

IEVA's contribution to Lithuania's TRIS notification 2024/0317/LT

The [Independent European Vape Alliance](#) (IEVA) would like to express its concerns regarding the Lithuanian State Consumer Rights Protection Authority's draft *Order of the Director of the State Consumer Rights Protection Authority on the approval of the list of chemical substances authorised for use in the Republic of Lithuania to impart the taste and smell of tobacco to electronic cigarettes and electronic cigarette filler liquids*, notified to the European Commission on the 16th of June 2024, under the reference [2024/00317/LT](#).

[IEVA](#) is the only pan-European association that brings together Europe's small and medium sized producers and retailers of vaping products. The vast majority of vaping companies are run by self-funded entrepreneurs who saw a problem in society, namely cigarette smoking, and created vaping products as part of the solution. We are independent and not influenced by tobacco companies.

Article 13 of the draft Rules foresees the ban on the use of flavouring additives in e-liquids by presenting an exhaustive list of 16 flavouring additives that are allowed. This "white-list" ban (a ban of all substances except a selected few), justified by the Lithuanian State Consumer Rights Protection Authority by the need to "reduce the availability and attractiveness" of vaping products and to protect citizens' health.

IEVA believes the **proposed "white list" flavour ban is not proportionate to the objective** pursued, as the measure strongly fails to be:

- Appropriate, i.e. a suitable mean to attain the objective 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.

1. Introduction of a white-list flavour ban on e-liquids

Proposed measure: *The draft order aims to protect the health interests of the public, in particular children and young people, by introducing stricter regulation of nicotine-containing products, reducing their availability and attractiveness.*

IEVA considers that the foreseen flavour ban does not adequately serve the policy objectives targeted by the Lithuanian authorities.

- a. **Publicly-financed scientific studies demonstrate there is no significant correlation between the availability of flavoured e-liquids and youth uptake.** 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”.
- b. The foreseen flavour ban appears to be **unjustified as it is not an appropriate measure to reduce attractiveness of vaping products and youth uptake.** IEVA calls on the Lithuanian authorities to reassess the dominant negative perception of flavour in the amendment and consider current scientific evidence on the matter. Moreover, the foreseen ban is not supported by any concrete evidence that vaping products are actually more attractive to youngsters.

Young people access vaping products (primarily disposables) **through other sources than vape shops or general stores, i.e. the black market**. The growing illicit market is heavily focused on younger consumers, selling non-conforming products via social media (one of the main mediums where Lithuanians see vaping advertisements). Black markets will grow and thrive with the adoption of the flavour ban, as most of the products sold there do not comply with EU rules to begin with and are therefore not allowed to be sold. Undue restrictions on vaping products lead to a reinforcement of illicit markets, as it was the case in various countries such as Hungary or Estonia.

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.

2. Vaping as a harm reduction alternative to tobacco

Many independent and publicly funded studies have highlighted the **harm reduction potential of vaping products**: a [report](#) commissioned by Public Health England found that vaping is 95% less harmful than smoking combustible cigarettes, and a [study](#) financed by the prestigious Institut Pasteur confirmed that vaping is significantly less carcinogenic than smoking and constitutes an acceptable replacement for traditional tobacco. Other sources pointing to the harm reduction potential in vaping can be found in studies by the [Royal College of Physicians](#) or published in the [British Medical Journal](#). Overall, vaping products reduced the risk of cancer for smokers.

Vaping products also play a **critical role in helping adult smokers to quit traditional tobacco**. Peer reviewed studies by the [American Journal of Public Health](#) and research led by the [University of Oxford](#) highlight the smoking cessation potential of vaping. The European Parliament considered in two separate reports - the report on [strengthening Europe in the fight against cancer](#) (2022) and the report on [non-communicable diseases](#) (2023) - that “electronic cigarettes could allow some smokers to progressively quit smoking”.

3. Effects of a white list flavour ban on the legitimate vaping industry

With the limited list of 16 substances, none of the current tobacco-flavoured e-liquids that are being marketed by registered vape shops in Lithuania can be manufactured anymore. This option would therefore force the industry to start new development processes to determine (with no guarantee of success) whether an

acceptable and marketable tobacco-flavoured e-liquid can be produced using only these 16 ingredients.

It is more than likely that **this option could outright ban all e-liquids in the country**. It is also important to remind that Lithuania already has one of the strictest vaping regulations in the EU, with a current ban on e-liquid flavours besides tobacco and with high taxation rates.

Risking the ban of all e-liquids in Lithuania is an extreme measure that would gravely impact the vape shops SMEs in the country. It would put hundreds of jobs at risks and would boost the black market, flooding Lithuania with unregulated and dangerous products. IEVA strongly argues against this measure, and notes that its consequences are not proportional to the public health goals that the government intends to reach.

We believe that the best measure is not to introduce any flavour ban, but rather to strictly enforce the law on the age restriction for the sale of vaping products.

4. Legal justification of the measure

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

a. IEVA believes the white list ban 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 e-liquids 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.

The Lithuanian authorities do not thoroughly demonstrate that the products in question pose a genuine threat to public health, which should therefore prevent Lithuania from introducing such a flavour ban under article 36 of the TFEU.

Conclusion and propositions of appropriate measures

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