

To the European Commission,

Subject: Notification 2024/0064/DK 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)

Regarding the Danish government's notification of new measures in the field of tobacco and nicotine in Denmark.

We would like to draw the European Commission's attention to a concerning development in Denmark. Since the implementation of the national action plan against children and young people's smoking in 2019, there has been a significant increase in the use of tobacco and nicotine products among children and young people.

The measures in the action plan included, among others, taxes on nicotine-containing liquids for e-cigarettes and a ban on characteristic flavors in liquids with and without nicotine, except for tobacco or menthol flavors, as well as requirements for neutral packaging. The intention was to prevent children and young people from starting to smoke and from starting a consumption of nicotine products. Unfortunately, it seems that these measures have had the opposite effect.

For example, the proportion of young users of e-cigarettes among 15-17-year-olds has increased from 4.5% in 2020¹ to 10% in 2023². At the same time, the proportion of 15-17-year-olds using e-cigarettes with fruit, candy, and other sweet flavors has increased from 64.9% in 2020 to 88.7% in 2023. Paradoxically, the proportion of 15-17-year-olds using tobacco flavor has decreased from 6.5% in 2020 to 0% in 2023, and for menthol, there is also a decrease, from 10.8% in 2020 to 8.9% in 2023.

Furthermore, the proportion of 15-17-year-olds who do not know if there is nicotine in their e-cigarettes has increased from 0% in 2020 to 6.7% in 2023. Additionally, the proportion who always use nicotine in e-cigarettes has increased from 44.7% in 2020 to 72.9% in 2023.

All indications suggest that the newly implemented law has caused a significant illegal market in Denmark, supported by various stories in the media concerning the sale of illegal disposables (puff bars) to children as young as fourth graders³.

This information calls for an evaluation of the current legislation in this area before the newly announced measures are implemented in Denmark. Everything indicates that the law has had the opposite effect of its intention and that the regulatory authorities do not have the resources or expertise to enforce the rules.

The implementation of the latest measures in this area has had significant consequences for businesses in the legal part of the industry. Moreover, it appears that the authorities have lost control of the market, which, after the implementation of the law, has shifted sales from well-established and controlled e-cigarette specialty stores to an illegal market where trade primarily occurs through social media, facilitated by shady and cynical individuals who are completely indifferent to the contents of e-cigarettes, where the products come from, or the age of the buyers.

¹ https://www.sdu.dk/da/sif/rapporter/2020/paragraf_roeg

² https://www.sdu.dk/da/sif/rapporter/2024/roeg_rapport_5_tobak_regler_adfaerd

³ <https://www.tv2nord.dk/aalborg/elever-helt-ned-til-4-klasse-kender-til-farligt-og-ulovligt-faenomen-unge-blander-stoffer-i-puff-bars>

The present legislative proposal raises concerns about whether the parties involved understand the consequences of the newly implemented legislation in the area, as the measures in this legislative proposal primarily aim to target the businesses already struggling with the consequences of current legislation.

It is noted that the proposal has been subject to consultation in the Danish context, and a so-called commented consultation document was recently published⁴, in which Minister of the Interior and Health Sophie Løhde confirms that the intention of the legislative proposal is to act against the supply chain and distributors.

In the consultation document, the Minister of the Interior and Health also confirms that the Danish Safety Technology Authority is given powers to seize products that can subsequently be legalized. Thus, it must be assumed that the present proposal does not exclusively concern the protection of public health but is merely another attempt to limit the legal part of the industry, which is contrary to Directive 2014/40/EU of the European Parliament and of the Council, Article 24⁵.

GEJSER points out that it currently takes nearly 5 years to process a case in the Danish courts, which means that the consequences for the bad actors in the industry, who have not intended to comply with the applicable rules, have not yet been illuminated by a court decision. Thus, it must be assumed that threats of consequences for violating the law have no effect on those who do not intend to comply with the law, which unfortunately leads to more and more consciously choosing to circumvent the rules, creating distortion of competition as customers move from legal retailers to the illegal market.

We hope that the European Commission will take our views into consideration and thus urge the Danish government to evaluate the current legislation before the newly announced measures are implemented.

As Denmark's largest e-cigarette retailer, GEJSER is always available and willing to provide the European Commission with further information and documentation.

Med venlig hilsen / Best regards

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Kommunikationsansvarlig

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⁴ <https://www.ft.dk/samling/20231/lovforslag/L173/bilag/1/2856714.pdf>

⁵ <https://eur-lex.europa.eu/legal-content/DA/TXT/?uri=CELEX%3A32014L0040>