

This is Planet of the Vapes ([www.planetofthevapes.co.uk](http://www.planetofthevapes.co.uk)) response to the Department of Health's call for evidence for the EU balance of competence review.

### **How does the EU's competence in health affect you/your organisation?**

Planet of the Vapes (PotV) is a UK based limited company which provides a community for vapers (users of ecigarettes) both nationally and internationally. It provides a forum, a wiki and a marketplace, enabling members and vendors to come together for chat, support and advice across all issues impacting vaping. At the time of writing, it has over 1,400 active members including 97 vendors and 15 modified device makers. Furthermore, it has strong social media following, specifically through Facebook and Twitter. By current standards it – and its members – will be directly and negatively affected by the proposed EU legislation into further tobacco control, specifically the Tobacco Products Directive (TPD), and potentially those directives covering medicine and medicinal devices. **It is PotV's argument that the EU is incompetent and ill-informed in dealing with this matter, as it directly contradicts stated government policy, and the UK's national interest economically and socially.** In summary, the proposed legislation would prevent all the businesses mentioned above from operating legally, making several hundred employees redundant, and potentially several thousand more across the sector nationally. Furthermore, it has been estimated that 600,000 people have given up smoking as a direct result of vaping. Based on research undertaken by PotV, the majority of these people would revert to smoking, with the resultant negative impact on health and social care. The remainder would be likely to continue vaping through utilising the black market which would surely spring up in the vacuum. This goes against the published government aims of reducing smoking across the population, as well as of reducing crime.

In responding to this call for evidence, PotV will be referring specifically to the proposed legislation on vaping, but from this will extrapolate the competence or otherwise of the EU in matters of public health.

### **What evidence is there that EU action in health advantages or disadvantages:**

#### **The UK national interest**

A healthy population is in the UK's national interest, and smoking has been shown to account for over 81,000 deaths in the UK in 2009 alone (ASH, 2011). Government policy reflects this concern, and it has launched initiatives such as Stoptober and the Smoking Health Harm campaign, with the stated aims of reducing the number of British smokers. Furthermore, organisations such as NICE have included the use of ecigarettes in their guidelines as part of the Tobacco Harm Reduction programme. The proposed revisions to the EU Tobacco Products Directive exactly oppose these policies, by severely restricting the use of ecigarettes, which have been shown in numerous surveys to be one of the best means of encouraging smokers to quit, with success rates of up to 70% (Siegel, M.B., Tanwar, K.L., & Wood, K.S., 2011), compared with conventional NRT rates of a maximum of 12% (West R, Owen L, 2012). Research undertaken by PotV has indicated that if restricted in the proposed ways, 77% of vapers would revert to smoking cigarettes (2013). The Electronic Cigarette Consumer Association in the UK (ECCAUK) estimates that there are at least 600,000 vapers in the UK at the current time. If the ratio of vapers who would start smoking again were applied to this figure, then **462,000 people would return to smoking as a direct result of this legislation.**

The UK is a democracy, and the population expect that decisions will be taken fairly and democratically, with due consideration of the facts, without bending to pressure from certain powerful groups. If it appears that the government is not fulfilling these expectations, there will be reduction in trust in both the national and European parliaments. This could lead to an increase in popularity of fringe political single-issue groups, which could have a far-reaching negative effect on the UK national interest. So far, the EU's approach to ecigarettes has been one-sided and undemocratic. This is evidenced in the TPD public hearing on 25<sup>th</sup> February 2013, at which all but one of the experts were from big pharmaceutical companies with a vested interest in preventing the rise of a free market in ecigarettes. The other voice was that of a tobacco corporation representative, who was ridiculed and not given a fair hearing. There was no consideration given to the voice of ordinary vapers, nor to the companies which would be directly affected by the directive. **The EU has therefore shown itself to be incompetent in considering evidence in an unbiased and professional manner.**

**Professor John Britton, who leads the Tobacco Advisory Group for the Royal College of Physicians, believes nicotine itself to be no more or less harmful than caffeine** (BBC, 11 February 2013), and that the real danger of cigarettes comes from the other chemicals within them. Caffeine in itself is lethal at high doses. It is estimated that 500mg of caffeine in one day can trigger serious health problems (Chad J. Reissig, Eric C. Strain, Roland R. Griffiths, 2008) yet there are some products in which one can alone contains 500mg, which are perfectly legal. Ecigarettes are not necessarily even closely connected with tobacco: of those surveyed by PotV, only 16% favoured tobacco flavoured liquid over other flavours, and half of respondents did not refer to their vaping devices as ecigarettes (2013). Furthermore, a company in Minnesota successfully challenged its state tobacco tax laws in 2012 by proving that its nicotine was derived from plant sources other than tobacco leaf (greensmartliving.com). If the EU were to apply its decisions fairly, it would ban cigarettes and relabel caffeine as a medicine with all of the restrictions on coffee and chocolate that it is proposing to place on ecigarettes.

The approach which the EU is proposing is potentially unlawful, and implementation would lead to several legal challenges: deciding to limit nicotine absorption by only one of the many legal methods is both questionable as a human rights issue and a matter of unfair competition.

### **Business and industry**

The British ecigarette industry is a fledgling industry which is experiencing considerable growth. In Q1 of 2011, the industry was considered to be worth over £10m per annum. By Q4 of 2012, this figure had doubled, with several firms declaring annual earnings of over £1m (ECCAUK, 2012). PotV has 97 vendors as members, and there are hundreds more who are not. All of these businesses are SMEs, a group which the government has specifically targeted and praised as being beneficial to the UK's economic growth. Furthermore, all of these companies pay taxes within the UK. Most employ staff and many have storefronts which are helping to support local high streets.

The TPD would stop this economic activity immediately. **The EU's interference would prevent the UK markets from operating freely, and would be promoting monopoly by big pharmaceutical**

**companies.** All of the ecigarette businesses would be forced to close, as they would no longer be able to supply the products their customers require. Thousands of employees would be made redundant, having a significant impact on already dismal unemployment rates. This would put further stress on the economy and lead to more people claiming benefits. Additional health service costs would be incurred, with half a million people reverting to smoking. Prescription and GP costs would increase as the remaining vapers turned to their surgeries for life-long repeat prescriptions, as vaping is seen as a lifestyle choice rather than an NRT in the traditional sense. Of those surveyed by PotV, over half stated they knew of no-one who had stopped vaping (2013).

The PotV survey suggests that 61% of current vapers would try to obtain nicotine liquid through alternative means before they started smoking again (2013). This would send all sales outside of the EU and establish a black market, thus criminalising a section of society. Not only would this have a negative impact on the UK economy by removing tax revenues, it would also put further burden on the criminal justice system as perpetrators were prosecuted.

### **Patients and citizens**

The effects of smoking are well known and summarised above. If the EU's proposals are implemented almost half a million vapers will return to smoking. This will not only have a negative impact on patients' health, but will also serve to normalise smoking, breaking the hard work of several decades within the UK and across all political parties.

As indicated above, 61% of respondents to the PotV survey stated they would attempt to obtain nicotine from the black market. The EU would therefore push potentially 366,000 vapers into criminal activities, putting them in touch with criminal gangs with all the moral and social issues this would entail, and would lower the quality of products making them more dangerous to public health.

### **Does the EU's role in public health support UK actions?**

**The EU's role in public health, so far as it relates to tobacco control, negates UK actions.** It does this by:

- Undermining government policy
- Sending almost 500,000 vapers back to smoking
- Normalising smoking
- Reducing freedom of choice in determining how to stop smoking
- Ignoring, misrepresenting or misunderstanding the facts about vaping

### **Future options and challenges**

#### **How might the UK benefit from the EU taking less action in health?**

Refusing to support the TPD would enable the UK to:

- Continue to offer smokers the freedom of choice in when and how to stop smoking

- Keep one of the most successful NRTs on the open market, thus improving the chances for smokers to stop smoking permanently and keep almost half a million vapers from returning to smoking
- Support UK SMEs

### **How could action in this area be undertaken differently?**

More research, particularly longitudinal studies, needs to be conducted on the effects of ecigarettes, both in and of themselves and in comparison with other substances, particularly cigarettes and other materials which could be considered hazardous (such as caffeine). This research should be carried out in conjunction with those in the industry and those who use the devices.

The government should help support those organisations, such as the Electronic Cigarette Industry Trade Association (ECITA), which are attempting to improve standards of quality across the industry, and provide help and guidance to companies both already in the industry and which are considering entering it. More regulation would also be welcome on the quality of import coming in from countries such as China, whose standards can vary widely.

Further work needs to be undertaken in educating the general public about ecigarettes in a rational and unbiased manner. This would be particularly helpful across the NHS, to ensure that health practitioners have all the facts and can advise their patients accordingly.

## **General**

### **Is there evidence of any other impacts resulting from EU action in health that should be noted?**

In 1992, the EU banned snus, a tobacco product that is placed under the lip, on the basis that it had a causal link with mouth cancer. The only country still allowed to produce it is Sweden, who entered the EU in 1994. The EU has resisted challenges to the ban despite a considerable amount of scientific evidence showing the health benefits in using snus to reduce smoking prevalence: ‘the proportion of male smokers [in Sweden] fell dramatically from 40% in 1976 to just 15% in 2002. Almost a third of ex-smokers used Snus when quitting, and those who did were about 50% more likely to succeed’ and Sweden now has the lowest number of tobacco related diseases within the EU. ‘Anti-smoking organisations...played a major role [in upholding the ban], some of them funded by pharmaceutical companies worried that their share of the lucrative smoking cessation market was under threat.

**These were the same companies regarded as "stakeholders" by the European commission, and who continue to be consulted regularly over EU tobacco regulation.**’ (Guardian, 2012) This is the same approach that has been displayed in the TPD review.

### **Other general points**

The NHS is the largest health organisation in the world. Health policies and health provision and the way this is funded and organised varies substantially through the EU: the major and more credible source of expertise is the NHS.

Public health, including the use of tobacco, is a social matter and is largely dependent upon the prevailing culture in each country, and often in regions within those countries. For the EU to think

that it can determine an overarching strategy which suits all countries equally is palpably impossible. The EU was created to enable free trade between member states and provide a degree of commonality in key areas, such as human rights and trade laws. It was not designed to dictate the daily life of member states' citizens at this level.

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