

**NECA**  
**National Electronic Cigarettes Association**  
Code 305728418, address Merkines st. 16-1, Vilnius, Lithuania

**European Commission - TRIS/(2023) 2273**  
**Directive (EU) 2015/1535**  
**Notification: 2023/0471/LT**

31/10/2023, Vilnius

**RE: DRAFT LAW NO. XIVP-2791(2) AMENDING ARTICLE I-1143 9(2) OF THE LAW ON THE CONTROL OF TOBACCO, TOBACCO PRODUCTS AND RELATED PRODUCTS**

Lithuanian National Electronic Cigarettes Association (NECA) represents national and international companies importing and selling e-cigarettes in Lithuanian market.

Draft Law No XIVP-2791(2) amending Article 9 (2) of Law No I-1143 on the control of tobacco, tobacco products and related products of the Republic of Lithuania (hereinafter “**Draft law**”) proposes to set a new ban applicable on the composition of the e-cigarettes’ liquid specifying that e-cigarette liquid must not contain sugars or sweeteners.

NECA asks European Commission to evaluate critically the Draft law, whereas:

*First*, the objectives of the adoption of the regulation and explanation of the proposed regulation set out in the notification notice are based on misleading, incorrect information.

<b>Notification Notice Statement</b>	<b>NECA comment</b>
<p>There is no list of authorised or prohibited tobacco flavouring substances approved by the law, which allows economic operators to argue that tobacco flavours are different and to interpret the term ‘flavour of tobacco’ differently, thus placing on the market electronic cigarettes and their refill containers with certain non-tobacco smell and/or taste properties. The draft law therefore proposes to extend the concept of ‘added smell or taste’ to e-cigarettes. It is proposed to prohibit the placing on the market of electronic cigarettes and their refill containers with an added flavour other than that of tobacco.</p>	<p>Provided information is misleading and incorrect, because:</p> <p>(i) In order to ensure other than tobacco e-cigarettes smell and / or taste ban effective functioning, which is in place in Lithuania from 1 July 2022, Lithuania plans to adopt draft of the law on the control of tobacco, tobacco products and related products of the Republic of Lithuania which is now under TRIS notification process (notification No. 2023/0467/LT, TRIS/(2023) 2253). Mentioned draft of the law proposes to specify in sub-statutory legal acts the specific authorised chemicals that give the flavour of tobacco to electronic cigarettes and their refill containers and to indicate the CAS numbers of these substances. <b>Meanwhile, the Draft law proposes to introduce a new ban, i.e. in addition to the existing ban on flavours of e-cigarettes, it is proposed to introduce a ban on the presence of sugars or sweeteners in e-cigarettes liquid.</b></p> <p>(ii) The Draft law has no relevance with the indicated aims “to extend the concept of ‘added smell or taste’ to e-cigarettes” because it proposes to set the new restriction (ban) applicable to the composition of e-cigarettes liquid, i.e. to set a ban for the usage of the</p>

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	<p>substances having sugar and sweeteners molecules.</p> <p>(iii) The statement that “<i>It is proposed to prohibit the placing on the market of electronic cigarettes and their refill containers with an added flavour other than that of tobacco</i>” is incorrect because in Lithuania e-cigarettes flavour ban is already in place from 1 July 2022.</p>
<p>The draft law proposes to specify in sub-statutory legal acts the specific authorised chemicals that give the flavour of tobacco to electronic cigarettes and their refill containers and to indicate the CAS numbers of these substances. This would limit the possibility for economic operators to circumvent the prohibitions of the Law and to place on the market e-cigarettes and their refill containers with certain non-tobacco smell and/or taste properties.</p>	<p>Draft law has absolutely no relations with provided information.</p> <p>Draft law has only one purpose and proposal – to set the new restriction (ban) applicable to the composition of e-cigarettes liquid, i.e. to set a ban for the usage of the substances having sugar and sweeteners molecules.</p> <p>Intentions of the Draft law indicated in TRIS notification notice relate to a completely different draft legislative act - i.e different draft law which is now under notification process TRIS/(2023) 2253.</p>
<p>Therefore, for the sake of clarity, it is proposed to exempt electronic cigarettes and their nicotine-free refill containers from the health warning requirement. In order to reduce the administrative burden of state institutions dealing with cases for violation of the provisions of the Law and to increase the speed of the proceedings in pending cases, the draft law proposes certain amendments to the procedures for the handling of cases concerning infringement of the Law</p>	<p>Draft law has absolutely no relations with provided information.</p> <p>Draft law has only one purpose and proposal – to set the new restriction (ban) applicable to the composition of e-cigarettes liquid, i.e. to set a ban for the usage of the substances having sugar and sweeteners molecules.</p> <p>Intentions of the Draft law indicated in TRIS notification notice relate to a completely different draft legislative act – i.e different draft law which is now also under notification process TRIS/(2023) 2253.</p>
<p>The law was drafted in order to fill the gaps in the current regulation when electronic cigarettes, electronic cigarette refill containers with attractive taste and attractive characteristics for young people are placed on the market of the Republic of Lithuania and reduce the attractiveness of electronic cigarettes and e-cigarette refill containers for young people.</p>	<p>Draft law has absolutely no relations with provided information and such purposes.</p> <p>Draft law has only one purpose and proposal – to set the new restriction (ban) applicable to the composition of e-cigarettes liquid, i.e. to set a ban for the usage of the substances having sugar and sweeteners molecules.</p> <p>Intentions of the Draft law indicated in TRIS notification notice relate to a completely different draft legislative act - i.e different draft law which is now also under notification process TRIS/(2023) 2253.</p>

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*Secondly*, the adoption of the Draft law would impose a new, disproportionate ban that would virtually eliminate all import and sales of e-cigarettes in Lithuania. A new prohibition on the composition of e-cigarettes liquid, i.e. that they must not contain sugars or sweeteners, would effectively prevent the marketing of all e-cigarettes, as it would prohibit all e-cigarette liquids in general. One of the main components of e-cigarette liquids is vegetable glycerine, which is vaporised during heating<sup>1</sup>. Vegetable glycerin is 100% derived from plant materials such as soya, palm or coconut oil. Due to the fact that vegetable glycerin is extracted from plant materials, it always contains sugars in its chemical composition.<sup>2</sup> Accordingly, vegetable glycerol itself, which is a necessary component of the e-cigarette liquid, does not give rise to an odour or taste characteristic of the e-cigarette, but would be prohibited if the Draft law were to be adopted.

*Third*, the proposed prohibition is not justified in the light of the range of regulatory measures already applied / under implementation in Lithuania: (i) Prohibition of e-cigarette liquids other than tobacco flavours (applicable from 1 July 2022); (ii) Licensing of e-cigarette sales, which ensures that only sales that comply with the law are authorized; (iii) The draft law, notification number No TRIS/(2023) 2253, establishing regulations to ensure that only e-cigarette liquids complying with a specific list of substances are considered to be tobacco flavoured.

Also, it should be noted that on 9 June 2023 Ministry of Justice of the Republic of Lithuania has submitted position No XIVP-2791 stating that Draft law contradicts to the Directive 2014/40/EU.<sup>3</sup>

**Thus, NECA recognizes Draft law as illegal, disproportionate measure restricting the free movement of goods.**

Lithuanian National Electronic Cigarettes Association

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<sup>1</sup> [European Code Against Cancer - What are electronic cigarettes \(e-cigarettes\)? \(iarc.fr\)](http://iarc.fr)

<sup>2</sup> [Glycerin—produced by hydrolysis of fats and oils \(usda.gov\)](http://usda.gov)

<sup>3</sup> [XIVP-2791 IŠVADA dėl Tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymo Nr. I-1143 9\(2\)... \(lrs.lt\)](http://lrs.lt)