

IEVA's Contribution to Consulta pública previa para el Proyecto de Real Decreto por el que se modifica el Real Decreto 579/2017, de nueve de junio, por el que se regulan determinados aspectos relativos a la fabricación, presentación y comercialización de los productos del tabaco y los productos relacionados

IEVA - the Independent European Vape Alliance - would like to contribute to the *Consulta pública previa para el Proyecto de Real Decreto por el que se modifica el Real Decreto 579/2017, de nueve de junio, por el que se regulan determinados aspectos relativos a la fabricación, presentación y comercialización de los productos del tabaco y los productos relacionados*.

We would like to express our concern regarding the Spanish Ministry of Health's intention to propose a ban on vaping products' flavours in a modification of the *Real Decreto 579/2017* regulating the manufacture and marketing of tobacco and vaping products.

IEVA believes that a ban on vaping products' flavours runs several risks:

- The effective ban of e-liquids in the Spanish market will lead to a boom in black market activities with dangerous, non-compliant products;
- It will lead to a rise in smoking rates;
- It will put at risk more than 3,000 jobs in the Spanish vaping industry and would lead to a reduction in government revenues by reducing tax collection.

Overall, IEVA respectfully calls on the Ministry of Health to refrain from imposing a ban on vaping products' flavours, in the light of the information we provide in this contribution.

1. A flavour ban will lead to a rise in smoking rates and will threaten public health

Many independent and publicly funded studies have highlighted the **harm reduction potential of vaping products**: a [report](#) commissioned by Public Health England found that vaping is 95% less harmful than smoking combustible cigarettes, and a [study](#) financed by the prestigious Institut Pasteur confirmed that vaping is significantly less carcinogenic than smoking and constitutes an acceptable replacement for traditional tobacco. Other sources pointing to the harm reduction potential in vaping can be found in studies by the [Royal College of Physicians](#) or published in the [British Medical Journal](#). Overall, vaping products reduced the risk of cancer for smokers.

Vaping products also play a **critical role in helping adult smokers to quit traditional tobacco**. Peer reviewed studies by the [American Journal of Public Health](#) and research led by the [University of Oxford](#) highlight the smoking cessation potential of vaping. The European Parliament considered in two separate reports - the report on [strengthening Europe in the fight against cancer](#) (2022) and the report on [non-communicable diseases](#) (2023) - that "electronic cigarettes could allow some smokers to progressively quit smoking".

Vaping products' flavours moreover constitute an **essential motivation for smokers trying to switch to a less harmful alternative**. A [peer-reviewed article](#) published in the *Journal of the American Medical Association* showed that adults vaping non-tobacco flavoured products were more likely to quit smoking than those vaping tobacco flavours (which are commonly exempted from flavour bans in countries that implemented them).

For these reasons, we can expect that implementing a flavour ban **will push smokers away from a safer alternative** and lead to a **rise in tobacco smoking rates**: current smokers will lose an incentive to quit, and consumers of flavoured products will revert back to smoking. As an example, in Denmark, a country with similarly harsh vaping legislation, the e-liquid flavour ban implemented in 2020 led to an increase in the smoking rates. The [Danish Health Authority](#) highlighted that the percentage of 15-29 year-olds who smoked tobacco cigarettes went from 23% in 2020 to 25% in 2022.

This decree will therefore do more harm to Spanish public health than good.

2. A flavour ban will severely impact the vaping industry and cause a black market boom

A flavour ban is an extreme measure that would gravely impact the vape shops SMEs in Spain, threatening their very existence. Flavoured products being the main source of activity and revenues for the vape shops in Spain, their ban will bring the closing of hundreds of vaping stores, putting **more than 3,000 jobs at risk**.

Beyond their economic consequences for SMEs and governmental fiscal revenues, banning e-liquids will create a **rise in black markets selling non-compliant and potentially dangerous products**. EU Member States that have introduced flavour bans, such as Denmark, Hungary or the Netherlands, saw a boom of illegal and unsafe vaping products. In Estonia, the Parliament actually introduced a [bill](#) to roll back a ban on e-liquid flavours, stating that *“the reduction of consumer choice and the growth of the clandestine market have led to a reduction in compliance with the law and a loss of trust in the state”* and due to the use of black market products, *“the health risk of consumers has increased significantly, which was until then mitigated by the mandatory laboratory control of electronic cigarette liquid established in the EU Tobacco Product Directive”*.

The consequences of this ban are **not consistent with the public health goals** that the Spanish Ministry of Health intends to reach.

3. Banning flavours is a disproportionate measure to protect underage people and non-smokers from vaping

Spain, like all 27 EU Member States, prohibits the sale of vaping products to anyone younger than 18 years old. The issue with youth uptake stems from a lack of adequate enforcement of this prohibition.

IEVA's position on the matter is clear: **non-smokers should not start vaping**, and **underage people should not have access to vaping products**. IEVA members, which include the Spanish association UPEV, must comply with a responsible marketing charter designed to ensure that young people do not access their products.

Some measures can be implemented to properly enforce the law supposed to protect underage people, such as compulsory age verification systems and bans on the sale of vaping products in non-specialised shops. A licence system for vape shops can also be considered, with strict penalties for non-compliance.

All these measures can, and should, be implemented instead of a flavour ban. Such bans penalise smokers trying to switch to less harmful alternatives, boost unsafe black market products and do not hold any added value in the protection of young people from accessing vaping products.

4. Flavour bans on the basis of the protection of health are not justified under EU law

IEVA would also like to express serious doubt regarding the legal justification of flavour ban:

1- IEVA believes the ban on vaping products with particular flavour profiles will amount to a **quantitative restriction in the sense of article 34 of the Treaty on the Functioning of the European Union (TFEU)**, as the banned products can legally be marketed in other Member States. This would therefore create a difference of treatment and access for e-cigarette and associated products shops.

2- The measure seems moreover **unlikely to be justified under article 36 TFEU** that allows for restrictions in imports or exports of goods justified on grounds of protection of health and life of humans.

According to the article, Member States initially require that Member States demonstrate they have **genuine health concerns** regarding the products, i.e. scientific evidence for the harmful effects of vaping and a seriously considered health policy. To introduce such exception, the measure needs to be proportionate, which entails that the national provision must be:

- Appropriate, i.e. a suitable mean to attain the end with a reasonable connection between the aim and the measure;
- Necessary, i.e. Member States should choose the means which least restrict the free movement of goods if it has a choice between various measures to attain the same objective.

In 2020, the European Court of Justice released a [judgement](#) expressing a negative stance on Member States prohibiting a product on the basis of public health (article 36 TFUE), when other Member States allow the product and when the prohibition is not strictly necessary to protect health.

The threat of vaping products to public health has not been sufficiently characterised, and, as explained above, a number of more appropriate measures can be put forward to effectively prevent underaged people from accessing vaping products.

Conclusion

Against this background, IEVA respectfully calls on the Ministry of Health to examine the proportional character of a flavour ban, and encourage the national authorities to adopt measures adapted to the pursued aim and based on thorough scientific evidence.

About IEVA

The Independent European Vape Alliance (IEVA) is a European trade body that unites small and medium-sized producers and retailers of vaping products, as well as European countries' national vaping associations. The vast majority of 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 and not influenced by tobacco companies.

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