b. A Cochrane review of 88 studies, updated in January 2024, found that nicotine-containing vaping products are one of the most effective methods to quit smoking among various recognized prescription medications for smoking cessation and that people using nicotine-containing vaping products were more than twice as likely to quit smoking than those who did not use any method.
- c. Regulation of flavours should consider balancing between protecting the underage and allowing adult smokers and nicotine users to find satisfying alternatives to smoking
- d. Completely banning flavours other than tobacco and menthol might prevent smokers from switching to e-cigarette use or may increase the relapse rate among former smokers who have managed to quit
- e. A balanced regulation should ban the use of any flavours and flavour descriptors or names that make reference to candy, dessert, confectionery, soft drinks and any product or flavour particularly appealing to the underage – this is what New Zealand has recently implemented and the UK is thinking of doing
- f. Besides its smoking cessation potential, the Slovenian government should take into account its much lower risk profile. A report commissioned by Public Health England found that using vaping products is 95% less harmful than smoking combustible cigarettes.
- g. Another report by the British Royal College of Physicians confirmed that the “hazard to health arising from long-term vapour inhalation is unlikely to exceed 5% of the harm from tobacco smoke.”
- h. A study financed by the prestigious Institut Pasteur of France stated that vaping is significantly less carcinogenic than smoking, thus drastically reducing the risk of cancer for smokers.

This smoking cessation potential was recognized by the European Parliament’s 2022 resolution on Strengthening Europe in the Fight against Cancer (point 12), and more recently in the 2023 Non-Communicable Diseases report (point 17).

4. Legal justification of the measure

AIV would also like to express serious doubt regarding the legal justification of the measure:

a. AIV believes the ban on vaping products with particular flavour profiles will amount to a **quantitative restriction in the sense of article 34 of the Treaty on the Functioning of the European Union (TFEU)**, as the banned products can legally be marketed in other Member States. This would therefore create a difference of treatment and access for vaping and associated products shops.

b. The measure seems moreover **unlikely to be justified under article 36 TFEU** that allows for restrictions in imports or exports of goods justified on grounds of protection of health and life of humans. According to the article, Member States initially require that Member States demonstrate they have **genuine health concerns** regarding the products, i.e. scientific evidence for the harmful effects of vaping, and a seriously considered health policy. To introduce such exception, the measure needs to be proportionate, which entails that the national provision must be:

- Appropriate, i.e. a suitable mean to attain the end with a reasonable connection between the aim and the measure;
- Necessary, i.e. Member States should choose the means which least restrict the free movement of goods if it has a choice between various measures to attain the same objective.

AIV notes that the Slovenian Ministry of Health provides no source when asserting that vaping significantly increases the likelihood that young people will also start smoking conventional cigarettes, or that attractive flavours in vaping products are associated with an increase in their attractiveness and a decrease in the perception of their harmfulness.

The Slovenian Ministry of Health does not thoroughly demonstrate that the products in question pose a genuine threat to public health, which should therefore prevent Slovenia from introducing such a flavour ban under article 36 of the TFEU.

Conclusion

Against this background, AIV respectfully calls on the European Commission to reexamine the proportionality of the flavour ban bill, and encourage national authorities to adopt measures adapted to the pursued aim and based on thorough scientific evidence.

Respectfully,
AIV President - Ciprian Boboi

