



Tobacco Europe¹ contribution on the TRIS Notification [2024/0164/FR](#)

Context:

France ranks approximately as the sixth-largest importer of electronic cigarettes among the EU-27 with imports totaling 304 million euros, according to an analysis of Eurostat 2022 data.¹ The majority of single-use electronic cigarettes in the French market are imported from Member States and non-EU jurisdictions. Additionally, France exports electronic cigarettes worth approximately 57,3 million euros to Member States including Spain and Poland.² Notably, France is the second-largest e-cigarette exporter to Spain, accounting for over 14.6% of its e-cigarette imports.

Tobacco Europe views:

The draft technical regulation notified by France constitutes a **measure having an equivalent effect to quantitative restrictions as prohibited by Article 34** of the Treaty on the Functioning of the European Union (TFEU). The draft technical regulation **cannot be justified on the grounds set out in Article 36** TFEU, for the following reasons:

1. Banning the distribution and placing on the market of single-use electronic cigarettes is unnecessary relative to the aim pursued due to the characteristics of the French electronic cigarettes market. The notified measure is unnecessary because it cannot critically or decisively contribute to public health protection, given the extensive range of electronic cigarettes and refill containers (other than for single-use) notified on the French market. According to EU-CEG data, the number of refillable and rechargeable electronic cigarettes and refill containers, exceed the number of single-use electronic cigarettes by a significant margin – 214.03% (i.e., 47,289 disposable vs 148,504 non-disposable products). This more than threefold difference is likely even greater, as cross-border distance sales of electronic cigarettes are allowed in France. It is settled EU case law that Member States must adopt measures that are proportionate to their aims when such measures affect the smooth functioning of the internal market.

2. The draft technical regulation is unnecessary and disproportionate as there exist alternative measures that are less restrictive to achieve the aim pursued. France's concern regarding the appeal of single-use electronic cigarettes among the underage stems from a commercial malpractice confined to irresponsible manufacturers who use confectionary terms in flavour descriptors and other on pack labelling. The notified measure is unnecessary because this malpractice is not limited to single-use electronic cigarettes but also affects the labelling of refill containers for refillable e-cigarettes, which are far more popular in France as stated in Point 1 above. A less restrictive and, arguably, more effective measure would involve prohibiting the use of confectionary-related names in flavour descriptors and other packaging labelling across all types of e-cigarettes. It is settled case law that Member States must opt for measures that are the least restrictive relative to the aim pursued, particularly in matters concerning the internal market.

3. Banning the manufacturing of single-use electronic cigarettes is disproportionate and unnecessary relative to the public health protection aim pursued. No Member State has ever banned

¹ [Tobacco Europe](#) AISBL is the umbrella organisation representing the three largest tobacco and nicotine products manufacturers, namely British American Tobacco, Imperial Brands and Japan Tobacco International.



the manufacturing and / or distribution of a product that complies with the requirements of Directive 2014/40/EU.³ Notably, the absence of a statement detailing the grounds that make such a restrictive measure necessary contradicts the obligation set in Article 5(1) of Directive 2015/1535/EU.⁴ This lack of justification raises concerns regarding the necessity and proportionality of the notified prohibition. It is settled EU case law that a Member State may set its own health protection level and the measures to attain it insofar as it adheres to EU Law.⁵ Moreover, such a measure will halt French exports to Member States where single-use electronic cigarettes remain lawful, thereby obstructing trade between Member States. Overall, this measure is unprecedented: there is risk that France may force a similar public health level upon Member States as a result, especially for those whose trade activity with France is significant. Since Directive 2014/40/EU has been in force, only four Member States have banned the placing on the market of a product but there's never been a ban on manufacturing and distribution in scope. In addition, the ban would contravene some recent statement from the Commission, notably the decision from Belgium to disposables, where it clearly states "it is for the Member States to determine the degree of protection which they wish to afford to public health and the way in which that degree of protection is to be achieved" as it would alter the policy objectives and degree of protection that other Member States perceive.

4. The omission of a date of entry into effect in the notified draft may hinder trade by significantly undermining the ability of importers and exporters of single-use electronic cigarettes to adapt and comply in a timely manner.

Finally, Tobacco Europe and its members would like to bring to attention that the notified measure is **unsuitable** relative to the public health aim pursued. French people can be misled into perceiving vaping as more harmful than smoking in spite of the mounting evidence to the opposite, potentially driving underage, non-smokers and former smokers toward smoking. Indeed, according to France-based market research agency Harris Interactive, the main reason a French vaper would go back to smoking is linked to the difficulty in purchasing products. Thus, this notified draft regulation can run contrary to the health protection aim pursued.

References:

¹ 2Firsts (2023). France imported 304M euros of e-cig in 2022, Belgium as second largest source country. Retrieved from <https://www.2firsts.com/news/france-imported-304m-euros-of-e-cig-in-2022-belgium-as-second-largest-source-country>

² Ibid.

³ Directive (EU) 2014/40 of the European Parliament and 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;

⁴ 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;

⁵ Case C-110/05, Commission v Italy, Judgment of the Court (Fourth Chamber), July 9, 2009.

⁶ ECigIntelligence (2023). France: the e-cigarette market, September 2023. Retrieved from <https://ecigintelligence.com/france-the-e-cigarette-market-september-2023/>
