



29th of August 2021

Dear sir / madam,

Norway's proposal to maintain the ban on the sale of water-pipe tobacco is ineffective, it disproportionately discriminates against minority ethnic groups and is in contravention of European Union and international law. We believe that the ban on water-pipe tobacco in Norway should be reversed.

The **European Shisha Community Alliance (ESCA)**¹ is a trade association that seeks to represent the thousands of shisha businesses across Europe. As you may be aware, shisha, also called water-pipe, vannpipetobakk, hookah and nargileh, is a centuries old tradition that is enjoyed by adults, mostly from ethnic minority backgrounds, in the home or in controlled venues known as shisha lounges.

Several of our members including businesses based in Norway and manufacturers in the EU have recently expressed great concern with regard to the planned implementation of the 'Vedtak til lov om endringer i tobakksskadeloven (gjennomføring av direktiv 2014/40/EU og standardiserte tobakkspakninger)² (the "New Norwegian Tobacco Law") that is expected to become law in 2022.

We have conducted a thorough review of the document titled *Consultation Note Proposal for amendments to the Tobacco Damage Act with regulations (stricter regulation of e-cigarettes and extended smoking ban, etc.)* dated the 22nd of June 2021 (the "Consultation Note") and would like to take this opportunity to **bring to your attention several substantial concerns** that have been identified in section 15.3 titled 'The Ministry's Assessments and Proposals' that are being used as a basis to make important policy decisions.

1. You are failing to take the cultural and historic needs of ethnic minorities and immigrants into account which is not only offensive but also illegal.

Since shisha was banned in 1989 the population demographics in Norway have undergone significant change. This makes the statement on page 61, para 6, that reads *Hookah tobacco is therefore not available on the Norwegian market today and we have no traditional use of the product* appear vastly out of date, offensive and does not take into consideration Norwegians born to immigrant parents or immigrants in the policy making process. Since 1989 the annual inflow of immigrants has tripled and today immigrants or Norwegians born to immigrant parents make up just under 1 million people or 18.5% of the total population³.

¹ www.shishaalliance.org

² <https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Beslutninger/Lovvedtak/2016-2017/vedtak-201617-026/>

³ Immigrants and Norwegian-born to immigrant parents, 1 January 2016". Statistics Norway. Accessed 20 August 2021.

The continuation of the ban on shisha tobacco is illegal under EU laws requiring member states to respect cultural identity.

- Article 51 of the Charter of Fundamental Rights (the "Charter") requires that the provisions of the Charter must be respected by the Member States when implementing EU law. Accordingly, the Charter must be taken into consideration when implementing the Tobacco Products Directive.
- Under Article 22 of the Charter, the Member States must respect cultural diversity. Shisha tobacco is overwhelmingly enjoyed by underrepresented immigrant and ethnic groups with large communities in Norway, particularly among people originating from Turkey, Iraq, Kurdistan, Syria, Afghanistan, Somalia, and Iran all countries that have a long history of and a culturally important link to shisha use⁴.
- The continuation of the ban would therefore directly impact these groups and the social gatherings that are based on long-standing cultural traditions. As the continuation of the ban would impact these ethnic groups significantly harder than other groups, it can be argued that it would be contrary to the right to cultural diversity under the Charter.

2. A comparison of shisha with one cigarette is not scientifically accurate or based on sufficiently rigorous evidence to be introducing important policy decisions. In fact, the Scientific Agency of the German government has already concluded that statements comparing shisha use with cigarettes are 'unsuitable' and 'misleading'⁵.

On page 62, para 2, it states that *According to a report from the WHO expert group TobReg, one hour of using a hookah will result [in] inhalation of 100-200 times as much smoke as from one cigarette.*

Firstly, the above statements are taken from a WHO advisory note from 2005⁶ which is in turn based on a research study⁷ carried out in 2004 in one shisha café in Beirut, Lebanon. The authors of this study recognise the limitations of the report and specifically refer to these limitations throughout the report. For example,

- the study is limited to a small sample size of 52 people.
- the study is based on VISUAL observations without any analysis of chemical compounds present in the aerosol that is generated during shisha use.
- it takes place in one venue for a short period of time over only few days, they do not take into consideration frequency of smoking ("heavy" vs. "light" smokers), nicotine dependence, prior smoking deprivation, use of other forms of tobacco, and time of day among others.
- The author of the study writes that *we do not know whether the smokers visiting the cafe in this study are representative of cafe smokers, in general, or whether, for example, our sample is skewed by disproportionate numbers of "chippers"*

⁴ "Population by immigrant category and country background". Statistics Norway. Retrieved 25 December 2017.

⁵ German Federal Institute of Risk Assessment, Waterpipe - Frequently Asked Questions, Online, October 17, 2011.

⁶ WHO Study Group on Tobacco Product Regulation, Advisory Note: Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators, 2005.

⁷ Shihadeh and Azar et al. (September 2004). "Towards a Topographical Model of Narghile Water-Pipe café Smoking: A Pilot Study in a High Socioeconomic Status Neighborhood of Beirut, Lebanon". *Pharmacology Biochemistry and Behavior*. 79 (1): 75–82.

[very occasional users] or, conversely, nicotine-dependant smokers, whose puffing practices may differ from that of the average cafe smoker.

- Most importantly the author concludes that *The results of this study should therefore be taken as a snapshot of how narghiles were used in a particular place, time, and population, rather than as a general model of cafe smoking.*

3. Many of the claims in the Consultation Note about the toxic nature of shisha use are not accurate, not scientifically comparable, and most importantly fail to consider the occasional nature of shisha compared to regular cigarette smoking.

Other statements that are misleading include the text on page 61, Para 8 that reads *According to many users, hookah smoking is at least as dangerous to health as smoking cigarettes* and on Page 62, para 1 that reads *hookah smokers get bigger amounts of addictive nicotine and other harmful substances than other smokers, [and] as a consequence of the fact that hookah smokers spend more time smoking. It is intended that one hookah smoker will be able to inhale as much smoke as someone who smokes over 100 cigarettes.* This statement fails to take into account the usage patterns of shisha users compared to cigarette smokers and the difference in operation of shisha compared to cigarettes. For example,

- Shisha is used very occasionally compared to cigarettes where smokers can consume 20 cigarettes a day and every day.
- The most recent European Commission Eurobarometer Survey⁸ (which interviewed 28,288 respondents) clearly demonstrates that shisha use is extremely occasional, with 0% of respondents using shisha daily, 1% using it weekly and 1% using it monthly. This cannot be said for cigarettes or almost other tobacco and nicotine products.
- 94% of Shisha users in Spain use shisha once a week or less⁹, In Germany, shisha is used on average 1 to 2 times per week¹⁰, in the United States, 89% of shisha users do so once a month or less¹¹.
- It would be more accurate to compare average use of shisha over a one week period with average cigarette smoking over a one week period. Under these circumstances studies show that exposure to NFDPM¹², Nicotine and CO is significantly less for shisha users than for cigarette smokers¹³
- Of most significance is the fact that shisha is heated at a much lower temperature than cigarettes that undergo complete combustion at high temperature¹⁴¹⁵¹⁶. The temperature at the centre of the tobacco rarely exceeds

⁸ <https://europa.eu/eurobarometer/surveys/detail/2240>

⁹ [KANTAR, Study of Shisha Use in Spain, May 2021.](#)

¹⁰ German Federal Institute of Risk Assessment, Waterpipe - Frequently Asked Questions, Online, October 17, 2011.

¹¹ Characteristics of Hookah Tobacco Smoking Sessions and Correlates of Use Frequency Among US Adults: Findings From Wave 1 of the Population Assessment of Tobacco and Health (PATH) Study Robinson, Wang et al, Nicotine & Tobacco Research, Volume 20, Issue 6, June 2018, Pages 731–740.

¹² Nicotine Free Dry Particulate Matter (NFDPM), commonly known as TAR.

¹³ Cooperation Centre for Scientific Research Relative to Tobacco. A Preliminary Comparison of flavoured waterpipe tobacco aerosol with cigarette smoke. Parts 1 & 2, Wilkinson, Oct 2019.

¹⁴ Wakeham, H. "Recent Trends in Tobacco and Tobacco Smoke Research". The Chemistry of Tobacco and Tobacco Smoke. Boston, MA: Springer.

¹⁵ Cooperation Centre for Scientific Research Relative to Tobacco. A Preliminary Comparison of flavoured waterpipe tobacco aerosol with cigarette smoke. Parts 1 & 2, Wilkinson, Oct 2019.

120 degrees Celsius and the temperature at the point of contact with the charcoal and foil reaches a maximum of 400 degrees Celsius¹⁷. A cigarette burns at over 900 degrees Celsius.

- A study by a leading shisha researcher concludes that *a larger fraction of the smoke condensates of the hookah are produced by simple distillation rather than by pyrolysis and combustion, and as a result, would tend to carry considerably less of the pyrosynthesized compounds found in cigarette smoke*¹⁸.
- As a result, the aerosol produced by heating shisha contains 60% water vapour and 15% glycerine compared to combusted cigarette smoke that consists of only 15% water vapour.

4. Shisha initiation is driven by social factors and not flavourings.

On Page 62, para 2, the Consultation Note states that *hookah tobacco often has flavorings that give a sweet taste and smell, which may explain why some young people who otherwise will not use tobacco, start using hookahs*. There is no evidence in Europe that shows that flavours are the primary factor for youth to start using shisha. In fact, the European Union's latest report¹⁹ from 2020 on shisha use has identified at least three different studies that show that the main factors in driving shisha uptake are social reasons and not flavours.

5. CO poisoning is very rare, and technology is now in use that reduces CO exposure

On page 62, para 3, it is stated that *it is also worth noting that [information] from Sweden some cases have been reported [where much] use of hookah has led to severe poisoning of carbon monoxide*. This situation is very rare and there is no evidence of widespread hospitalisation because of shisha use. In fact, a study²⁰ by Imperial College, London and the London School of Economics has shown that shisha is 86% less risky than cigarette use. Furthermore, new technologies, such as heat management devices, have become common practice and studies show that they can substantially reduce CO exposure²¹.

6. Shisha is not a gateway to cigarettes.

There is no evidence to suggest that shisha is a gateway to cigarette smoking as stated on page 62, para 4, *hookah smoking among young people in Denmark, Sweden and Germany have been the subject of a dramatic increase, and that seems to be a*

¹⁶ Shihadeh and Azar et al. (September 2004). "Towards a Topographical Model of Narghile Water-Pipe café Smoking: A Pilot Study in a High Socioeconomic Status Neighborhood of Beirut, Lebanon". *Pharmacology Biochemistry and Behavior*. 79 (1): 75–82.

¹⁷ A. Shihadeh et al, Investigation of mainstream smoke aerosol of the argileh water pipe, *Food and Chemical Toxicology* 41 (2003) 143–152.

¹⁸ Shihadeh, A (21 July 2002). "Investigation of mainstream smoke aerosol of the argileh water pipe". *Food and Chemical Toxicology*.

¹⁹ Consumer preference and perception of specific categories of tobacco and related products Request for Service Chafea/2017/Health/34 under Framework Contract Chafea/2015/CP/01 Specific contract number 2017 85 07

²⁰ Estimating the Harms of Nicotine-Containing Products Using the MCDA, European Addiction Research · April 2014 David J Nutt, Imperial College London & Lawrence D. Phillips, The London School of Economics and Political Science et al.

²¹ [Analysis Of Carbon Monoxide Levels In The Aerosol Of Shisha Heated By Charcoal Over Foil And Shisha Heated With Charcoal Placed On A The "Kaloud Lotus" Heat Management Device.](#)

link between hookah smoking and the transition to later cigarette smoking among adolescents. Hookah smoking is therefore referred to as another gateway general smoking. Firstly, the study²² by Dhillon et al used to support this statement is based on interviews with only 16 people. This sample size is not sufficient to allow for the forming of important policy decisions. Secondly, there are other studies with much larger sample sizes that show shisha is not a gateway. For example, the latest Eurobarometer Survey²³ shows that 94% of cigarette smokers in Germany DID NOT start smoking with shisha and a study²⁴ in Spain from 2021 shows that 9 out of 10 cigarette smokers DID NOT start smoking with shisha. The sample size for each of these studies was 1,527 and 800 respectively.

7. Maintaining the total ban on shisha would be unique in Europe and contrary to the principle of free movement of goods and proportionality and is not effective as criminal groups are already supplying illegal products in Norway.

Under Article 34 of the TFEU (Treaty on the Functioning of the European Union), a continuation of the ban would be discriminatory toward the shisha industry under international trade law as flavourings in cigars, pipe tobacco and cigarillo products can continue to be available in Norway. This measure will continue to unfairly prevent the import of shisha tobacco into Norway as the sale of shisha tobacco category is entirely dependent on flavourings in the product.

As justification for the continuation of the ban, the Consultation Note refers to the protection of public health which is a treaty-based exclusion to the ban on measures obstructing the free movement of goods. However, the justification under Article 36 of the TFEU is construed strictly, and all measures hindering free movement must also pass the test of proportionality, requiring the measure to be the least restrictive possible to attain the goal in view. No other Member states in Europe have implemented a complete ban on shisha tobacco and they are able to regulate this product in an effective manner through education and enforcement initiatives.

In fact, the existing ban is not effective as the levels of illicit trade in shisha tobacco continue to grow each year. In Norway, the amount of illegal shisha seizure by customs has grown from under ½ ton in 2018 to over 1.1 tons in 2020²⁵. And in neighbouring Sweden the figures are even more alarming with an average of 6 tons²⁶ of shisha tobacco seized each year.

While the goal of the continuation of the ban is stated in section 15.3 of the Consultation Note, including to minimise the consumption of tobacco by young people, the continuation of the ban goes beyond this group of consumers and will also hinder all adults from enjoying shisha tobacco.

Furthermore, shisha is much less attractive to underage users than cigarettes. It requires cumbersome equipment, expertise, and time to prepare. It cannot be easily

²² Dhillon et al., Perceptions of Waterpipe Smoking among Young Adults: A Phenomenological Study, 2020: <https://pubmed.ncbi.nlm.nih.gov/33321834/>

²³ <https://europa.eu/eurobarometer/surveys/detail/2240>

²⁴ [KANTAR, Study of Shisha Use in Spain, May 2021.](#)

²⁵ Tolletaten Grensdivisjonen, 2018, 2019, 2020 – Water-pipe Tobacco Seizures, Vår dato: 26.11.2020,

²⁶ Tullverket, 2018, 2019, 2020 – Water-pipe Tobacco Seizures, Nov 2020.

concealed from teachers or parents therefore it is more difficult for those under the legal age of 18 to acquire and consume the product.

The goals that are stated in section 15.3 of the Consultation Note could arguably be achieved by less intrusive measures. All other Member States of the European Union are able to effectively regulate shisha tobacco without a complete ban. As explained above in section 1, shisha tobacco is overwhelmingly enjoyed by underrepresented immigrant and ethnic groups, and these groups will therefore continue to be deprived from purchasing legal shisha products by the continuation of the ban. The Tobacco Products Directive (the “TPD”) already includes several other measures aimed at reducing marketability of tobacco to children, including stricter control on venues selling tobacco to make sure they do not sell tobacco to children and stricter requirements for the advertisement of tobacco products.

Minimizing the consumption of shisha tobacco by young people could be achieved with measures that would not impact the majority of adult consumers of shisha tobacco as harshly. For instance, you could allow the consumption of flavoured tobacco products in specially licensed lounges where the lounge-owners would be held to high standards of control ensuring that underage people would not gain access. This would allow the consumption of shisha tobacco by adults and achieve the goal of barring underage people from using the product.

8. A continuation of the ban on shisha tobacco in Norway would be in conflict with the Tobacco Products Directive

The implementation of the TPD into Norwegian law must ensure compliance with the goals set out in the Tobacco Products Directive. The purpose of the TPD is to facilitate the smooth functioning of the internal market for tobacco and related products, whilst ensuring a high level of health protection, especially for young people²⁷. The measures set out by the TPD thereby already seek to ensure a high level of health protection.

Article 7 TPD regulates the ingredients of tobacco products. It requires Member States to prohibit tobacco products with a characterising flavour, but it only applies to cigarettes and roll-your-own tobacco²⁸. An exemption is afforded for all other tobacco products under Article 7(12). The Commission shall adopt delegated acts in accordance with Article 27 to withdraw that exemption for a particular product category, if there is a substantial change of circumstances as established in a Commission report. That report²⁹ was published earlier this year which confirmed there has not been a substantial change in circumstances to warrant a withdrawal of the exemption.

Under Article 24(1) TPD, Member States may not prohibit the placing on the market of tobacco or related products which comply with the TPD.

Under Article 24(3) of the Tobacco Products Directive, the Member States can only prohibit a certain category of tobacco on grounds relating to the specific situation in the Member State and must consider the high level of protection of human health achieved through the Tobacco Products Directive. Further, all restrictions must be notified to the Commission including the grounds for the restrictions after which the Commission must approve or reject the restrictions.

²⁷ Recital 21 of the Tobacco Products Directive.

²⁸ Article 7(12) of the Tobacco Products Directive.

²⁹ <https://op.europa.eu/en/publication-detail/-/publication/c6378b33-b8a7-11eb-8aca-01aa75ed71a1>

9. Conclusion

In summary, shisha is a tobacco product and therefore is not harmless and should be regulated. However, shisha is **cultural**, **occasional**, and **social**. It is **heated** and does not undergo combustion generating an aerosol that is **60% water** vapour. **Shisha is nothing like cigarettes** and sits far lower on the risk continuum compared with cigarettes and other tobacco products.³⁰ A large proportion of the adult population in Norway have been unfairly deprived of enjoying this uniquely cultural pastime which, in Western cultures, is comparable to socialising or drinking a beer in a pub and we urge the Norwegian government to follow examples from other EU member states by allowing shisha to be sold responsibly.

Yours faithfully,

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³⁰ Estimating the Harms of Nicotine-Containing Products , European Addiction Research · April 2014 David J Nutt, Imperial College London & Lawrence D. Phillips, The London School of Economics and Political Science et al.