

Will the Netherlands become the next casually negligent ally of the cigarette trade? Twenty-four experts advise a rethink

written by Clive Bates | 27 January 2021



So let's make the e-cigs less appealing and see what happens... what could possibly go wrong?

The Netherlands is proposing to ban e-cigarette flavours - what could possibly go wrong?

The government of the Netherlands, led by [Paul Blokhuis](#), State Secretary for Health, Welfare and Sport, is in imminent danger of fooling itself into becoming an unwitting ally of the cigarette trade. By taking measures to make vaping less attractive (notably by proposing a ban on all non-tobacco flavours for e-cigarettes), it threatens to degrade the appeal of a low-risk rival to cigarettes, provide regulatory protection to the cigarette trade, prolong smoking, obstruct quitting, and add to the burden of disease and death. All this in the name of protecting youth, while managing to harm both adults *and* adolescents. Quite a feat for any politician.

The problem is hubris – believing that the world responds to regulation in the way the regulator thinks it should. Experience suggests foreseeable perverse consequences will be the result of the ill-conceived prohibitions of much safer alternatives to smoking, including flavoured e-cigarettes.

It really isn't difficult to understand why and how this would happen – I can only assume the State Secretary received very poor advice, which would not be unusual in this field. Nevertheless, twenty-four international experts have set out the arguments and evidence in detail in a submission to the Dutch government, hoping to spare Mr Blokhuis later embarrassment and, even more importantly, to avoid yet more death and disease from smoking in the Netherlands. It should also be a wake-up call to like-minded politicians and naive policymakers in the United States, European Union, and the World Health Organisation who continue to fail to grasp the impact of low-risk products in the real world.

The case is set out in 30-page submission to a Dutch government consultation on the measure. The relevant documents are:

- Government consultation page: [Regulation of e-cigarette flavours](#)
- Justification for the measure: [State Secretary's supporting memorandum](#) (translation)
- Full response from twenty-four experts: [Regulation of e-cigarette flavours - a response](#) (30 pages PDF) – or via the consultation site [here](#)

To provide a more digestible version of the submission, I have included below the twelve sections of the summary below with a link to the corresponding twelve sections with more detail and references.

Summary and links to detail

The case for the ban on vaping flavours described in the memorandum supporting the measure is wholly inadequate, and the measure should not proceed on this basis. The critical weaknesses in the rationale described in the memorandum are as follows:

1. *Sets conflicting objectives and takes a “war on drugs” approach to nicotine. The proposed measure is supposed to support a “smoke-free Netherlands” objective for 2040 as part of the Prevention Agreement.*

As stated, this is a sensible goal and should be widely supported – it recognises that smoke, not nicotine, is the overwhelming cause of disease. It is practical and achievable if smoke-free alternatives to smoking, such as vaping products, are available. However, the proposal introduces a significant expansion of scope by extending “smoke-free” to mean all tobacco, even if not smoked and then to tobacco-free nicotine products like e-cigarettes. It will make it impossible to use harm-reduction approaches, despite the enormous potential to reduce disease and death. It misunderstands the nature of youth risk behaviours. It amounts to extending the war on drugs to nicotine, but at a time when failures of prohibition are widely recognised. It would be better to stick to a smoke-free goal and use smoke-free alternatives to achieve it rather than pursue nicotine prohibition. The Netherlands is rightly world-famous for its pragmatic approach to soft drugs – that pragmatism should be leveraged to accelerate the end of smoking in the Netherlands by embracing harm reduction for those who smoke.

[\[More detail\]](#)

- 2. Adopts false and misleading claims about the risks of e-cigarettes. The justification fails to adequately characterise the overwhelming evidence showing e-cigarette use is much less harmful than smoking. Suppose policymakers believe e-cigarettes are just as harmful as cigarettes. In that case, their policies will be detrimental to public health by hindering substitution as smokers move from high-risk to low-risk products. It is clear from toxicology and exposure studies that e-cigarettes are, beyond any reasonable doubt, far less harmful than cigarettes. It is simplistic to apply the precautionary principle to use long-term uncertainties to justify excessive regulation. This ignores the substantial body of science suggesting much lower risk and neglects the problem that excessive regulation can cause harm by protecting the cigarette trade, which is known to be highly harmful.*

[\[More detail\]](#)

- 3. Draws on irrelevant information about an outbreak of lung injuries in North America. Without a credible case for harm arising from e-cigarette use, the justification includes distracting and irrelevant references to “EVALI”, an outbreak of severe lung injuries in the United States in 2019. EVALI was caused by the addition of a cutting agent, Vitamin E Acetate, to illicit cannabinoid (THC) vape pens. This*

substance cannot be added to nicotine liquids and would serve no purpose if it could. There is no other credible evidence of material risks of severe lung injury.

[\[More detail\]](#)

- 4. Misunderstands “dual-use”. Concurrent use of e-cigarettes and cigarettes (“dual-use”) should be understood as progress towards reducing smoking or smoking abstinence in most cases. Unless a smoking cessation method is 100% and immediately effective, it will mean some continued smoking on the pathway to smokefree status whatever method is used. It is true that some ‘dual users’ do not see significant reductions in toxicant exposure, but that is likely caused by higher dependence for which dual use is a marker. It is likely that public hostility to e-cigarettes, including from the government, agencies and academics, contributes to users not appreciating the benefits of switching completely. A cause of dual-use-related harm could, in part, be negative statements of tobacco control activists, academics and politicians.*

[\[More detail\]](#)

- 5. Asserts a “gateway effect” but there is more likely to be a diversion away from smoking. The memorandum claims there is a gateway effect from vaping to smoking. At an individual level, some adolescents will be likely to take up e-cigarette use, but there is also growing evidence that other adolescents who would otherwise have smoked are diverted away from starting to smoke. This diversionary effect is consistent with observed declines in youth smoking prevalence despite the recent increases in e-cigarette use as the technology has emerged. The strong correlations between smoking and vaping commonly reported in the literature are likely partly caused by ‘common liabilities’. These are characteristics such as genetics, mental health status, home environment, community, school etc. that incline a young person both to smoking and to vaping. The vaping cannot be assumed to cause the smoking. Regulating based on assumptions of a gateway effect where none exists is not responsible or ‘precautionary’. Over-regulation of e-cigarettes, the far safer product, could prevent e-cigarettes functioning as a diversion from smoking for young people.*

[\[More detail\]](#)

- 6. Takes a simplistic approach to youth risk behaviours and fails to*

demonstrate benefits to adolescent public health. The rationale offered is grounded in a naïve account of youth risk behaviours, which do not stop simply because adults in authority disapprove of them or pass laws to prevent them. There is a long and complicated chain of causation from a ban on e-cigarette flavours to improved health, with many possible diversions into perverse and harmful consequences. Legislating to ban something does not make it go away or necessarily cause its existing users to become abstinent – it provokes a variety of responses on the part of consumers. Illicit drugs are subject to prohibitions and strong sanctions yet are still widely used and supplied by criminal enterprise. The proposal lacks justification of the measure as a successful youth-orientated public health intervention. Without realistic insights into youth risk behaviours, the government is likely to regulate in a way that increases harm to young people – for example, by tacitly encouraging young people to revert to smoking.

[\[More detail\]](#)

7. *Ignores perverse consequences of prohibition, even though these are foreseeable. The case provides little analysis of a range of harmful perverse consequences that could arise from a prohibition of vaping flavours. These are foreseeable, yet not foreseen in the justification as presented. They include but are not limited to:*

- *Fewer smokers switching to vaping*
- *More vapers relapsing to smoking*
- *Teenagers smoking instead of vaping*
- *More teenagers switching to vaping cannabinoids such as THC*
- *Cross-border sales of flavoured e-liquids*
- *More home mixing of flavoured liquids (with additional risks)*
- *Black market trade in flavoured liquids and flavoured e-cigarettes*
- *Workarounds like selling flavours separately or use of food flavours*
- *Loss of legitimate retail and online businesses replaced by criminal networks or exporters from outside the Netherlands or European Union.*

[\[More detail\]](#):

8. *Fails to show benefits for adolescents or address concerns it may cause harm to young people. The justification fails to articulate the benefit for youth. It does not show that:*

- *Flavours play an important causal role in adolescent vaping*
- *A ban on flavours would reduce adolescent vaping, rather than just stimulate workarounds*
- *If reductions in adolescent vaping were achieved as intended, this would translate to a benefit to health and not trigger an uptick in other risk behaviours.*

[\[More detail\]](#)

9. *Ignores the harmful effects of a vaping flavour ban on adults. Where vaping displaces smoking – both in adults and adolescents – there are health, welfare, and economic gains for the users and for society. These benefits have been largely ignored in the reasoning presented to support the ban. The government’s own target is to be smoke-free by 2040 – the substitution of smoke-free alternatives in place of cigarettes will be critical in meeting that target.*

[\[More detail\]](#)

10. *Creates regulatory protection for the cigarette trade. The case does not recognise that vaping is an alternative to smoking and a pathway for smoking cessation and that flavours are an important part of the experience for adults. In obstructing this pathway and making it practically harder and less attractive for smokers to switch or risking that vapers will relapse to smoking, the proposals amount to a regulatory defence of the cigarette trade. While this is unlikely to be the government’s intention, it may well be the perverse effect of this proposed intervention. It is quite possible that the e-cigarette flavour ban will protect the cigarette trade and increase smoking, resulting in more disease and death. Nothing in the memorandum provides an adequate counter to these concerns. The government should adopt “risk-proportionate regulation”, which encourages producers and consumers to migrate from high-risk to low-risk products – rather than unjustified regulation that will inhibit switching away from smoking.*

[\[More detail\]](#)

11. *Violates important regulatory principles, including those underpinning*

the European Union internal market. The proposed measure is disproportionate, discriminatory, anti-competitive, and counter to the aims of the European Union internal market. A key competitive advantage of e-cigarettes over cigarettes is the availability of diverse flavours (other than tobacco flavour). The availability is important because most adult users prefer these non-tobacco flavours. The proposed measure is indiscriminate in banning all but one flavour and does not adequately show that all non-tobacco flavours or descriptors have particular appeal to youth.

[\[More detail\]](#)

12. *Proposes an illiberal policy and fails to recognise a major global public health opportunity. Though it is a political judgment, the measure appears to be excessively illiberal in its intrusion in adults' rights to protect their own health, on their own initiative, and at their own expense – or simply to use nicotine in a much safer way, if they choose to. It sets a precedent for governments to use potential risks to youth to curtail reasonable adult free choices. The aim should be to use targeted measures to control youth risks, not general measures that target all users. The policy overreacts to relatively minor and manageable risks but denies or ignores a significant opportunity to help millions of smokers radically reduce their health risks. In its role as Chair of the WHO Framework Convention on Tobacco Control Conference of the Parties in 2021, the Netherlands should be leading a positive approach to tobacco harm reduction.*

[\[More detail\]](#)

Twenty four signatures

Full affiliations [here](#).

1. David B Abrams, PhD
2. Karolien Adriaens, PhD
3. Clive Bates, MSc, MA
4. Frank Baeyens, PhD
5. Ron Borland PhD FASSA
6. Sharon Cox PhD
7. Lynne Dawkins, PhD

8. Jean-François Etter, PhD
9. Konstantinos Farsalinos, MD, MPH
10. Peter Hajek, PhD
11. Martin J Jarvis, DSc OBE
12. Lynn T. Kozlowski, Ph.D.
13. Eva Kralikova, MD
14. Christopher E. Lalonde, PhD
15. Jacques Le Houezec, PhD
16. Karl Erik Lund PhD
17. Bernd Mayer, PhD
18. Raymond S. Niaura, PhD
19. Caitlin Notley, PhD
20. Lars M. Ramström, PhD
21. Lion Shahab, PhD
22. Andrzej Sobczak, PhD
23. David T. Sweanor J.D.
24. Professor Umberto Tirelli MD

My take on Twitter

While reading the case for the measure

I'm trying to be polite, but the quality of policy justification - the analysis of intended and perverse consequences arising from intervention - is unbelievably poor. Politicians should protect themselves from becoming useful idiots by asking more sceptical questions.

— Clive Bates (@Clive_Bates) [January 16, 2021](#)

Twitter thread for this blog

Will the Netherlands become the next casually negligent ally of the cigarette trade? Twenty-four experts advise [@PaulBlokhuis](#) to rethink the proposed e-cigarette flavour ban.

Submission in 12 parts:

Blog: <https://t.co/41K52aE870>

PDF: <https://t.co/NP5vHCj6VK>

Thread: 1/13 

— Clive Bates (@Clive_Bates) [January 27, 2021](#)

