PROHIBITION DOES NOT WORK

27 July 2026
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To: Liisa-Ly Pakosta
Ministry of Justice and Digital Affairs
Government of Estonia

Re: Comments on the Draft Act amending the Tobacco Act and the State Fees Act, file no. 26-0826

Dear Ms. Pakosta,

Prohibition Does Not Work appreciates the opportunity to comment on the proposed amendments to Estonia's Tobacco Act concerning nicotine pouches and other nicotine-containing products.

Prohibition Does Not Work is an international network of think tanks examining how bans and excessive restrictions on reduced-risk nicotine products create black markets, strengthen criminal networks, reduce consumer safety, and undermine public health, and is dedicated to advancing evidence-based policies to reduce smoking and its associated harms.

We support appropriate measures to prevent underage access and ensure that nicotine products meet clear safety and quality standards. However, we submit that the Draft Act amending the Tobacco Act, specifically the proposed nicotine limit of 4 milligrams per gram and the restriction of flavours to tobacco and menthol, would amount to a de facto prohibition of much of Estonia's existing legal nicotine-pouch market and come with significant negative consequences. We further note that Estonia should be particularly cautious because it has already adopted a similar prohibitionist policy for reduced-risk nicotine products, and evidence shows that not only did this policy fail to achieve its stated objective, but it created significant harm to public health, law and order, and the economy.

In 2020, Estonia prohibited vaping flavours other than tobacco and menthol. A subsequent survey commissioned by the Tholos Foundation, a member of the Prohibition Does Not Work network, and conducted by Ipsos found that almost 60 percent of Estonian vapers continued to use prohibited fruit, sweet, or dessert flavours. More recent research suggests that this was not a temporary adjustment. The Fraunhofer Institute estimated that 41 percent of Estonia's e-cigarette trade in 2025 was illicit, comprising 32 percent black-market supply and 9 percent cross-border purchasing.

Germany provides an equally direct warning for nicotine pouches. As documented in the Prohibition Does Not Work report *Nicotine Pouches in Germany*, the de facto prohibition of legal sales did not eliminate demand. Adult use increased approximately eightfold, as many as 1.4 million consumers were pushed into an unregulated market, and illegal sales reached an estimated 444 million pouches worth more than US$114 million in 2024. Products containing as much as 150 mg of nicotine per pouch remained available, while meaningful age verification was largely absent. Estonia's proposed nicotine ceiling risks reproducing exactly this failure.

As such, Prohibition Does Not Work recommends that the Estonian Government withdraw the proposed 4 milligram-per-gram nicotine limit, reject the proposed restriction of legal products to tobacco and menthol flavours, and instead establish a workable regulated market based on proportionate product standards, licensed sellers, age verification, traceability, and enforcement against illegal commercial suppliers. A critical test of nicotine regulation is whether it keeps the market legal. Rules that most adult consumers will evade are not effective regulation. They transfer control from regulated businesses to illicit suppliers.

Estonia has already tested flavour prohibition

The strongest evidence against the proposed flavour restrictions comes from Estonia itself. The Tholos Foundation commissioned Ipsos to examine the effects of Estonia's 2020 vaping flavour ban. The survey of 300 adult current and former vapers found that 58 percent of current users continued to use fruit, sweet, or dessert flavours after their legal sale had been prohibited. Among users of prohibited flavours, 42 percent mixed their own liquids, 42 percent continued to find local sellers, 25 percent purchased online, and 18 percent bought products across the border. The survey concluded that almost 60 percent of Estonian vapers had turned to do-it-yourself mixing or black-market supply following the ban.

This was not a minor unintended consequence. It was the predictable result of a policy that prohibited legal supply without eliminating consumer demand. More recent research reinforces this conclusion. The Fraunhofer Institute estimated that 41 percent of Estonia's e-cigarette trade in 2025 was irregular. Black-market supply accounted for 32 percent of the market, with a further 9 percent obtained through cross-border channels. Estonia therefore does not need to speculate about what happens when desirable reduced-risk nicotine products are prohibited. It already has a large-scale domestic example.

The Ipsos survey also found that Estonian adults were using vaping products specifically to reduce or stop smoking. Twenty-nine percent said they vaped to reduce smoking, and 20 percent said they did so to stop smoking. While limited to e-cigarettes, similar research conducted internationally has found that people use nicotine pouches for broadly the same reasons: to reduce or stop smoking combustible tobacco.

Flavours are not incidental to that process. For many adult smokers, non-tobacco flavours help create distance from the taste, smell, and rituals associated with cigarettes. A smoker attempting to leave tobacco behind may have little interest in being restricted permanently to products that reproduce tobacco flavour. Flavour restrictions therefore reduce the appeal of lower-risk alternatives relative to cigarettes. They may discourage smokers from switching completely, encourage continued dual use, or push existing consumers towards illicit flavoured products.

The proposal would take a failed policy already applied to vaping and extend it to another reduced-risk nicotine category. There is no reason to expect a different result.

The nicotine limit would create a de facto prohibition

Because a typical pouch contains approximately half a gram of filler, a limit of 4 milligrams per gram would permit only around 2 milligrams of nicotine in an ordinary pouch. This is not a cautious or moderate ceiling. It would eliminate almost the entire existing European nicotine-pouch market.

Published testing of more than 1,100 pouch products found that 82 percent contained more than 4 milligrams of nicotine even when measured per pouch. European retail data similarly suggest that the overwhelming majority of existing consumption would fail a 4-milligram-per-pouch threshold. Estonia's proposal is more restrictive still because it applies the limit per gram.

A product that is too weak to satisfy an adult smoker is unlikely to help that smoker move completely away from cigarettes. It may instead encourage heavier consumption, continued dual use, a return to smoking, or purchases from unregulated suppliers offering stronger products.

The proposed measurement may also create predictable workarounds without meaningfully reducing nicotine consumption. Manufacturers may respond by increasing pouch size or changing the density and composition of the filler. Consumers may use two pouches simultaneously, use more pouches throughout the day, or obtain stronger imported products through illegal channels.

A concentration limit does not necessarily limit nicotine exposure. It may simply alter product design and consumer behaviour while making the legal market less competitive.

Nicotine limits should therefore not be determined by concentration alone. Regulators must also consider the weight of each pouch, total nicotine content, nicotine release, product formulation, patterns of use, and the needs of adult smokers with different levels of dependence.

The relevant choice is not between nicotine use and theoretical abstinence. For many consumers, the practical choice is between cigarettes, sufficiently effective legal pouches, and unregulated products obtained through illicit channels.

Estonia should not make cigarettes the easiest effective nicotine product to purchase legally.

International Experiences

The Prohibition Does Not Work report *Nicotine Pouches in Germany* provides the closest international comparison to Estonia’s proposal. Germany has effectively prohibited ordinary legal nicotine-pouch sales since 2021 by classifying the products as food and applying food-safety limits that no commercially viable pouch could satisfy. This approach was adopted despite Germany’s own Federal Institute for Risk Assessment concluding that switching from cigarettes to nicotine pouches could reduce health risks and recommending standardisation and regulatory quality controls instead.

The prohibition did not eliminate consumer demand. According to market estimates cited in the PDNW report, adult nicotine-pouch use increased approximately eightfold after the de facto ban, rising from around 0.1 percent of adults when the prohibition was introduced to more than 0.8 percent by 2024. Other German government research estimated regular use at 2 percent of adults, equivalent to approximately 1.4 million people. Rather than regulating this growing market, German authorities effectively surrendered it to illicit suppliers.

By 2024, illegal sales were estimated at approximately 444 million pouches, worth more than US$114 million. Consumers could obtain products through more than 1,300 online channels, including dedicated websites, digital marketplaces, and social-media sellers. Yet the black market was not confined to the internet. The report estimates that 63 percent of pouch sales continued to take place through offline retail channels by 2025, demonstrating how illicit supply can become embedded in the domestic market.

Germany’s experience also shows why severe legal nicotine limits do not protect consumers from high-strength products. Many illicit products exceeded the 16.6 mg-per-pouch ceiling recommended by the German Federal Institute for Risk Assessment, with some containing as much as 150 mg per pouch.

Prohibition removed ordinary regulated products while leaving the strongest products available from sellers with no obligation to test contents, label nicotine accurately, or comply with product standards.

Age controls also deteriorated rather than improved. While 63 percent of German websites displayed some form of age warning, the report found that none used generally accepted third-party age verification at purchase or delivery. Only 4 percent of sponsored social-media posts stated that the products were intended exclusively for adults. In 2023, an estimated 5.4 percent of German minors had tried nicotine pouches, rising among 16- and 17-year-olds to 15.2 percent of boys and 10.3 percent of girls.

Germany therefore demonstrates the central danger in Estonia's proposed approach. A de facto ban does not prevent pouch use, prevent youth access, or keep high-strength products off the market. It removes accountable manufacturers and retailers while allowing illegal sellers to supply a growing market without meaningful nicotine limits, age verification, ingredient standards, or regulatory supervision.

Estonia's proposed 4 mg-per-gram limit risks reproducing precisely this outcome. Moderate legal products would disappear, while stronger products would remain available online, across borders, and through informal domestic sellers.

Similar outcomes have been seen in other jurisdictions where prohibitionist policies have been tried. Brazil's prohibition on vapour products has not eliminated use. Millions of consumers continue to obtain products through an illicit market estimated at more than US$1 billion. Australia's de facto prohibition on nicotine pouches and e-cigarettes has similarly created an illicit market worth an estimated AUD $1–2 billion, accompanied by organised crime, extortion, arson attacks, and violence. In Mexico, PDNW has documented how prohibition has enabled criminal organisations to profit from illicit nicotine markets and associated cross-border trafficking. In the Netherlands and Belgium, flavour and product restrictions have been followed by continued illicit sourcing, cross-border purchasing, and widespread non-compliance.

These jurisdictions differ significantly, but the pattern is consistent. When demand remains, prohibiting legal supply does not eliminate the market. It changes who supplies it.

Sweden demonstrates the alternative. Rather than prohibiting oral nicotine products, Sweden has maintained broad adult access to snus and, more recently, tobacco-free nicotine pouches under a regulated framework. Sweden now has the lowest daily smoking rate in Europe, at approximately 5.3 percent, placing it at or near the internationally recognised threshold for becoming "smoke-free." As a result of this, Sweden has the lowest rates of lung and cardiovascular disease in Europe.

It is also worth noting that snus played a major role in reducing smoking among Swedish men, while smoking among women remained comparatively more persistent until tobacco-free nicotine pouches became widely available. Because pouches are tobacco-free, discreet, and do not require spitting, they proved more acceptable to many women and were followed by a sharp decline in female smoking. Sweden's experience therefore shows how a range of oral nicotine products can reach different groups of smokers and accelerate the decline of combustible tobacco use across the whole population.

Prohibition imposes economic costs far beyond lost excise revenue

The economic consequences of prohibition are also frequently understated.

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Governments often calculate the cost primarily in terms of lost excise or sales-tax revenue. However, Professor Sinclair Davidson's PDNW report, *The Costs of Driving Vape Markets Underground*, explains that the true economic cost is considerably larger.

The report examines prohibitionist nicotine policies in Australia, Brazil, Belgium, the Netherlands, and Denmark. It finds that bans and severe restrictions transfer economic activity from legitimate businesses to criminal and informal suppliers while imposing broader costs through violence, enforcement, regulatory failure, reduced consumer welfare, lost legal profits, and resources diverted towards policing illicit markets.

The largest cost is not necessarily the tax revenue forgone by government. It is the transfer of producer and retailer profits from lawful businesses to criminal networks, combined with the wider social costs generated by those networks.

Professor Davidson estimates recurring annual regulatory-failure costs of AUD $12–20 billion in Australia, R$3–15 billion in Brazil, €250 million–€1.2 billion in Belgium, €500 million–€3 billion in the Netherlands, and DKK 250 million–1.5 billion in Denmark.

Estonia's market is smaller, but the mechanism is identical. When lawful products are prohibited or rendered commercially unviable, existing demand becomes an income stream for smugglers, unlicensed online retailers, and informal distributors.

The Government then loses twice. Legitimate businesses and consumers bear the initial loss, while taxpayers fund enforcement against a black market created or enlarged by the regulation itself.

Regulation must keep the market legal

A critical objective of nicotine regulation should be to keep consumer demand within the legal market.

A functioning legal market allows authorities to identify manufacturers and importers, inspect products, verify nicotine content, require ingredient disclosure, trace batches, order recalls, and enforce age restrictions through licensed sellers. Illicit sellers provide none of these safeguards.

An operator already willing to sell a prohibited product has no reason to respect nicotine limits, test for contaminants, label products accurately, verify the purchaser's age, or cooperate with a recall. This is why rules that drive most consumers towards non-compliance should not be regarded as strong regulation. They are a transfer of control from regulated businesses to illicit suppliers.

If Estonia wants stronger control over nicotine products, it should ensure that ordinary adult consumers have access to legal products they are willing to buy. A legal market that does not reflect consumer behaviour will steadily lose market share to sellers outside the law.

Regulation should reflect Estonia's continuing smoking burden

Nicotine pouches are not risk-free and should not be used by minors or people who do not consume nicotine. However, they do not contain tobacco leaf, involve no combustion, produce no smoke, and create no second-hand smoke exposure.

They should therefore not be regulated in a manner that makes them less accessible or less attractive than combustible cigarettes, but rather in a manner that recognises the continuum of risk. This is especially important because smoking remains a substantial public-health problem in Estonia. World Health Organization estimates indicate that approximately 26.1 percent of Estonian adults smoke, including 30.9 percent of men and 21.4 percent of women. Estonia does not have the luxury of regulating reduced-risk alternatives as though the smoking problem has already been solved.

Policies that make non-combustible products weaker, less appealing, or less accessible can carry significant public-health costs when large numbers of adults continue to smoke. The proposed framework would permit cigarettes, the most harmful nicotine product, to remain readily available while removing many flavours and nicotine strengths that make non-combustible alternatives viable for adult smokers. That is the reverse of a coherent harm-reduction policy.

Sweden demonstrates that access to oral nicotine alternatives is not only compatible with exceptionally low smoking rates; it drives them. Countries that maintain workable legal access to reduced-risk products give smokers more opportunities to move away from combustion. Countries that prohibit those products generally create illicit markets instead.

A better regulatory approach

Estonia does not face a choice between the proposed restrictions and an unregulated market.

It can establish proportionate standards for nicotine content and product quality, require accurate ingredient and nicotine labelling, maintain batch traceability, license sellers, enforce meaningful age verification, and impose strong penalties on commercial suppliers of illegal or non-compliant products.

Such a framework would preserve a legal alternative for adults while giving regulators identifiable businesses, traceable products, and enforceable standards. It would also allow Estonia to target the actual problems of underage sales, mislabelled products, contamination, and illegal supply without repeating the failure of its existing vaping flavour ban.

Conclusion

Estonia's own experience provides the clearest warning: prohibition does not remove demand. It removes safeguards.

The proposal seeks to repeat Estonia's failed approach to e-cigarettes for nicotine pouches by introducing a nicotine limit likely to make almost the entire lawful market unviable. The evidence shows that it will lead to more people smoking and dying as a result, and create a large-scale unregulated market with few product safeguards, which may paradoxically increase youth usage.

We submit that the choice before the Government is not between nicotine pouches and no nicotine pouches. The choice is between a regulated market and an illicit one. As such, Prohibition Does Not Work respectfully urges the Estonian Government to withdraw the proposed 4-milligram-per-gram limit and flavour restrictions and instead adopt a proportionate, evidence-based framework that maintains legal access for adults, protects minors through enforceable age controls, and preserves regulatory oversight.

Sincerely,

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