

# Tobacco harm reduction and the new TPD

## Wednesday Briefing No. 4

*The Wednesday Briefing is a weekly free-market commentary on topical economic issues by our Head of Research, Diego Zuluaga. You can subscribe to the Wednesday Briefing by e-mailing Greta Gietz at [greta.gietz@epicenternetwork.eu](mailto:greta.gietz@epicenternetwork.eu).*

The new Tobacco Products Directive (TPD2) dramatically tightens regulation of cigarettes, rolling tobacco and e-cigarettes. Yet, it is unclear that it will lead to improved health outcomes.

E-cigarettes are the most beneficial innovation in tobacco harm reduction since the health risks of smoking were first identified. Yet, Article 20 of TPD2 will curb innovation and variety in this burgeoning sector.

Measures on packaging, minimum sizes, and bans on menthol cigarettes are unlikely to reduce smoking prevalence, according to the available evidence. Bigger mandated sizes might even induce smokers to increase their consumption.

The last two decades have seen an increasingly restrictionist approach in public health measures on smoking. But the prevalence curve has flattened, not steepened, during this period. There is no visible correlation between restrictions on smoking and smoking prevalence.

There is considerable evidence that an open environment for e-cigarettes, and the legalisation of snus outside of Sweden, hold the greatest potential to improve health outcomes across the EU through harm reduction. Prohibitions have repeatedly failed to achieve these goals.

On Friday, the new [Tobacco Products Directive \(TPD2\)](#) came into force. It builds on legislation first passed in 2001, but TPD2 dramatically expands the scope of EU-wide regulation of tobacco products, while also tightening existing restrictions.

Among other things, the legislation requires standardised health warnings to be displayed on cigarette packs, covering at least 65 per cent of their front and back. It bans packs of fewer than twenty cigarettes, or 30 grams for rolling tobacco, with immediate effect. It also prohibits cigarettes with characterising flavours, notably menthol, by 2020. TPD2 includes new EU-wide rules for electronic cigarettes, a relatively recent innovation which did not exist at the time of the first Directive. This, it should be noted, is despite the fact that e-cigarettes do not contain tobacco and are therefore not tobacco products.

Nominally, TPD2 is justified as necessary to facilitate trade in the internal market, which is an EU competence. But tobacco products are highly standardised and neither health warnings of varying sizes nor packaging or flavouring differences really constitute barriers to free trade. Rather, the real motivation behind TPD2 and its predecessor is health promotion and the curbing of tobacco use across the EU.

This is not unreasonable in principle: governments may well wish to inform consumers about the risks of smoking, and even to make the habit more uncomfortable and expensive in order to encourage smokers to quit. Quite why the optimal level of intervention is deemed to be the EU has not been adequately explained. But let us leave that aside.

Government interventions with a view to promoting the health of citizens are only justifiable to the extent that they achieve their stated aims. TPD2 is only acceptable to the extent that it does more good – creating incentives to quit smoking or switch to less harmful options; decreasing the likelihood that new people will take up the habit – than bad – spurring the black market for illegal (and potentially more unsafe) tobacco products; making quitting less likely; harming tobacco manufacturers and retailers needlessly.

Does TPD2 meet the effectiveness test? There is reason to believe that many of the measures contained in the legislation will prove counterproductive. Consider the part about e-cigarettes: as Christopher Snowdon explained [in a briefing for EPICENTER](#) in September, Article 20 of TPD2 limits the size of refill devices and containers in e-cigarettes, as well their nicotine content.

The limits are not trivial because they effectively outlaw some of the devices and liquids favoured by heavy smokers, thus decreasing their chances of successfully switching some or all of their nicotine consumption to e-cigarettes. Snowdon estimates that 20 per cent of e-cigarette users are affected by the new rules, with likely very adverse consequences.

This regulatory drive is momentous because e-cigarettes are the most auspicious development in tobacco harm reduction since the health hazards of smoking first started to be known. Previous nicotine replacement therapies (NRTs), such as patches and gum, did not work for most people. [Studies have shown](#) that 90 per cent of attempts to quit smoking with the

help of NRTs end in failure, only marginally less than the 95 per cent figure for those who try to quit ‘cold turkey.’ It is clear that gums and patches will never be the silver bullet of tobacco harm reduction.

E-cigarettes, on the other hand, have delivered astonishing results in a short span of time. [A 2011 clinical trial](#) found that their use led to complete smoking abstinence among 22.5 per cent of smokers *who did not wish to quit smoking*. A further 32.5 per cent saw their cigarette consumption decline after beginning to use e-cigarettes. Those are stunning numbers, especially considering that we are not talking about a self-selecting group of nicotine addicts desperate to kick the habit.

The positive evidence around e-cigarettes has led to their endorsement by public health bodies, including the official [Public Health England](#) and, just last month, [the UK’s Royal College of Physicians](#). The current scientific consensus is that e-cigarettes are 95 per cent less harmful than tobacco cigarettes, primarily because they do not lead to the inhalation of carcinogens associated with smoking. The case for e-cigarettes is further bolstered by growing evidence that only a tiny proportion (1 per cent) of users are lifelong non-smokers, suggesting that e-cigs are a gateway *from* smoking, not *to* smoking.

There is much to be gained from a more widespread use of e-cigarettes. With 130 million current smokers across the EU, and [10 million e-cig users](#) as of late 2014, the scope for harm reduction through switching is substantial. Yet, by placing restrictions and onerous compliance burdens on e-cigarette manufacturers – most of whom remain small, independent producers – TPD2 will discourage smokers from making the switch, and producers from innovating further to attract this large latent customer base.

How about the other measures in the Directive? Again, there is reason for scepticism. Much as it may seem that bigger health warnings and bans on flavouring might wean off some smokers, a [Eurobarometer survey on attitudes towards tobacco and e-cigarettes](#) conducted in late 2014 showed that packaging and the design of cigarettes were not important for 75-80 per cent of regular smokers in the EU when it came to their choice of a cigarette brand. Only a third considered the specific taste – menthol, spicy, etc. – important for their brand choice.

Note that these questions concern smokers’ choice of a brand, not their decision on whether or not to smoke. However, it is unlikely that, if packaging and flavouring are relatively unimportant for most smokers’ brand choices, restrictions on packaging and flavouring might lead most of them to quit smoking. Indeed, as Christopher Snowdon [perceptively pointed out](#), at a time when public health initiatives – following the insights of behavioural psychology – focus on reducing packaging sizes in order to trigger self-restraint, TPD2 is doing the exact opposite, forcing smokers to buy bigger packs and therefore to expand their stock of cigarettes at any point in time. Incentives rarely get more perverse than that.

TPD2’s new restrictions are not backed by any substantial evidence that they might help to reduce smoking prevalence. Much like the plain-packaging legislation which just came into force in France, Ireland and the UK, they are the product of heavy and sustained lobbying by public health campaign groups, not empirical results. The ineffectiveness of these sort of measures was also recently brought home by EPICENTER’s [Nanny State Index](#), which shows no correlation between a range of anti-smoking policies and smoking prevalence in the Member States.

[The one case study](#) of plain packaging which we have so far, Australia, paradoxically shows an increase in prevalence as soon as the legislation came into force, as well as a staggering (154 per cent) rise in illicit cigarette trade. The downward trend in Australia’s smoking population has resumed afterwards, but not at a faster pace than before plain packs were introduced, and not before significant tax increases.

Historically, smoking prevalence in Europe saw [the biggest decline](#) – from around 50 per cent of the adult population to about 30 per cent – from the mid-1960s to the mid-1990s, as awareness about the health risks of smoking became more and more widespread. Since then, government policy on smoking has become more restrictionist, characterised by steep tax increases, ever bigger health warnings on packs, and indoor smoking bans – but the prevalence curve has become flatter, not steeper.

To a large extent, this just reflects a sociological fact: the 25 per cent of the EU’s population who remain smokers today are by definition the least willing to quit despite the increasingly high monetary cost of smoking. Neither information nor heavy taxation nor the increasing social opprobrium associated with the habit have weaned them off. What these policies certainly have achieved is to make the poor – the socioeconomic group most likely to smoke – poorer through heavy indirect taxation of cigarettes and rolling tobacco, as analyses from [Britain](#) and [France](#) document.

Yet, there are more and less effective ways to curb smoking prevalence and, most importantly, to reduce the harm associated with a nicotine addiction. As discussed above, the evidence on e-cigarettes is overwhelming and positive. In the

EU, we have [another successful case study](#): Sweden, where use of ‘snus’ – a form of oral tobacco illegal in the other Member States – has resulted in the steepest drop in smoking prevalence in all of Europe, from 40 per cent in 1976 to 12 per cent today. As studies consistently showed snus to be less harmful than smoking, more and more Swedes made the switch, with unambiguously positive health benefits.

Harm reduction in the form of increased switching to e-cigarettes and snus – if it were legalised elsewhere in the EU – is arguably the most promising avenue to effectively curb the harms of tobacco use. By contrast, the record of heavy taxation and prohibitions is mixed at best. The danger is that interest-group pressure and heated rhetoric – not least [from Health Commissioner Andriukaitis](#) – will lead policymakers to mistake the intentions of legislative proposals for their results. Yet, only what is shown to be effective is desirable, especially when it involves restricting the choices of consumers and the right of legal businesses – including tobacco companies – to serve them.

Just when country after country is embracing harm reduction with regard to illegal narcotics, we are moving towards prohibition – which has failed time and time again to meet its objectives – on tobacco and, increasingly, alcohol and fast food as well. TPD2 is another exemplar of the latter approach. Success is unlikely.

### Further Reading

EPICENTER Nanny State Index 2016. [“The best and worst countries to eat, drink, smoke and vape in the EU.”](#) March 2016.

McNeill, A., et al. [“E-cigarettes: an evidence update. A report commissioned by Public Health England.”](#) London: PHE, 2015.

Petkantchin, Valentin. [“The pitfalls of so-called ‘sin’ taxation.”](#) Paris: Institut Economique Molinari, 2014.

Royal College of Physicians. [“Nicotine without smoke: tobacco harm reduction.”](#) London: RCP, 2016.

Snowdon, Christopher. [“Free-market solutions in health: the case of nicotine.”](#) IEA Current Controversies Paper No. 45. London: Institute of Economic Affairs, 2013.

----- [“Aggressively regressive: the ‘sin taxes’ that make the poor poorer.”](#) IEA Current Controversies Paper No. 47. London: Institute of Economic Affairs, 2013.

----- [“Plain packaging – questions that need answering.”](#) IEA Briefing 14:02. London: Institute of Economic Affairs, 2014.

----- [“E-cigarettes and Article 20 of the Tobacco Products Directive.”](#) EPICENTER Briefing, September 2015.

Special Eurobarometer 429. [“Attitudes of Europeans towards tobacco and electronic cigarettes.”](#) Brussels: European Commission, 2015.