

## AIV'S CONTRIBUTION TO DENMKARK'S

*Tris notification 2024/0064/DK*

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***Proposal for a law amending the law on tobacco products, etc., and various other laws (Implementation of parts of the prevention plan targeting children and young people - tobacco, nicotine, and alcohol)***

Hereby, **Asociația Industriei de Vaping (AIV)**, wishes to contribute to the Danish government's notification of new measures in the field of tobacco and nicotine in Denmark.

**We are very concerned by the significant increase in the use of tobacco and nicotine products among children and young people in Denmark, starting back in 2019.**

The national authorities have implemented an action plan, among which three primary policies stood out:

- 1. more taxes on nicotine-containing liquids for e-cigarettes;*
- 2. a ban on characteristic flavours in liquids with and without nicotine, except for tobacco or menthol flavours;*
- 3. requirements for neutral packaging on those products.*

While the Danish government's intentions were noble in aiming: to deter children and young people from smoking and starting the use of nicotine products, in reality, the measures implemented had unintended consequences.

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### **1. Our concerns of the new legislation regarding the abusive seizures and impact on SMEs**

We observed a significant increase in young e-cigarette users (aged 15-17) between [2020](#) and [2023](#). The percentage of users in this age group surged from 4.5% to 10%. Interestingly, their preference for sweet flavors also skyrocketed during this period, jumping from 64.9% to 88.7%. Conversely, the use of tobacco-flavored e-cigarettes dropped dramatically, reaching 0% by 2023 (down from 6.5% in 2020). Menthol flavors saw a slight decrease in popularity, going from 10.8% to 8.9% over the same timeframe.

At the same time, there's been a concerning rise in 15-17-year-olds unaware of nicotine content in their e-cigarettes. From none in 2020, this number jumped to 6.7% in 2023. Regular nicotine use in e-cigarettes among this age group has increased significantly, going from 44.7% in 2020 to 72.9% in 2023.

All indications suggest that the newly enforced plan sparked a notable **illicit market in Denmark**, as shown even by various [media reports](#) detailing the sale of illegal disposable vape devices (puff bars) to children as young as fourth graders.

The situation created highlights the importance of comprehensively evaluating existing legislation before implementing new regulations. The unintended consequences of the recent regulation, particularly the rise of an illegal market, suggest a lack of resources or expertise for effective enforcement by the regulatory bodies.

Furthermore, the recent measures has profoundly impacted legitimate businesses within the industry. It seems evident that regulatory authorities have relinquished control over the market. Following the enactment of the law, sales have transitioned from reputable and regulated e-cigarette specialty stores to an illicit market driven by social media, facilitated by unscrupulous individuals who show utter disregard for the contents and origins of e-cigarettes, as well as the age of the purchasers.

The current legislative proposal prompts concerns regarding the comprehension of involved parties regarding the ramifications of the newly enforced legislation. These measures primarily seem directed at businesses already grappling with the repercussions of existing laws in the domain.

It's worth noting that the proposal has undergone consultation within the Danish framework, and a [document termed as a "commented consultation document" was recently released](#). In this document, Minister of the Interior and Health Sophie Løhde affirms that the legislative proposal aims to address issues within the supply chain and among distributors. Within the consultation document, the Minister of the Interior and Health further confirms that the Danish Safety Technology Authority has been granted the authority to confiscate products for potential legalization. This implies that the current proposal extends beyond safeguarding public health and instead appears to be another endeavor to restrict the legal sector of the industry. [Such an approach contradicts Directive 2014/40/EU of the European Parliament and of the Council, specifically Article 24](#).

As stated in the grounds outlined in the TRIS notification, to conduct seizures of vaping products not in compliance with Danish legislation, the Safety Technology Authority must enlist the police's assistance in confiscating these goods. In Denmark, the Safety Technology Authority holds the responsibility of ensuring the vaping industry's adherence to national laws. However, there have been instances where the Authority has imposed immediate bans on legally compliant products based on erroneous information and mistakes.

**Granting the Safety Technology Authority direct seizure capabilities poses the risk of unjust confiscations stemming from inaccurate information, thereby compelling vaping companies to challenge these actions in court<sup>1</sup>.** While small and medium-sized enterprises (SMEs) currently retain possession of their products during legal proceedings, the proposed Draft Act would empower the Authority to retain these products until the court reaches a verdict. Given that such legal proceedings can extend up to five years, the seizures permitted under this Draft Act jeopardize the survival of Danish vaping SMEs.

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## 2. Public health and harm reduction opportunity

AIV wants to emphasize that such extreme measures would significantly disrupt small and medium-sized, jeopardizing their survival and will fuel even more the rise in illicit market.

**Last governmental policies stimulated the proliferation of illegal and unsafe vaping products on the black market and harmed the public health.** Other EU member states like Hungary, and the Netherlands experienced a surge in illicit vaping products following flavor bans. [Estonia is rolling back](#) a flavor ban due to increased non-compliance with the law and heightened health risks associated with black market products. For this reasons we can say that **as regulations become more stringent, the potential for harm reduction in public health diminishes.**

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<sup>1</sup> Not to mention that it takes nearly 5 years to process a case in the Danish courts.

Numerous independent and publicly funded studies have underscored the potential for harm reduction offered by vaping products. For instance, a [report](#) commissioned by Public Health England revealed that vaping is 95% less harmful than smoking traditional cigarettes, while [research](#) funded by the esteemed Institut Pasteur demonstrated that vaping is considerably less carcinogenic than smoking and serves as a viable substitute for conventional tobacco. Additional support for the harm reduction capacity of vaping can be found in studies conducted by the [Royal College of Physicians](#) and published in the [British Medical Journal](#). Overall, vaping products have been shown to mitigate the risk of cancer for smokers.

Moreover, vaping products play a pivotal role in assisting adult smokers in quitting traditional tobacco. Peer-reviewed studies published in the [American Journal of Public Health](#) and research conducted by the [University of Oxford](#) underscore the smoking cessation potential of vaping. The European Parliament acknowledged in two distinct reports — [the report on strengthening Europe in the fight against cancer \(2022\)](#) and the report on [non-communicable diseases \(2023\)](#) — that "**electronic cigarettes could enable some smokers to gradually quit smoking**".

Given these findings, it is reasonable to anticipate that the Draft Act, by jeopardizing legal vaping enterprises, will steer smokers away from a safer alternative, **harming the public health** and potentially leading to a further increase in tobacco smoking rates. Furthermore, the Draft Act lacks provisions capable of deterring the black market for vaping products, which inherently operates outside the bounds of the law. Consequently, illegal products, devoid of regulation and posing hazards to consumers, are likely to proliferate even more than they already do. Ultimately, the Draft Act stands to inflict greater harm on Danish public health than it does good.

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## Conclusion

*AIV respectfully urges the European Commission to thoroughly review the Draft Act, considering the information presented in this submission.*

*We also advocate for the encouragement of national authorities to implement measures aligned with the intended objectives and to refrain from penalizing the legal vaping industry.*

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**AIV (Asociația Industriei de Vaping)** unites key players in the Romanian vaping market including producers, distributors, and specialists. Our mission is to advocate for this sector with state authorities and the public in Romania. AIV operates independently from the tobacco and pharmaceutical industries and aims to collaborate closely with government institutions responsible for public health, striving to improve conditions for smokers in Romania.

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Chairman AIV - Ciprian Boboi

