

ETHRA's submission to EU Call for evidence- Extending smoke-free environments

European Tobacco Harm Reduction Advocates (ETHRA) is the voice of 27 million EU consumers of safer nicotine products. ETHRA is a consortium of 25 grassroots consumer associations in 17 European countries, supported by experts in tobacco control and nicotine research. We are a voluntary operation with no industry funding or conflicts of interest. Our transparency registration number is 354946837243-73.

This document is our response to the call for evidence regarding the initiative smoke-free environments - updated recommendation.

We will confine our comments to the use of non-combustible Safer Nicotine Products (SNPs), such as vapes and Heated Tobacco Products rather than combustible products, such as cigarettes and pipes.

The purpose of the Recommendation on smoke-free environments (2009/C 296/02)¹ is to protect people in the EU from exposure to second-hand smoke, as well as to encourage current smokers to quit. The intention to extend this recommendation to Safer Nicotine Products is not based on science and is counterproductive to public health, as we explain in the nine points below.

1. The scientific basis for updating this recommendation is flawed
2. There are key differences between secondhand smoke and secondhand vape exposure, which policy makers should take into account.
3. With no credible evidence to show that vaping presents a material risk to bystanders, the decision on whether to permit it should rest with property owners.
4. Banning the use of safer alternatives to smoking in public spaces will increase smoking.
5. Banning the use of products which people know to be safer will damage trust in public health.
6. Eurobarometer data does not support the claim that SNPs appeal in particular to young people.
7. Enforcement would add a financial burden to member states and risk criminalising people for bettering their own health.
8. The evaluation study does not consider the economic impact on the vape sector or the impact on quitting rates
9. Consumers are omitted from the targeted stakeholder consultation

1. The scientific basis for updating this recommendation is flawed

The evidence given in support of including Safer Nicotine Products in the recommendations is drawn from two widely criticised reports, namely the *2021 WHO Report on the global tobacco epidemic*² and the *SCHEER opinion on electronic cigarettes*³.

The *WHO report on the global tobacco epidemic* draws alarmist conclusions about the dangers posed by emerging products and second-hand exposure to them. In fact, there are key differences between secondhand smoke and secondhand vape exposure, see point 2 below.

The public consultation for the *SCHEER opinion on e-cigarettes* attracted a huge number of critical submissions from consumers⁴ and scientists.⁵ The Opinion's fatal flaw stems from the mandate, where the SCHEER was asked to focus only on health impacts compared to non-smoking and not to smoking. The result is that the SCHEER has produced a document which is useless to policymakers who wish to reduce the smoking burden by taking a balanced approach to safer nicotine products. With regards to the SCHEER's assessment of the harms from second hand vapour, ETHRA's public health advisor, Clive Bates, sums up the report's flaws as: "*there is no evidence supporting a plausible risk from exposure to secondhand vapour and good reasons to believe any risk will be negligible. These reasons include the low toxicity of vapour, the much smaller volumes produced compared to smoking and rapid dispersal in the atmosphere.*"⁶

2. There are key differences between secondhand smoke and secondhand vape exposure, which policy makers should take into account.

Key differences between secondhand smoke and secondhand vape exposure

1. *The quantity emitted. Most of the inhaled vapour is absorbed by the user and only a small fraction is exhaled (15% or less, depending on the constituent). In contrast, about four times as much environmental tobacco smoke comes directly from the burning tip of the cigarette than is exhaled by the smoker. There is no equivalent of this "sidestream smoke" for vaping.*
2. *The toxicity of the emissions. Tobacco smoke contains hundreds of toxic products of combustion that are either not present or present at very low levels in vapour aerosol. Vapour emissions do not have toxicants present at levels that pose a material risk to health. Exposure to nicotine, itself relatively benign, is unlikely to reach a level of pharmacological or clinical relevance.*
3. *The time that the emissions remain in the atmosphere. Environmental tobacco smoke persists for far longer in the environment (about 20-40 minutes per exhalation). The vapour aerosol droplets evaporate in less than a minute and the gas phase disperses in less than 2 minutes."*

Taken from The Counterfactual blog, Clive Bates⁷

Avino et al's *Second-hand aerosol from tobacco and electronic cigarettes: Evaluation of the smoker emission rates and doses and lung cancer risk of passive smokers and vapers*⁸

finds that the excess life cancer risk (ELCR) for passive smokers is 5 orders of magnitude higher than the passive vaper one. You can think of five orders of magnitude as 10,000 times. In practice, this means zero and it would be undetectable in epidemiology.

3. With no credible evidence to show that vaping presents a material risk to bystanders, the decision on whether to permit it should rest with property owners.

With no credible evidence to show that indoor vaping presents a material risk to bystanders, the only potential issues around public use is of etiquette and nuisance to others. What is appropriate for one setting might not be appropriate for another. Property owners, managers and local authorities are best placed to determine the policy on SNP usage for their premises.⁹

4. Banning the use of safer alternatives to smoking in public spaces will increase smoking.

Allowing SNPs in places where smoking is banned might encourage smokers to switch to a much safer product. As the Special Committee on Beating Cancer (2020/2267(INI))¹⁰ recognises, vaping can *“allow some smokers to progressively quit smoking”*.

In its 2021 report, *“Smoking and health 2021: A coming of age for tobacco control?”*¹¹ the Royal College of Physicians recommends that safer nicotine products should not be included in smoke free policies, stating that: *“Allowing vaping in areas where smoking is prohibited may prevent former smokers who vape from relapsing to smoking and current smokers unable or unwilling to quit smoking to abstain from smoking.”*

Preventing people who smoke from benefiting their health by using SNPs sends out the false message that SNPs are as harmful as smoking. A recent study published in *Nicotine and Tobacco Research*¹² cautioned that misperceptions of the relative risk of vaping compared to smoking can influence subsequent smoking and vaping behaviour, stating:

“The pervasive misperception that e-cigarettes are equally or more harmful than combustible cigarettes is a barrier to current smokers switching to e-cigarettes.”

5. Banning the use of products which people know to be safer will damage trust in public health.

People who have quit smoking by using SNPs, and those close to them, know that they have done something that has improved their health, and that use of SNPs does not pose a substantial risk to bystanders. Governments trying to convince them of the opposite will lose trust. The inaugural *OECD Survey on the Drivers of Trust in Public Institutions (Trust Survey)*¹³ published last year illustrates that governments are not performing well on responding to citizens' concerns. The survey shows that disadvantaged groups have lower levels of trust in government; these are the groups with the highest smoking rates, who would benefit from switching to SNPs.

6. Eurobarometer data does not support the claim that SNPs appeal in particular to young people.

It is stated in the Call for Evidence that *“Since 2009, e-cigarettes and HTPs have consolidated their market shares and they appeal, in particular, to young consumers”*. However, the assertion that vapes and HTPs appeal in particular to young people is false. Eurobarometer 506¹⁴ found that only 2% of 15 - 24-year-olds use HTPs, and the percentage

of never smokers using HTPs is 0. Only 2% of 15 - 24-year-olds used a vaping product without having previously smoked. Eurobarometer 506 also found that smoking rates among those aged 15 and over fell by 3% and youth smoking fell by an astonishing 9%, but the Commission fails to recognise the dramatic fall in combustible tobacco consumption as a positive. This focus on nicotine use, rather than on combustible tobacco use, is misguided and dangerous¹⁵.

7. Enforcement would add a financial burden to member states and risk criminalising people for bettering their own health.

Governments are currently under considerable financial pressure. Requiring member states to legislate for and enforce these proposals, especially in the absence of any discernible health or economic benefits, is misjudged.

Users of SNPs are people who are improving their health by avoiding combustible products. It is immoral to punish people for bettering their health, especially when there is no negative impact on others. There have been recent instances of US law enforcement officers tasing Black teenagers for vaping in open spaces.¹⁶ We do not consider that the Commission has adequately considered the unintended consequences of banning the use of SNPs in outside spaces.

8. The evaluation study does not consider the economic impact on the vape sector or the impact on quitting rates

This initiative is based on evidence from a 2021 evaluative study that looked at the potential negative impact of the update on economic operators, in particular for the hospitality sector. This study, however, did not consider the potential of differentiated measures, either for the sector or the health of people.

9. Consumers are omitted from the targeted stakeholder consultation.

The targeted consultation foreseen in the consultation strategy fails to even mention the people most affected by this initiative: consumers of SNPs and people who smoke. Omitting consumers from the main list of stakeholders to be consulted renders the consultation process obsolete. This major group of stakeholders represents a key subset of the hospitality industry's customers.

Conclusion.

There are compelling scientific and moral arguments against including the use of SNPs in public place bans. It is wrong to ban something which people want to do unless there is compelling evidence that the activity causes harm to others. We are disappointed that the Commission has chosen to rely on the flawed SCHEER opinion to justify its reasoning, and also misrepresented Eurobarometer data. The Commission's proposals run contrary to the BECA report, approved by the European Parliament in February 2022. The consultation process and evaluation study fail to consult with those most affected and do not adequately examine the health and economic impacts. This all leaves us with the unfortunate conclusion that these policies are motivated by ideological rather than health considerations. The potential consequences for people who smoke and their families are devastating.

A note on ETHRA's preferred terms for products

As the people with lived experience of using Safer Nicotine Products (SNPs), we generally choose to use the terms "vapes", "vaping products" and "vaping" rather than "e-cigarettes" or "ENDS".

We use "HTPs" to refer to Heated Tobacco Products.

"Nicotine pouches" is our chosen term for non-tobacco containing oral sachets.

We use "snus" to refer to the pasteurised Scandinavian oral tobacco product, either in loose or pouch form.

References:

- ¹ European Commission. 2022. Smoke-free environments – updated recommendation. [\[access\]](#)
- ² World Health Organisation. 2021. WHO report on the global tobacco epidemic 2021: addressing new and emerging products. [\[access\]](#)
- ³ European Commission. 2021. Scientific Committee on Health, Environmental and Emerging Risks (SCHEER) Opinion on electronic cigarettes. [\[access\]](#)
- ⁴ European Tobacco Harm Reduction Advocate. 2021. ETHRA's view on the SCHEER Opinion. [\[access\]](#)
- ⁵ O'Leary, R., Polosa, R., Li Volti, G. et al. Critical appraisal of the European Union Scientific Committee on Health, Environmental and Emerging Risks (SCHEER) Preliminary Opinion on electronic cigarettes. *Harm Reduct J* 18, 31 (2021). [\[access\]](#)
<https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-021-00476-6>
- ⁶ Clive Bates. 2020. Response to the extremely poor European Commission SCHEER preliminary opinion on e-cigarettes. *The Counterfactual*. [\[access\]](#)
- ⁷ Clive Bates. 2022. Are secondhand ENDS emissions dangerous? *The Counterfactual*. [\[access\]](#)
- ⁸ Avino, P., Scungio, M., Stabile, L., Cortellessa, G., Buonanno, G., & Manigrasso, M. (2018). Second-hand aerosol from tobacco and electronic cigarettes: Evaluation of the smoker emission rates and doses and lung cancer risk of passive smokers and vapers. *Science of the Total Environment*, 642, 137–147. [\[access\]](#)
- ⁹ Public Health England. 2016. Use of e-cigarettes in public places and workplaces. [\[access\]](#)
- ¹⁰ European Parliament's Special Committee on Beating Cancer. 2022. On strengthening Europe in the fight against cancer – towards a comprehensive and coordinated strategy. [\[access\]](#)
- ¹¹ Royal College of Physicians. *Smoking and health 2021: a coming of age for tobacco control?* London: RCP, 2021. [\[access\]](#)
- ¹² Madeleine R E Svenson, BSc, Tom P Freeman, PhD, Olivia M Maynard, PhD, The effect of conflicting public health guidance on smokers' and vapers' e-cigarette harm perceptions, *Nicotine & Tobacco Research*, 2022,, ntac163. [\[access\]](#)
- ¹³ Organisation for Economic Co-operation and Development. 2021. *OECD Survey on the Drivers of Trust in Public Institutions (Trust Survey)*. [\[access\]](#)
- ¹⁴ European Commission, Directorate-General for Communication, Directorate-General for Health and Food Safety, *Attitudes of Europeans towards tobacco and electronic cigarettes : report*, European Commission, 2021, [\[access\]](#)
- ¹⁵ Royal College of Physicians. *Nicotine without smoke: Tobacco harm reduction*. London: RCP, 2016. [\[access\]](#)
- ¹⁶ Li, DK., Britton, B., 2021. Viral video shows Maryland police use Taser on teen to enforce vaping ban. *NBC news*. [\[access\]](#)