

ETHRA letter to the Council of the European Union

We write as advocates for consumers of safer alternatives to smoking.¹ We are aware of the forthcoming Health Ministers' Council discussion² and a call for action to protect young people from novel tobacco and nicotine products led by the government of Latvia.³

We wish to urge caution and provide some factual context for the discussion. The measures proposed are unlikely to protect young people and likely to do more harm than good overall. Full or partial bans on the manufacturing and supply of novel nicotine products will not prevent the underlying demand for nicotine. All safer nicotine products are flavoured in some way (including tobacco flavour); therefore, a ban on flavourings is a *de facto* ban.

Prohibitions do not cause banned products to disappear or demand to dissipate. Instead, three primary responses should be expected:

1. There would be an **increase in smoking** through reduced adult switching and increased relapse from vaping to smoking. Given the risks of smoke-free products are a small fraction of those of cigarettes and given that 700,000 people die from smoking in the European Union each year, only a slight uptick in smoking is necessary for the unintended harms to far exceed the intended benefits.
2. The **illicit market** in banned products would flourish through informal internet commerce and multiple distribution channels to connect users and manufacturers. This market would be unregulated and attract criminal networks prepared to sell any illicit product to anyone of any age. While many products traded illegally will be high quality and manufactured legitimately outside the EU, there will be nicotine products on sale with misleading product information, safety risks and unknown potency. The main effect will be to exclude law-abiding European Union businesses from participation in a regulated market.
3. Consumers and suppliers will develop **potentially risky workarounds** to counter intrusive regulations that prevent access to products that are far safer alternatives to smoking. There is already experience of this effect with menthol adaptations and innovation to overcome the mandated small tank and container sizes required in the Tobacco Products Directive. In the future, consumers may be pressured to mix their own flavoured liquids and sell them to others, possibly adding dangerous ingredients and mixing them in unhygienic conditions.

These effects will apply to young people and adults alike. There are further risks to young people if they are drawn into illegal supply (a common practice in illegal drug networks) or manufacturing (making liquids for friends to earn money).

We agree that young people should not use nicotine. However, we are concerned about measures that would address this challenge by removing choices from the much larger adult population of nicotine users (there are typically 10-20 times more adult nicotine users in most countries), most of whom are at risk from smoking. It is also essential to understand that most forms of nicotine use by teenagers may be experimental and short-lived, with minimal consequences. However, adults who switch from smoking to safer, smoke-free nicotine products will experience dramatic reductions in their exposure to harmful toxicants. The European Union should not be obstructing such moves but encouraging the transition to safer nicotine products as part of its efforts to beat cancer and address non-communicable diseases.

We support a proportionally regulated market for safer nicotine products, which aims to achieve a high level of health and consumer protection with minimal acceptable risk. That means doing everything possible to migrate smokers to smoke-free alternatives. This aim will not be achieved with prohibitions.

We agree that there should be efforts to reduce youth access to all nicotine products. These break down into four main areas:

- **A lawful regulated market.** Maintaining a legal market in the products that adults legitimately wish to buy is essential. Prohibitions will lead to unregulated markets with no controls and elevated risks to adults and youth. There is no logic to prohibiting safer nicotine products while cigarettes are pervasively available and by far the most dangerous products.
- **Age-secure retailing.** It should be straightforward for adults to buy the products they want but difficult for those deemed to be underage. Licensing regimes, identification systems and other options exist to support age-secure retailing.
- **Marketing controls.** We recommend controlling advertising, promotion, and sponsorship to prevent irresponsible and youth-oriented marketing. These controls should be extended to controls on packaging and branding, including the descriptors used for flavours (see below).
- **Control of flavour descriptors.** A flavour can be understood in three ways: (i) a chemical recipe, (ii) a sensory experience (e.g. “apple” or “vanilla”), and (iii) a descriptor (the words used to describe the sensory experience). It is legitimate to control the chemicals used to avoid toxic risks. Controls on flavour descriptors as a form of marketing are justified. But we do not advise broad prohibitions of flavour as a sensory experience.

However, any excessive control on the supply and marketing of safer alternatives to smoking works against the aims of the internal market, forming a barrier to entry that suppresses pro-health, pro-consumer innovation while protecting the incumbent cigarette trade.

We hope that further revisions of the Tobacco Products Directive, Tobacco Advertising Directive and Tobacco Excise Directive will be based on evidence, deliberation and meaningful consultation. These are important directives that can have lethal or life-saving consequences for European citizens. We should not begin their revision with pre-ordained results that are based on weak or misleading evidence.

ETHRA remains at your disposal and would be delighted to supply any further information which you might require. We look forward to hearing from you.

Yours sincerely,

Damian Sweeney
On behalf of ETHRA & Partners

A note on ETHRA's preferred terms for products

As people with lived experience of using Safer Nicotine Products (SNPs), we generally choose to use these terms:

- 'vapes', 'vaping products' and 'vaping', rather than 'e-cigarettes' or 'ENDS'.
- 'HTPs' to refer to Heated Tobacco Products.
- 'Nicotine pouches' for non-tobacco containing oral sachets.
- 'snus' to refer to the pasteurised Scandinavian oral tobacco product, either in loose or pouch form.

References:

¹ ETHRA is the voice of 27 million EU consumers of safer nicotine products (SNPs). The safer nicotine products we use include vapes, nicotine pouches, snus, and heated tobacco products. ETHRA is a consortium of 24 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.

² Council of the European Union (Employment, Social Policy, Health and Consumer Affairs) ECCL, Notice of Meeting and Provisional Agenda, Luxembourg 20 and 21 June 2024, 5 June 2024 [\[link\]](#)

³ A call for action at EU level to protect young people from the harm caused by novel tobacco and nicotine products Information from the Latvian delegation on behalf of the Cyprus, Estonian, Irish, Latvian, Lithuanian, Luxembourg, Maltese, Portuguese, Slovenian and Spanish delegations, Brussels 5 June 2024 [\[link\]](#)