

EU Call for evidence: Smoke-free environments – updated recommendation

Thank you for the opportunity to submit to the EU Commission call for evidence towards updated recommendations on smoke-free environments.

We are the New Nicotine Alliance (NNA), a consumer association and educational charity which represents consumers of low-risk alternatives to cigarettes such as vaping products, nicotine pouches, smokeless and heated tobacco products. As consumers, we have a direct interest in the regulation of these products and the personal and public health consequences of policy choices made by governments. We are not affiliated with or supported by the tobacco or e-cigarette industries. Our comments draw on academic research and our own experience of the benefits of novel nicotine delivery products for smokers who cannot or have no urge to quit smoking by other means.

Extending smoke-free coverage to emerging products is counterproductive

The World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC) defines tobacco control as "a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke."¹ Therefore, the singular focus of a legislative framework for tobacco control should be on the reduction of harmful combustible tobacco use.

The WHO has recognized that vaping is an alternative to smoking, it states that "ENDS/ENNDS and cigarettes are substitutes – higher cigarette prices are associated with increased ENDS/ENNDS sales."² This is equally true of other non-combustible nicotine products such as snus, heated tobacco and nicotine pouches. As substitutes to smoking, burdens placed on reduced risk products inevitably favour sales of traditional cigarettes.

Furthermore, the EU Commission's recommendation on smoke-free environments (2009/C 296/02)³ is designed to protect people in the EU from exposure to second-hand smoke, as well as to encourage current smokers to quit.

As such, extending coverage of smoke-free environments to emerging products, such as e-cigarettes and heated tobacco products (HTPs) is counterproductive as it removes incentives for smokers to switch to less harmful products by treating the safer alternatives equally to combustible tobacco. In effect, the Commission would be proactively protecting the combustible tobacco trade from competition.

A recommendation by the EU to prohibit use in public places would also have the effect of sending a false message to the public that vaping products and HTPs are as harmful as smoking, despite both presenting vastly lower risk. In recent years, there has been an increase in the number of smokers incorrectly believing that, compared to combustible tobacco, reduced risk products are more or equally harmful. Incorrect perceptions of harm discourage some smokers either trying or maintaining use of e-cigarettes and HTPs and can only perpetuate combustible tobacco use.

Therefore, this proposal would slow reduction in consumption of combustible tobacco products and exposure to tobacco smoke, obstruct initiation of products which are vastly safer than smoking, and dissuade current smokers from quitting combustible cigarettes.

The evidence in favour of extending smoke-free coverage is flawed

The Commission cites two reports as justification for extending smoke-free coverage, both of which are based on faulty science.

The July 2021 WHO Report⁴ avoids contrasting secondhand tobacco smoke with aerosols from reduced risk products and therefore ignores significant differences. Firstly, vapour from e-cigarettes and HTPs is absorbed by the user and only a small fraction is exhaled. This differs significantly from combustible tobacco use as about four times as much smoke comes directly from the burning tip of the cigarette than is exhaled by the smoker, known as sidestream smoke. Vaping products and HTPs do not emit any sidestream material.

Secondly, the report assumes a false equivalence between toxicity of emissions of new and emerging products and those of combustible tobacco. Tobacco smoke contains hundreds of toxic products of combustion that are either not present or present at very low levels in e-cigarette and HTP aerosol. Vapour emissions do not have toxicants present at levels that pose a material risk to health. The Royal College of Physicians has assessed evidence on secondhand vapour emissions and stated that there is “no direct evidence that such passive exposure is likely to cause significant harm”⁵. Similarly, the UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT) estimates HTPs to produce aerosol which is up to 90% less harmful than tobacco smoke⁶. Furthermore, the US Food and Drug Administration (FDA) has authorised a brand of HTPs as a modified risk product, concluding that it presents “reduced exposure ... expected to benefit the health of the population.”⁷

Thirdly, the WHO fails to recognise that combustible tobacco smoke lasts in the atmosphere far longer than vapour from e-cigarettes, whose aerosols evaporate very quickly, usually in less than a minute.

The 2021 opinion from the Scientific Committee on Health, Environmental and Emerging Risks (SCHEER)⁸ referenced by the Commission has been heavily criticised for its methodology. McNeill et al, 2021 summarised its many failings⁹.

“The methodology was not reported in sufficient detail in the report or annex to be able to understand how the evidence summarised had been selected. Established guidelines for systematically reviewing evidence and the reporting of reviews had not been followed. For example, search terms given for the review i) did not capture all of the questions covered in the opinion; ii) had a start date of January 2015 and hence included studies of vaping products marketed long before the TPD was in place and iii) had a cut-off of April 2019 which was 18 months before the publication of the preliminary opinion and hence a reliance on out-of-date data in this quickly moving field. The report included predominantly US studies which therefore involved products which were regulated very differently from the TPD regulations. There was also no information on the quality of the studies included.”

Given these methodological concerns and uncertainty, it would be unwise to impose a policy which has the potential for severe unintended consequences for public health in member states.

Conclusion and policy recommendations

The proposal to extend smoke-free environments to include emerging products such as e-cigarettes and HTPs is not sufficiently evidence-based and has the potential to be counterproductive to public health in EU member states. Focus should remain on reducing the harms of combustible tobacco use, which an inclusive approach to reduced risk products such as vapes and HTPs can accelerate.

The EU Commission should maintain recommendations on smoke-free environments as currently set out in 2009/C 296/02. Member states should only intervene to limit the use of smoke-free products in public places if there is a clear risk to the health or safety of bystanders. There is no compelling

evidence of material risks to bystanders from exposure to vape or heated tobacco aerosol. The decisions on policy in public places should be made by owners or managers of premises. The Commission's appropriate role is to provide guidance on the risks and benefits of different approaches so that owners or managers can make informed decisions. The guidance published by Public Health England in 2016 (*Use of e-cigarettes in public places and workplaces: Advice to inform evidence-based policymaking*)¹⁰ is an excellent example of appropriate government action in this area.

¹ World Health Organisation Framework Convention on Tobacco Control

<https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf?sequence=1>

² WHO (2016). Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems (ENDS/ENNDS). Conference of the Parties to the WHO FCTC Seventh session. FCTC/COP/7/11 November 2016.

³ Council Recommendation of 30 November 2009 on smoke-free environments <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009H1205%2801%29>

⁴ WHO report on the global tobacco epidemic 2021: addressing new and emerging products <https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021>

⁵ Royal College of Physicians: *Nicotine without smoke: Tobacco harm reduction* <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>

⁶ UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment: *Statement on the toxicological evaluation of novel heat-not-burn tobacco products*

https://cot.food.gov.uk/sites/default/files/heat_not_burn_tobacco_statement.pdf

⁷ FDA Authorizes Marketing of IQOS Tobacco Heating System with 'Reduced Exposure' Information, July 7th, 2020, <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-iqos-tobacco-heating-system-reduced-exposure-information>

⁸ Scientific Committee on Health, Environmental and Emerging Risks SCHEER Opinion on electronic cigarettes, https://health.ec.europa.eu/system/files/2021-04/scheer_o_017_0.pdf

⁹ Vaping in England: an evidence update including vaping for smoking cessation, February 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf

¹⁰ Public Health England. *Use of e-cigarettes in public places and workplaces: Advice to inform evidence-based policymaking*. 2016 <https://www.gov.uk/government/publications/use-of-e-cigarettes-in-public-places-and-workplaces>