



The International Network of Nicotine Consumer Organisations (INNCO) submits the following comments to the European Union (“EU”) consultation for nicotine vape taxes. INNCO urges the EU to embrace harm reduction principles and, specifically, to ensure that taxation of nicotine vape products (sometimes referred to as e-cigarettes or ENDS) reflect the relative risk of such products compared to combustible tobacco products.

Our reasoning is straightforward. Smoking kills 700,000 EU citizens every year. Nicotine vapes vs. traditional cigarettes are product substitutes. More than 60 respected scientific and public health organizations agree that nicotine vapes are safer. The most recent Cochrane review of 56 studies worldwide confirms previous Cochrane reviews: nicotine vapes are effective in helping smokers quit. Higher e-cigarette taxes favor deadly cigarettes, and discourage smoking cessation via lower-harm alternatives. In the USA, for example, cigarette sales have increased significantly in eight states that raised nicotine vape taxes.¹

To be blunt, increasing nicotine vape taxes will kill people. From a public health perspective, the most appropriate “tax” for these lower-harm alternatives would be a “negative tax” (a subsidy) for adult smokers. Under-age use is a concern, but under-age daily use remains low in EU countries. We recommend strong age-checks at point of sale (similar to alcohol).

INNCO is a global non-profit organization with nearly 40 member consumer groups. We make this submission in support of millions of European adult ex-smokers who vape (or who may, in the future, choose to vape) instead of smoke, thereby dramatically reducing their health risks. INNCO is a consumer organization, representing the interests of people who use safer nicotine. INNCO unites the voices of consumer groups across six continents in our call for rights-based, risk-relative and balanced tobacco harm reduction policies as a human right. Harm reduction embraces a range of policies, regulations and actions that reduce health risks by providing safer replacements for high-risk products or behaviors.

Harm reduction is not a novel concept. In fact, “harm reduction strategies” are specifically included within the definition of “tobacco control” in Article 1 of the WHO Framework Convention on Tobacco Control (“FCTC”).² A growing number of countries have chosen to reduce smoking in their borders by adopting pragmatic harm reduction strategies that allow adult smokers to make informed choices to significantly reduce their risks.

In this consultation, we specifically address why no additional taxation of vapor products is necessary or appropriate and why, if a tax is imposed, it must be risk-proportionate in order to reduce smoking rates and improve public health. We also address some of the unintended consequences of making low-risk alternatives to smoking less affordable due to increased taxation.

¹ <https://docs.google.com/document/d/1uxa9Dwx6dpfa5Mj6BkoOSi5qd2hm1xkHvKc1kLTRQo8/edit>

² World Health Organization, “WHO Framework Convention on Tobacco Control,” 2003, https://www.who.int/tobacco/framework/WHO_FCTC_english.pdf

I. Introduction: A brief overview of vapor products as a low-risk alternative to smoking and as a credible smoking cessation tool

A. Vapor products are a low-risk alternative to smoking

At the onset, we note that there is no doubt that smoking is an incredibly harmful behavior, resulting in a whole host of very serious health problems. Likewise, there is no doubt that vapor products, while not completely safe, are in fact markedly less harmful as compared to smoking. As first noted by the Royal College of Physicians in 2016, vapor products are “unlikely to exceed 5% of the harm from smoking tobacco,” and therefore, “in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking.”³ This position has been continuously reaffirmed. For example, Public Health England’s 2020 update on vaping found that “vaping regulated nicotine products has a small fraction of the risks of smoking” and that “smokers should be encouraged to try regulated nicotine vaping products along with smoking cessation medications and behavioural support.”⁴

The acceptance of the low-risk nature of vaping products is growing. In fact, last year the World Health Organization (“WHO”) Regional Office for Europe issued a report noting that there is conclusive evidence that “completely substituting EN&NDS for combustible tobacco cigarettes reduces users’ exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes.”⁵ This echoes the findings of the National Academies of Sciences, Engineering and Medicine.⁶

B. Vapor products help smokers eliminate their smoking habit

There is substantial and persuasive evidence that vapor products are effective in helping people eliminate their smoking habit. The Cochrane Review on electronic cigarettes for smoking cessation found “[t]here is moderate-certainty evidence that ECs [electronic cigarettes] with nicotine increase quit rates compared to ECs without nicotine and compared to NRT [nicotine replacement therapy].”⁷ See also the 2021 evidence update on e-cigarettes

³ Royal College of Physicians, “Nicotine without smoke: Tobacco Harm Reduction,” 28 April 2016, <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>.

⁴ McNeill, A., Brose, L.S., Calder, R., Bauld, L., and Robson, D. (2020). Vaping in England: an evidence update including mental health and pregnancy, March 2020: a report commissioned by Public Health England. London: Public Health England. <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-march-2020/vaping-in-england-2020-evidence-update-summary>.

⁵ Regional Office for Europe of the World Health Organization, “Electronic Nicotine and Non-Nicotine Delivery Systems: A Brief,” 2020, <https://www.euro.who.int/en/health-topics/disease-prevention/tobacco/publications/2020/electronic-nicotine-and-non-nicotine-delivery-systems-a-brief-2020>.

⁶ The National Academies of Science, Engineering, Medicine, “Public Health Consequences of E-Cigarettes.” Washington, D.C. The National Academies Press 2018, <https://pubmed.ncbi.nlm.nih.gov/29894118/>.

⁷ Hartmann-Boyce J, McRobbie H, Lindson N, Bullen C, Begh R, Theodoulou A, Notley C, Rigotti NA, Turner T, Butler AR, Fanshawe TR, Hajek P. Electronic cigarettes for smoking cessation. Cochrane Database of Systematic Reviews 2021, Issue 4. Art. No.: CD010216. DOI: 10.1002/14651858.CD010216.pub5. <https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD010216.pub5/full>

commissioned by Public Health England, which found that “tens of thousands of smokers [in England] stopped as a result of vaping in 2017,” and “[q]uit rates involving a vaping product were higher than any other method in every region in England. These ranged from 49% in the South West to 78% in Yorkshire and the Humber.”⁸

Even the WHO Regional Office for Europe notes that there is evidence showing that “some smokers may successfully quit tobacco by using some type of ENDS frequently or intensively.”⁹ There is increasing evidence that vapor products are more effective for smoking cessation than nicotine-replacement therapy, when both products were accompanied by behavioral support.”¹⁰ In a 2018 study examining data from eight European countries (England, Germany, Greece, Hungary, the Netherlands, Poland, Romania, and Spain), the authors reported “[e]-cigarettes were the most popular quit smoking aid used across all countries although the prevalence varied substantially across countries.”¹¹

Most importantly, we call attention to a valuable survey of more than 37,000 residents from 28 EU countries conducted by the European Tobacco Harm Reduction Alliance (ETHRA). The ETHRA survey is valuable not only due to its size and scope, but also because it provides policymakers critical insights into what is happening with real people in the real world as a consequence of policy decisions currently being made. Among other things, the ETHRA survey demonstrates the important role that vaping products play in helping people to quit smoking:

Significantly, more than 27,000 of the survey participants had completely quit smoking. Vapes, snus and nicotine pouches are the main harm reduction products used to quit. Amongst the respondents who had ever smoked, 83.5% of vapers, and 73.7% of snus users had successfully stopped smoking.

Over 93% of vapers and 75% of snus users cited harm reduction and improvements to health as their reasons for adopting these products. The report shows that the reduced cost compared to smoking, the availability of flavours, the availability of

⁸ McNeill, A., Brose, L.S., Calder, R., Simonavicius, E. and Robson, D. (2021). Vaping in England: An evidence update including vaping for smoking cessation, February 2021: a report commissioned by PHE. London: PHE. <https://www.gov.uk/government/publications/vaping-in-england-evidence-update-february-2021/vaping-in-england-2021-evidence-update-summary>

⁹ Regional Office for Europe of the World Health Organization, “Electronic Nicotine and Non-Nicotine Delivery Systems: A Brief,” 2020, <https://www.euro.who.int/en/health-topics/disease-prevention/tobacco/publications/2020/electronic-nicotine-and-non-nicotine-delivery-systems-a-brief-2020>.

¹⁰ Hajek, P., Phillips-Waller, A., Przulj, D., et al., “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy,” *N Engl J Med* 2019; 380:629-637, DOI: 10.1056/NEJMoa1808779 14 February 2019, <https://www.nejm.org/doi/full/10.1056/nejmoa1808779>.

¹¹ Hummel K, Nagelhout GE, Fong GT, et al. Quitting activity and use of cessation assistance reported by smokers in eight European countries: Findings from the EUREST-PLUS ITC Europe Surveys. *Tob Induc Dis*. 2018;16(Suppl 2):A6. doi:10.18332/tid/98912, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6659556/>

products and the ability to adjust vaping products are other major factors for consumers when switching to harm reduction products.¹²

Given that vapor products do work to help many people completely replace their smoking habit and improve their health, they should be embraced as a humane and pragmatic solution to help reduce the smoking rate in the EU. Appropriate taxation is critically important to ensure that low-risk smoking alternatives such as vapor products are much less expensive and far more accessible than deadly combustible tobacco products.

II. Appropriate taxation of vapor products is critical to ensure that smoking rates continue to decline and do not increase

As discussed previously, vapor products are increasingly being used by smokers to reduce or eliminate their smoking habit. The EU should be adopting policies that encourage this migration from smoking to vaping, particularly for people who feel unable or unwilling to completely quit all nicotine use.

In the ETHRA study previously discussed, survey respondents reported that the high cost of vapor products in countries that currently tax such products is a significant barrier to quitting smoking for dual users (those who continue to smoke and vape). “In countries with vape taxes, such as Italy (31.8%), Finland (37.5%) and Hungary (31.8%), nearly a third of dual users continue to smoke because of the high cost of vaping products.”¹³

Making vapor products less affordable for European Union consumers means more smoking, not less.

III. Appropriate taxation of vapor products is critical to ensure that consumers are willing and able to purchase products from legitimate, regulated sources within the EU

Increasing the cost of vapor products via taxation makes it less likely that people who smoke will completely transition from smoking to vaping. It also makes it far more likely that people who are committed to their choice to reduce their risk by vaping instead of smoking will seek out less expensive, alternative markets.

Vapers residing in the 12 EU countries with a vape tax are 65% more likely to declare they used products bought from abroad than vapers in countries without vape tax (10.1% vs 6.1%). The declared use of black market and other alternative sources is more than three times higher (3.8% vs 1.2%) in those countries.¹⁴

Purchasing vapor products via an unregulated market poses increased risk to users and undermines governments’ legitimate and appropriate regulation.

¹² THE EU NICOTINE USERS SURVEY 2020, The EU residents report European Tobacco Harm Reduction Advocates (ETHRA), June 2021, <https://ethra.co/news/80-ethra-eu-nicotine-users-survey-report>.

¹³ Id., p. 43.

¹⁴ Id., p. 46.

IV. Sin taxes on low-risk vapor products are regressive

People who smoke (and those who switch to vaping) are disproportionately poor and low-income people. Taxes on vapor products should be considered carefully to ensure that unnecessary and punitive burdens are not placed on an already financially challenged group.

Increasing the cost via taxation in such a case may not only cause a financial burden, but may also result in people feeling forced to either continue smoking (or return to smoking) or take the risk of purchasing products from alternatives, unregulated sources. Human beings have an inherent right to make the choice to lower their risk, and the governments should not erect barriers to their exercising such choices. Making regulated products unaffordable via increased taxes would do exactly that.

V. An appropriate taxation policy for vapor products

We note that currently vapor products are subject to taxation as a general consumer good. The ideal tax policy would impose no greater burden than that, providing maximum incentive for people who smoke to make the switch to low-risk (and lower cost) vapor products.

If there is a separate tax, such tax should not be required to be imposed by the European Union, and should operate as a ceiling only so that EU member states are not required to impose extra taxes.

If there is a separate tax, it must be proportionate to the risk of vaping versus smoking. Taxing vapor products at the same rate as deadly combustible products works against the interests of public health by discouraging the migration to less harmful products, which will translate into more smoking, not less.