

Liisa-Ly Pakosta

Minister of Justice and Digital Affairs
Government of the Republic of Estonia
By email: info@justdigi.ee / press@justdigi.ee

24 July 2026

Dear Minister

Comment on proposed amendments to the Tobacco Act and the State Fees Act – JDM/26-0826

My name is Clive Bates, a UK-based public health and tobacco control specialist. I am a former Director of Action on Smoking and Health UK), a former senior civil servant, and I now run Counterfactual Consulting, focusing on sustainable development and public health. I do not have conflicts of interest with respect to the tobacco, nicotine or pharmaceutical industries.¹

I have seen news of the government of Estonia's proposals to impose new restrictions on smoke-free nicotine products (vapes, oral nicotine, heated tobacco, etc).² I am writing to respectfully urge caution and to draw attention to the likely perverse unintended consequences of such measures.

To summarise, the proposed measures would likely have three broad harmful effects:

1. **Prolonging the personal, social and economic burdens of smoking.** More than one in four adult Estonians smoke, according to WHO. These restrictions will obstruct the migration of the lawful nicotine market from high-risk to low-risk products (a process that is underway globally), protecting the incumbent cigarette trade from competitive safer products. It will mean fewer people who smoke will switch, and more will suffer needlessly as a result, with further costs in productivity and healthcare. Many young people who are vaping today would have smoked in the absence of vapes; for them, youth vaping is a public health win.
2. **Cultivate a large illicit market.** Restrictions on legal products will do little to lower demand. Consumers will seek the products they want via informal and criminal markets. This will create greater opportunities for a large illicit market in the restricted products. The Fraunhofer Institute estimated that in 2025, Estonia had 41% irregular trade in e-cigarettes, of which 32% was black market and 9% was cross-border.³ In the Netherlands, which has already adopted similar measures to those now proposed for Estonia, Bureau Beke found that 87% of vapers use vapes obtained through an illegal sales channel. Dutch consumers spend around €280 million per year on vapes, but of that, approximately €257 million is spent on illegal products.⁴
3. **Trigger risky workarounds.** Consumers will try to obtain the products they want through innovation or workarounds. For example, people can make their own liquids and add commercial food flavours or even aromatherapy liquids. It is possible to work around limits on nicotine by adding nicotine from illegally purchased concentrates. There may be behavioural adaptations; for example, people may start using two or more nicotine pouches at once. Manufacturers can respond creatively to regulations: a limit of 4mg/g of filler would lead to the use of larger, denser filler materials.

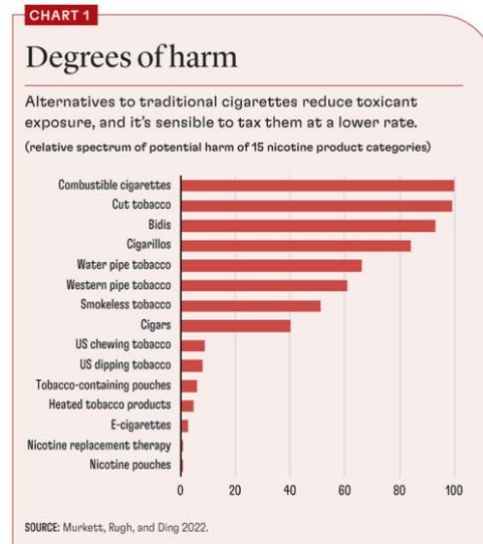
¹ See [clivebates.com: About](https://clivebates.com/about) for more detail.

² ERR.EE Ministry of Justice wants to tighten restrictions on the sale of nicotine products, 20 July 2026 [[link](#)]

³ Fraunhofer Institute. (2026). *The irregular market for e-cigarettes in Europe*. Fraunhofer IIS in cooperation with MRU GmbH. <https://www.scs.fraunhofer.de/en/publications/the-irregular-market-for-e-cigarettes-in-europe.html>

⁴ Emily Berger, Emma Derksen, Christa Dinissen, & Juno van Esseveldt. (2026). *Dark Clouds: A preliminary exploration of the illegal vape trade in the Netherlands*. Bureau Beke. <https://bureaubeke.nl/geen-categorie/dark-clouds/>

- **Policymaking requires a grasp of relative risk.** It is beyond reasonable doubt that smoke-free nicotine products that do not involve combustion and inhalation of tobacco smoke are far safer than smoking products. These smoke-free products include e-cigarettes (vapes), nicotine pouches and other oral products, heated tobacco and smokeless tobacco. The following chart, which provides rough estimates of risk relative to cigarette smoking, is from research on optimal taxation conducted by experts at the International Monetary Fund.⁵

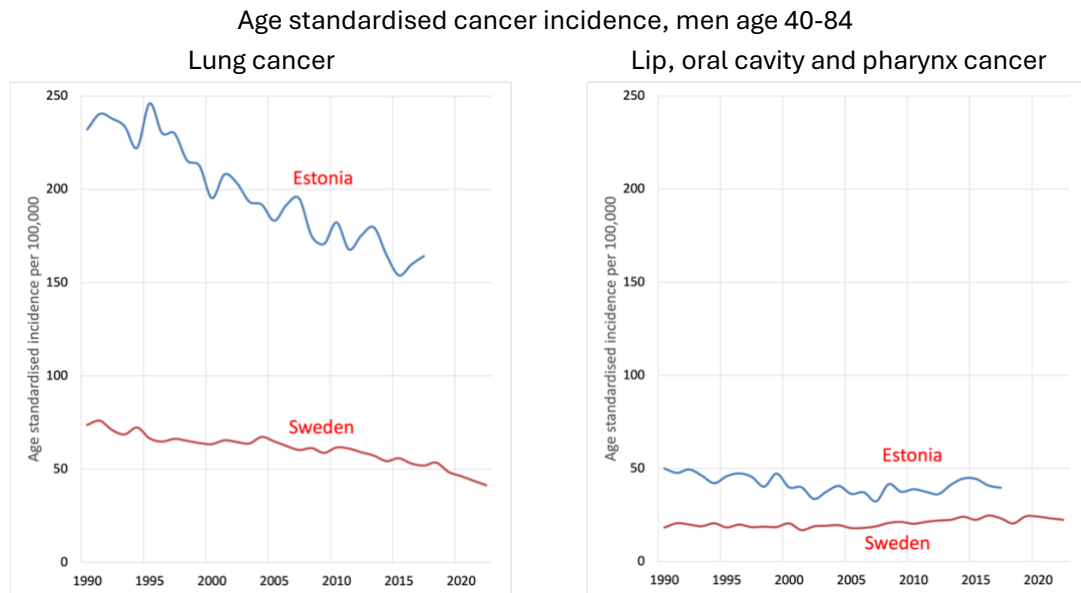


- **Policymakers cannot expect certainty but must make workable approximations.** It is not possible to know these relative risks with *certainty*, but it is possible to know *enough* with confidence to provide a basis for policymaking. There is a likely one- to two-orders-of-magnitude difference in risks between smoking and smoke-free products. Nicotine pouches are likely to have risks comparable to nicotine replacement therapy. That suggests major public health potential in migrating nicotine use from high-risk to low-risk products.
- **Low-risk products are displacing high-risk products.** There is also little doubt that these products are steadily displacing smoking through two main mechanisms: (1) existing smokers switching to safer smoke-free products, and (2) new nicotine users, including youth, diverting from smoking to safer products at the point of initiation and then ageing into the population without ever smoking. Most young people who are vaping regularly today would have become smokers in a world without e-cigarettes. The main problem in much of Europe is not that young people are taking up vaping instead of smoking, but that older adults are sticking with cigarettes.
- **The smoking problem remains and is concentrated in older nicotine users.** Estonia still has a substantial adult population at risk of smoking-related mortality and morbidity, including cancer, cardiovascular and respiratory disease, with more than one in four adults smoking (26.1% of adults, 30.9% men and 21.4% of women – WHO data)⁶. For this segment of Estonia's population, these products are a potential lifesaver, though only if users find them appealing and are confident that these products are much safer.

⁵ MF, Van Oordt & Rosenberg, [Taxing harmful habits](#), 2026. Graphic derived from [Murkett et al. 2022](#)

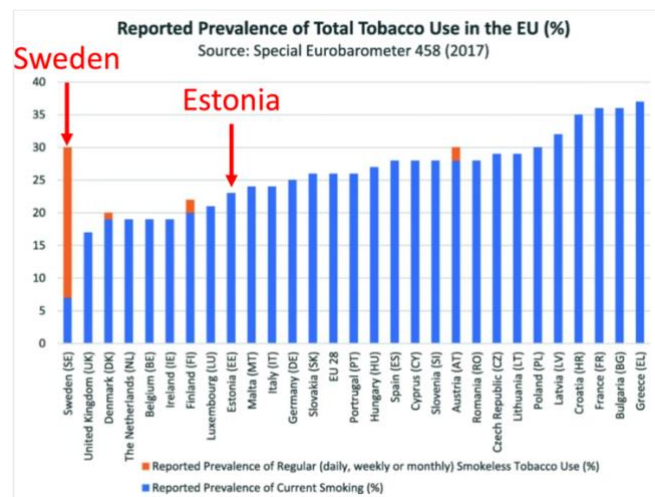
⁶ World Health Organisation (2025). *WHO global report on trends in prevalence of tobacco use 2000–2024 and projections 2025–2030* (6th Edition). World Health Organisation. <https://www.who.int/publications/i/item/9789240116276>

- **The Swedish experience shows the right direction to take.** The European Union country with the most significant success in addressing smoking and reducing smoking-related disease is Sweden. If we take male lung cancer incidence as a reasonable indicator for smoking-related harm, we see that Sweden has far lower levels than Estonia – around one third.⁷



International Agency for Research on Cancer (IARC): Global Cancer Observatory

- **Nicotine use is inevitable, but high levels of disease are not.** The reason is that nicotine is used differently in Sweden, mostly via smokeless oral tobacco or snus. Historically, Sweden has had high levels of *nicotine* use (higher than Estonia), but much lower levels of *smoking*. As a result, Sweden has lower levels of smoking-related disease (including oral cancer).⁸



- **The EU ban on snus was a major policy failure.** The European Union banned snus in 1992 with an exception for Sweden. Since 1992, more than 20 million Europeans have died from smoking-related disease (about 60,000 in Estonia).⁹ Had the EU promoted snus as an alternative to

⁷ IARC Global Cancer Observatory, Cancer Over Time <https://gco.iarc.who.int/en>

⁸ Ramstrom, L. M. (2024). If there had been no snus in Sweden: The impact of snus on mortality attributable to smoking. *Harm Reduction Journal*, 21(1), 176. <https://doi.org/10.1186/s12954-024-01095-7>

⁹ Institute of Health Metrics and Evaluation, GBD Compare 2023, <https://vizhub.healthdata.org/gbd-compare/>

cigarettes instead of banning it, the internal market could have contributed to reducing smoking-related disease in all countries. The danger is that the European Commission and several member states have not learned lessons from the ban on snus and appear willing to repeat the error with excessive restrictions on nicotine pouches and e-cigarettes. Estonia's proposed measures risk repeating the mistakes of the European Union in 1992 and maintained subsequently and, more recently, those of the Netherlands and others.

- **A ban on vape flavours is likely to backfire by increasing smoking.** There is substantial evidence that vape flavour bans increase cigarette smoking. This is because vapes and cigarettes are economic substitutes. By making one less attractive to its users and potential users, the other becomes relatively more attractive. In the case of a restrictive vape or pouch flavour ban, the harmful alternative products, cigarettes, are protected from more effective competition. Quasi-experimental economic research has shown that vape flavour bans have increased smoking at the state level in the United States; Friedman et al (2026) show:¹⁰

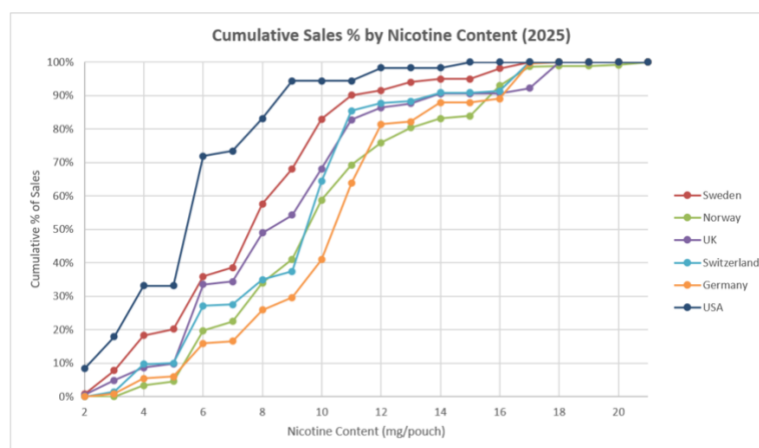
*Our findings reveal that ENDS flavor restrictions yield substantial decreases in total ENDS sales, primarily owing to significant declines in flavored ENDS sales alongside nonsignificant increases in unflavored ENDS sales. **Further analyses find that ENDS flavor restrictions increase sales of combustible cigarettes, a more harmful product: 11 to 15 additional cigarettes are purchased for every 1 less 0.7 mL ENDS pod sold because of these policies.** [emphasis added]*

- **... and illicit trade.** In addition, those who wish to use vapes will access a large black market in unregulated products ultimately linked to organised crime groups.
- **Flavour regulation should focus on flavour descriptors.** A flavour can be characterised as a chemical recipe, a sensation (“apple”, “mint”) or a descriptor – the name and branding used to convey to consumers what they should expect the product to taste and feel like. This is a form of product information, but also a form of marketing. Regulation should focus on preventing marketing with child-appealing themes and ensuring that flavour descriptors provide a literal description of the product without frivolous embellishments.
- **A low limit on nicotine in pouches is likely to backfire.** A limit of 4mg/g of filler will render nearly all the products currently available in Europe non-compliant. By setting a limit that would not meet the demands of many people who smoke or wish to use nicotine, it will nurture a black market in pouches with nicotine content that people are seeking. It will likely lead to changes in supply – larger pouches of denser material and encouragement to use more than one at once.
- **Much higher limits are justified on public health grounds.** Most pouch regulation so far has been based on the mass of nicotine in a pouch (mg/pouch), not per unit of filler (mg/g). The market shows a range of products from around 1 mg to 20 mg per pouch. Of the 1,118 pouch varieties independently tested on behalf of Haypp Group, a retailer, 921 (82%) had more than 4mg of nicotine per pouch.¹¹ One way of measuring the disruption a new regulation would cause (and hence the impact on users and likely unintended consequences) is to assess how much of the existing market would become non-compliant under the new regulation. The major online retailer Haypp Group provides the following data for its nicotine pouch sales. 80-95% of

¹⁰ Friedman, A. S., Liber, A. C., Crippen, A., & Pesko, M. F. (2026). E-Cigarette Flavor Restrictions' Effects on Tobacco Product Sales. *American Journal of Health Economics*, 12(2), 377–411. <https://doi.org/10.1086/734689>

¹¹ Haypp Group, NicoLeaks, <https://nicoleaks.com/>

European consumption would become non-compliant with a limit of 4mg/pouch.¹² Note that the ceiling shown is limited to 20mg/pouch as that is the maximum nicotine content sold by the company as a matter of policy.



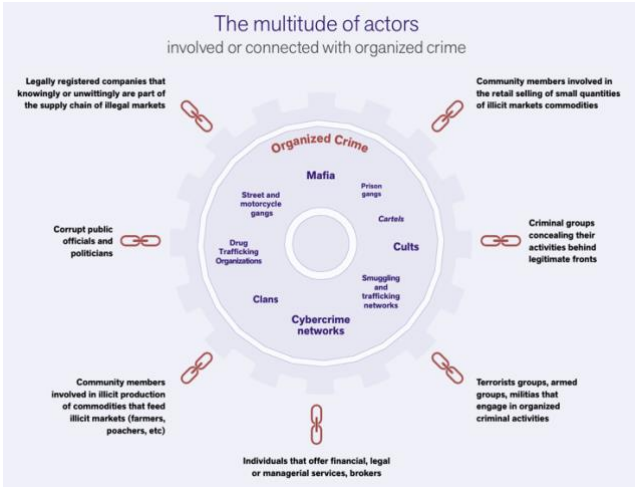
Haypp Group (online retailer) sales data

- **The proposed limit would wipe out the existing pouch market.** Yet, Estonia's proposal is more restrictive. By specifying a limit of 4mg per gram of filler (rather than per pouch), the limit per pouch would be lower. According to Haypp, the median product has just under 0.5g of filler, meaning Estonia's proposed limit of 4mg/g of filler would equate to approximately a nicotine limit of 2mg per pouch. That would eliminate almost every product currently used in Europe.
- **No identifiable beneficial reason to set this limit.** There is no real public health justification for limiting nicotine content to less than 20 mg. If someone who smokes needs a stronger pouch product, what is the reason to deny them access? Risks associated with overconsumption arise equally from people using more than one pouch or keeping them in the mouth for too long.
- **Illicit trade in nicotine pouches could easily reach the same levels as vapes.** A very high penetration of illicit trade has already been experienced for vapes. The global illicit share of the vape market was 75% in 2025 and is growing, according to the business information service Euromonitor.¹³ There is every reason to expect that excessive regulation or taxation of nicotine pouches would lead to a similar scale of illicit trade in pouches.
- **The negative consequences of illicit markets are severe:**
 - The aim of the restrictions or taxes that caused the illicit trade is defeated
 - The products are unregulated and may be dangerous, out of date, or defective
 - The sellers are unscrupulous commercial operators and will sell to anyone of any age
 - Criminal networks operate through violence, corruption and extortion
 - The consumer has no protections or recourse; disputes are settled through violence
 - Enforcement actions are expensive, often excessive, and do little to limit supply
 - Penalties to deter supply and use become disproportionate to the risk
 - Young people are drawn into criminal supply chains as bottom-tier suppliers
 - Consumers are exposed to other illegal products or services, such as illicit drugs
 - Large illicit profits finance flourishing organised crime groups and terrorism

¹² Haypp Group, personal communication, 24 July 2024

¹³ Euromonitor, Over 75% of global e-vapour volume is driven by illicit market, 28 August 2025. [\[Euromonitor\]](#)

The UN Office on Drugs and Crime has documented the harms arising from criminal infrastructure that underpins the illicit drug trade.¹⁴ The UNODC chart maps the actors involved:



- A critical goal for all tobacco and nicotine policies must be to keep the market legal.** The likely consequences of illicit trade constrain European policymakers’ flexibility to impose restrictive or prohibitive policies. Such trade undermines the policy’s original purpose, leaves the market unregulated, and causes a wide range of social harms. It is not adequate simply to call for more enforcement without explaining why this has so far failed to stop around three-quarters of the global market and half the European market in vapes becoming illicit or irregular by 2025.
- What to do: develop a framework for risk-proportionate regulation.** The policy aim should be to take the toughest, most restrictive measures to address the risks of smoking to the user and bystanders. The regulation of safer nicotine products should focus on consumer protection (chemical, electrical, and thermal safety, and reliable information) and on limiting youth uptake through measures to ensure responsible supply, retailing, and marketing.

An outline of a risk-proportionate regulatory framework for tobacco and nicotine

Measure	Cigarettes, hand-rolling tobacco, and other combustibles	Vaping, heated and smokeless tobacco and oral nicotine
Overall aim	Reduce appeal and deter use	Consumer protection
Taxation	Relatively high taxes	Low or zero tax (sales tax only)
Advertising	Prohibit other than within trade	Control themes and placement
Warnings	Graphic warnings depicting disease	Messages encouraging switching
Public places	Legally mandated controls	Up to the discretion of the owner
Plain packaging	Yes	No. Controls on imagery and branding
Risk communication	Major risks to health	A far safer alternative to smoking
Age restrictions	No sales to under-21s	No sales to under-18s
Flavours	Ban characterising flavours	Control flavour <i>descriptors</i>
Product standards	Control risks and reduce appeal	Control safety risks to the user

¹⁴ UN Office on Drugs & Crime, Research Brief on Transnational Organized Crime, November 2025 [UNODC]

- **What to do: focus on consumer protection and confidence.** Regulation should support the interests of the users of tobacco and nicotine products, while creating proportionate deterrence to uptake by new users. Aggressive attempts at behaviour change through regulation will largely drive unintended consequences such as increased smoking, more illicit trade, and risky workarounds. A key objective should be to facilitate the migration of the nicotine market from high-risk products to low-risk products, but through the consent and choice of consumers, not by coercive, punitive or stigmatising policy. The government should assign high priority to keeping the market legal, and policy choices should be constrained accordingly.

I hope this memo is useful and a basis for considering a possible alternative approach.

I have attached a more in-depth briefing prepared for the recent European Commission call for evidence. Please contact me via [REDACTED] if I may be of further assistance.

Yours sincerely

A handwritten signature in blue ink that reads "Clive Bates".

Clive Bates
Counterfactual Consulting
London (UK)