



ESIGBOND's Contribution to France's TRIS notification 2024/0164/FR

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The Esigbond represents the interests of the independent predominantly small-scale distributors and specialty stores that bring e-cigarettes and refills (liquids) to the Dutch market. The Esigbond would like to share its position regarding the draft law prohibiting single-use electronic vaping devices, as notified by France to the European Commission on 21 March 2024, under the reference [2024/0164/FR](#).

According to the statement of grounds submitted by the French authorities, the draft law intends to "prohibit the manufacture, keeping for sale, [...] sale, distribution [...] of electronic vaping devices" that are pre-filled and cannot be refilled and whose battery is not rechargeable. This prohibition is justified by "the need to ensure a high level of public health protection, especially among young people".

Esigbond would like to address some of the arguments presented to justify this ban and point at the *unintended consequences* that may arise if it is implemented, in particular the rise of dangerous and unregulated illicit products.

1. Disregard of harm reduction potential and smoking cessation effectiveness for smokers who switch to vaping

Peer-reviewed independent studies have shown that vaping products - disposables or not - are 95% less harmful than combustible tobacco cigarettes. The harm reduction potential of vaping has been evidenced by a number of reputable publications ([Royal College of Physicians](#), [British Medical Journal](#), [Institut Pasteur](#), etc.). Further scientific research highlights the critical role of vaping in helping adult smokers quit tobacco. A 2024 [Cochrane review](#) of 88 studies showed that nicotine-containing vaping products were the most successful method of achieving tobacco cessation for adults. This potential was recognised twice recently by the European Parliament: the reports on [strengthening Europe in the fight against cancer](#) (2022) and on [non-communicable diseases](#) (2023) and both state that "electronic cigarettes could allow some smokers to progressively quit smoking".

Disposable e-cigarettes are often a first introduction to vaping for smokers trying to quit. Rechargeable devices with refill tanks ("open systems") can sometimes rebuff smokers; with disposable e-cigarettes, many of them have discovered vaping and have taken the step to switch to more sustainable refillable devices. Also, the elderly with neurodegenerative disorders such as Alzheimer's and Parkinson's disease who are smoking could benefit from switching to disposable vapes.

Banning these disposable devices on the pretext of a risk to public health, and in particular to young people, is a serious attack on the image of vaping products and is based, in the French public debate, on scientifically erroneous beliefs (e.g. gateway effect between vaping and smoking).



2. Effective measures to prevent young people from vaping

France, like all 27 EU Member States, prohibits the sale of vaping products to anyone younger than 18 years old. The issue with youth uptake stems from a lack of adequate enforcement of this prohibition. Esigbond's position on the matter is clear: non-smokers should not start vaping, and underage people should not have access to vaping products. Esigbond's members must comply with a responsible marketing charter designed to ensure that young people do not access their products: for instance, packaging containing images that could catch the attention of children (candies, cartoons, superheroes, etc.) is prohibited.

Some measures can be implemented to properly enforce the law supposed to protect underage people, such as compulsory age verification systems and bans on the sale of vaping products in non-specialised shops. A *license system* for vape shops can also be considered, with strict penalties for non-compliance.

All these measures can, and should, be implemented to address the youth uptake issue, rather than a disposable ban. Such bans penalise smokers trying to switch to less harmful alternatives, boost the sale of unsafe illegal products and do not hold any added value in the protection of young people from accessing vaping products.

3. EU Battery Regulation: an upcoming de facto ban on disposables

Esigbond shares the environmental concerns stemming from the use of disposables, notably the issues of plastic pollution and improper disposal of batteries. We believe that the solution is not to ban such products, but to engage in an effective and compulsory disposal system in order to favour sustainable battery recycling.

The recently approved EU's Battery Regulation (2023) will ban the sale of electronic devices (vaping products included) if their battery is not removable and replaceable by February 2027. This Regulation amounts to a de facto ban on disposable products. The European vaping sector, including in France and The Netherlands, is aware of this legislation and has started adapting to it.

An earlier ban will not give sufficient time to the France vaping industry to manage its stocks and to properly adjust its business practices. It holds no real added value and should not be the focus of the Ministry of Health's policies.

4. The multiple threats of a rising black market

It is important to keep in mind that the vaping sector in France is strictly regulated and complies fully with the European and national legislation. The EU Tobacco Products Directive regulates the registration process of all new vaping products, the content of e-liquids and their nicotine concentration, ensuring that they are safe for consumption.

EU Member States that have introduced harsh restrictions on vaping products, such as Denmark, Hungary or the Netherlands, saw a boom of illegal and unsafe e-cigarettes. In Estonia, the Parliament actually introduced a bill to reverse restrictive measures on e-liquids, stating that "the reduction of consumer choice and the growth of the clandestine market have led to a reduction in compliance with the law and a loss of trust in the state" and 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”.

There is only a thin line to cross when banning legal products. If bans are imposed consumers will look for alternatives. Australia which has implemented the strictest measures against vaping in the world is confronted with an unintended and dangerous outcome - the rise of a lucrative and expanding black market for these products. Emerging black markets have attracted organized crime groups, which have used violence such as firebombing of stores selling illicit vapes and tobacco¹. Sensible regulation is the only way to avoid this type of subversive crime and keep consumers safe from harm.

5. Legal justification of the measure

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

- a. Esigbond believes the unilateral ban on disposable vaping products 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.

In conclusion, the proposed French law appears disproportionate. In addition to constituting a quantitative restriction on trade between Member States, the justification of protecting public health is unfounded and provides no real added value to the ban on sales to minors, as set in national legislation, which the French authorities have a duty to enforce.

This proposed law is all the more damaging in that it discredits public opinion on the effectiveness of vaping products in smoking cessation and the responsibility of marketers, even though vaping remains a harm-reduction tool that deserves a central place in the fight against tobacco.

¹ <https://theconversation.com/australias-restrictive-vaping-and-tobacco-policies-are-fuelling-a-lucrative-and-dangerous-black-market-225279>