

IEVA Contribution to TRIS notifications 2022/440/E

IEVA would like to express its concerns regarding the *Anteproyecto de Ley del Mercado de Tabacos y Productos Relacionados* notified by the Kingdom of Spain to the European Commission on the 21st of June 2022, under the reference [2022/440/E](#).

Context

The Spanish Government has recently launched a draft bill that threatens to end the independent vaping sector in Spain and give the entire electronic cigarette business to big tobacco companies.

Against all principles of EU law (proportionality, good regulation, good administration, fair competition and harmonisation), the Spanish Government has proposed in its *Anteproyecto de Ley del Mercado de Tabacos y otros Productos Relacionados* to ban and close all vape shops across Spain (transferring the sale of electronic cigarettes and e-liquids to the state monopoly of tobacco shops (estancos)) and to prohibit all online sales. These measures clearly go against (1) free competition in the EU, (2) freedom of movement of goods in the internal market, (3) will generate severe unemployment in a moment of emerging economic crisis and (4) will have a devastating effect on the fight against smoking in Spain as this will deprive vapers from personalised access to vaping products, forcing them to buy them precisely at a tobacco shop, where the majority of products sold are products they quit with great and continuing efforts (i.e. combustible tobacco).

Comments to the Anteproyecto

IEVA calls on the Spanish government, Spanish medical authorities, Spanish autonomous communities, and Spanish consultative bodies that will provide comments on the draft bill to critically reconsider this measure and reject an unfair and disproportionate law that will paradoxically only increase the combustible tobacco/smoking prevalence rate in Spain.

In its role as trade representative of independent producers and retailers of vaping products in the EU¹, IEVA would like to highlight several aspects of the draft bill:

¹ IEVA Members can be found in the following [link](#)

1) The proposed *Anteproyecto* goes against the main principles of EU Competition Law

- a. From a pan-European standpoint, it is striking to observe that in 2022, an EU Member State envisages to bring a new category of products (non-combustible nicotine products) to an obsolete system of state-owned monopoly of tobacco shops licences and distribution. Only 5 EU Member States rely (for historical reasons) on a monopoly of this kind, which compliance with EU law is by itself questionable, and only for traditional tobacco products.
- b. While such an historical anomaly in free markets can be traced back to decades-old management of combustible tobacco products related to the very own nature of such products, it goes against EU law to unilaterally ban sales in vape shops and specialised outlets of safe, legal and highly regulated products and their related electronic devices.
- c. Forcing a series of products and their related devices to be sold to a previously established monopoly and shutting down any previously established legal shops and distribution channels are most concerning barriers to free competition. While vaping products should be, and are, highly regulated as a category of their own based on their reduced harm compared to combustible tobacco products (as stipulated in the [Tobacco Product Directive 2014/40/EU](#)), the sale and distribution of vaping products (both liquids and electronic devices) cannot and should not be monopolised by the state having allowed the sale and distribution of these products through other channels for decades, in line with EU competition law.
- d. Considering the consequences of the proposed measures, the *Anteproyecto* will set a worrying precedent in which legally established business can be unilaterally closed in an EU Member State and handed over to a state-own network of tobacco shops.
- e. In light of the above, IEVA calls for the involvement of national and European independent competition authorities to review the proposed *Anteproyecto* against competition law and against the very basic principles of free competition.

2) The proposed Anteproyecto goes against the freedom of movement of goods in the EU and will generate severe adverse economic impacts in Spain and in the EU as a whole

- a. The proposed measures by the Spanish government will not only affect Spanish business and consumers but will also affect economic operators and consumers across the EU.
- b. First, operators from other Member States sell their products to vape shops in Spain. They then sell the most innovative and popular products (either electronic devices or e-liquids) directly to consumers. The proposed measures will drastically cut the European distribution value chain and will negatively impact the exports of professional operators to Spain from other EU Member States as the sales of vaping products in tobacco shops are expected to be extremely limited compared to the ones in specialised shops. Tobacco shops' business model aims to maximise sales of combustible tobacco products and not to devote time to explaining electronic devices to smokers looking to switch to less harmful alternatives).
- c. Second, the ban of online sales will also drastically reduce the movement of goods in the EU as pan-European retailers will no longer be allowed to sell their products in Spain to Spanish consumers.
- d. In light of the above, IEVA calls for the elaboration of a comprehensive impact assessment of the economic and social implications of the proposed measures before turning the current *Anteproyecto* into a bill (*Proyecto de Ley*).

3) The proposed Anteproyecto goes against the differentiation between combustible tobacco products and non-combustible products established in the EU regulatory framework for these products (Tobacco Products Directive 2014/40/EU)

- a. Lastly, we would like to emphasise that the proposed measures in the Spanish government's *Anteproyecto de Ley* do not seem to be aligned with, nor to take into account, the EU Framework for non-combustion products, including electronic cigarettes, adopted in the 2014 Tobacco Products Directive (TPD).

- b. The TPD clearly differentiates between conventional tobacco products and electronic cigarettes, based on the latter's reduced risk compared to the former, and establishes a differentiated regulatory framework accordingly for both categories in all elements that are regulated in the Directive: placing on the market, notification, labelling, warnings, information to consumers, etc.). In short, the TPD sets the path for regulating these products at the Member State level, clearly differentiating them from combustible tobacco due to their reduced harm.
- c. However, the *Anteproyecto de Ley* goes in the completely opposite direction and proposes to treat combustible tobacco and non-combustible products without distinction (with regards to sales and distribution), as if they were the same products and were regulated in the same manner at EU level. This approach will not only have severe economic and social consequences and be against EU competition law as highlighted above, it also goes against the spirit of the TPD when all other EU Member States have decided to regulate electronic cigarettes and non-combustible products in a different manner than conventional tobacco products.

Conclusion

Against this background, IEVA respectfully calls on the European Commission to examine the compatibility of the ban on specialised, independent vape shops proposed by Spain with EU law, and encourages relevant authorities to review and repeal the obligation to sell vaping products in state-owned tobacco shops.

About IEVA

The Independent European Vape Alliance (IEVA) is a trade body that brings Europe's small and medium sized producers together with retailers of vaping products. We also represent at European level all the national trade associations of vaping products. Most vaping companies are run by self-funded entrepreneurs who saw a problem in society, cigarette smoking; and created vaping products as part of the solution. We are independent from and not influenced by tobacco companies. We remain available anytime for any further questions or comments you may have:

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