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**COMMISSION IMPLEMENTING DECISION**

**of 18.3.2024**

**concerning national provisions notified by Belgium prohibiting the placing on the  
market of disposable electronic cigarettes**

(Only the Dutch and French texts are authentic)

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## concerning national provisions notified by Belgium prohibiting the placing on the market of disposable electronic cigarettes

(Only the Dutch and French texts are authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC<sup>1</sup>, and in particular Article 24(3) thereof,

Whereas:

### I. FACTS

- (1) On 9 December 2022, Belgium notified the Commission, under Article 24(3) of Directive 2014/40/EU, of a draft law prohibiting the placing on the market of disposable electronic cigarettes (Royal Decree amending the Royal Decree of 28 October 2016 on the manufacture and placing on the market of electronic cigarettes). The notified draft law prohibits the placing on the market of disposable electronic cigarettes, irrespective of whether they contain nicotine or not. The notification was accompanied by explanations and data justifying the proposed measure. At the same time, the Belgian authorities notified the above-mentioned draft law to the Commission under Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services<sup>2</sup> (notification 2022/851/B).
- (2) As the Commission considered that the notification was incomplete, on 2 March 2023, it sent to the Belgian authorities a request for additional information concerning the grounds for introducing the measure in question. On 19 September 2023, the Belgian authorities provided the requested information.

#### 1.1 Notification procedure under Article 24(3) of Directive 2014/40/EU

- (3) Pursuant to Article 24(3) of Directive 2014/40/EU, a Member State may prohibit a certain category of tobacco or related products provided that the conditions laid down in that Article are fulfilled. In particular, any such prohibition is to be based on grounds relating to the specific situation in the Member State concerned and must be justified by the need to protect public health, taking into account the high level of protection of human health achieved through Directive 2014/40/EU. Any Member

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<sup>1</sup> OJ L 127, 29.04.2014, p. 1.

<sup>2</sup> OJ L 241, 17.9.2015, p. 1.

State wishing to introduce such a prohibition is required to notify the Commission of the relevant national provisions and the grounds for introducing them.

- (4) Article 24(3) of Directive 2014/40/EU further provides that, within a period of six months of the date of receiving the notification, accompanied by the required justification, the Commission is to either approve or reject the draft national provisions in question after having verified whether or not they are justified, necessary and proportionate and whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States. As the notification within the meaning of Article 24(3) of Directive 2014/40/EU was completed following the submission of additional information by the Belgian authorities on 19 September 2023, the six-month time limit commences from that date.

### 1.2 Union legislation

- (5) Directive 2014/40/EU regulates the manufacture, presentation and sale of tobacco and related products placed on, or intended to be placed on, the Union market.
- (6) Pursuant to Article 20(1) of Directive 2014/40/EU, the Member States are to ensure that electronic cigarettes and refill containers are only placed on the market if they comply with that Directive and with all other relevant Union legislation.
- (7) Article 2(16) of Directive 2014/40/EU defines ‘electronic cigarette’ as a product that can be used for consumption of nicotine-containing vapour via a mouthpiece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank. In accordance with that provision, electronic cigarettes can be either disposable, or refillable by means of a refill container and a tank, or rechargeable with single use cartridges.

### 1.3 National Provisions Notified

- (8) According to the notification, it is proposed to insert the following provision in the Royal Decree of 28 October 2016: *“It is forbidden to place on the market disposable electronic cigarettes. A disposable electronic cigarette is a product which is pre-filled with a liquid and is not refillable.”* The proposed measure would cover disposable electronic cigarettes with and without nicotine.
- (9) In addition, the Belgian authorities propose inserting a transitional period, according to which the notified provisions would apply to retailers only six months after their publication in the Belgian official journal.

## II. ASSESSMENT

### 2.1. On the scope of the assessment

- (10) At the outset, it should be recalled that in Case C-547/14 *Philip Morris Brands and others*, the Court of Justice held that Directive 2014/40/EU is not intended to interfere with the policies of the Member States concerning the lawfulness of tobacco products as such. The Court clarified that Article 24(3) of Directive 2014/40/EU concerns an aspect of tobacco regulation that is not covered by the harmonisation measures in the Directive<sup>3</sup>. The Court ruled that Article 24(3) *“seeks to delineate the scope of the Directive by clarifying that tobacco and related products which comply with the requirements laid down by the Directive may move freely on the internal market,*

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<sup>3</sup> Judgement in *Philip Morris Brands and others*, C-547/14, ECLI:EU:C:2016:325, paragraph 90.

*provided that those products belong to a category of tobacco products or related products which is, as such, lawful in the Member State in which they are marketed"*<sup>4</sup>.

- (11) In accordance with this case-law, the notified measure that provides for a prohibition of the placing on the market of disposable electronic cigarettes, concerns an aspect not harmonised by Directive 2014/40/EU.
- (12) The proposed prohibition would cover disposable electronic cigarettes with and without nicotine. Given that only the placing on the market of disposable electronic cigarettes containing nicotine is subject to Directive 2014/40/EU, the scope of this Decision under Article 24(3) of Directive 2014/40/EU is limited to those disposable electronic cigarettes.
- (13) To the extent that the proposed measure concerns disposable electronic cigarettes without nicotine, it was subject to the procedure under Directive (EU) 2015/1535 (notification 2022/851/B).

## 2.2 The position of Belgium

- (14) In their notification, the Belgian authorities explain that the prohibition of the placing on the market of disposable electronic cigarettes is based on public health grounds. They underline that the urgency and complexity of the problem of the use of disposable electronic cigarettes in Belgium, presenting a clear risk to public health, and specifically to the young generation and non-smokers in Belgium, results in the necessity to introduce a total ban on the placing on the market of these products for public health reasons.
- (15) The Belgian authorities highlight that such prohibition of disposable electronic cigarettes is one of the proposed measures in their 'Inter-federal strategy 2022-2028 for a smoke-free generation' and essential for achieving its objectives. The prohibition would also be in line with the advice of the Belgian Supreme Health Council and Decision FCTC/COP6(9) of 2013 of the Conference of the Parties of the WHO Framework Convention on Tobacco Control (FCTC).
- (16) Belgium's inter-federal strategy and electronic cigarettes policy is based on the precautionary principle and the idea that children and teenagers, young adults and non-smokers should be protected as far as possible against nicotine addiction and the yet unknown long-term health effects of electronic cigarettes, whilst at the same time ensuring that electronic cigarettes remain available as potential aid for smoking cessation.
- (17) The Belgian authorities stress that certain disposable electronic cigarettes contain nicotine, often in high concentration, which is a highly addictive substance, and the brains of young people and adolescents are particularly vulnerable to addiction. In addition, the Belgian authorities highlight that nicotine has a detrimental effect on brain development, especially during adolescence, with loss of cognitive function, attention and short-term memory. Moreover, since a single disposable electronic cigarette corresponds to several packets of conventional cigarettes, young people can become heavily addicted to nicotine without even realising it.
- (18) The Belgian authorities also point to specific health risks associated with disposable electronic cigarettes. The first specific health risk is the risk of overdose since actual nicotine content is often not indicated clearly or accurately on disposable electronic cigarettes, despite the legal requirements in this regard. Also, the disposable electronic

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<sup>4</sup> Idem, paragraph 91.

cigarettes more often than other electronic cigarettes do not comply with the maximum nicotine content of 20mg/ml, or with the maximum volume of tank (2ml).

- (19) The second specific health risk is the risk associated with the waste from disposable electronic cigarettes. In this regard, the Belgian authorities underline that health and the environment are inextricably linked, and that a polluted environment is an obstacle to public health. The microplastics and chemicals released from discarded disposable electronic cigarettes pollute soil, waterways, fauna and flora, thus posing a threat to humans. Moreover, the lithium batteries can cause fires when crushed in a refuse collection vehicle or waste treatment plant. If use of disposable electronic cigarettes decreased, the amount of waste would be importantly reduced. The lifespan of refillable electronic cigarette can easily be between six to seven months, whereas a disposable electronic cigarette already enters the waste after one to five days.
- (20) The Belgian authorities highlight that banning nicotine containing disposable electronic cigarettes is necessary to protect particularly young people against the addictive and dangerous effects of these products. Their low price, the attractive design and ease of use, the variety of flavours, their availability in a range of sales outlets and online, and the targeted marketing to young people, together lead to an alarming popularity of these products among young people and to a misperception of the associated risk.
- (21) In particular, the Belgian authorities explain that the design of disposable electronic cigarettes makes them particularly attractive, as they are very easy to use. Contrary to some other categories of electronic cigarettes, no prior knowledge or technical manipulation is needed before their use. In addition, the design of many disposable electronic cigarettes targets young people by attractive colors and packaging and by mimicking other products or popular characters.
- (22) Further, the Belgian authorities explain that, due to the low price of disposable electronic cigarettes, young people can more easily afford them. One only needs to buy a single product, the cheapest version of which on the Belgian market costs around EUR 6, which is less than a pack of cigarettes. By comparison, the initial purchase of a rechargeable electronic cigarette (the device plus the liquid) costs around EUR 35. This low financial threshold adds to the risk of encouraging young people and non-smokers to try electronic cigarettes for the first time.
- (23) The Belgian authorities furthermore underline that disposable electronic cigarettes are very readily available on the Belgian market in many sales outlets. Moreover, the Belgian authorities point to the worrying online and social media marketing of disposable electronic cigarettes, targeting primarily young people. The internet and social networks were also quoted by Belgian young people as the second most well-known source for purchasing disposable electronic cigarettes.
- (24) Based on the above, the Belgian authorities claim that disposable electronic cigarettes can create a new generation of nicotine addicts and that, from a public health point of view, it is urgent to pursue prevention actions and to introduce a prohibition of placing the disposable electronic cigarettes on the market.
- (25) The Belgian authorities submit that the grounds underlying the proposed measure relate to the specific situation in Belgium. The Belgian authorities first refer to an alarming and continuous increase in market share of disposable electronic cigarettes on the Belgian market, despite controls of market access specific for Belgium and specific, intensive product inspections and penalties and seizures imposed. In this

respect, the Belgian authorities refer to the growing number of notifications of disposable electronic cigarettes in the EU Common Entry Gate (EU-CEG)<sup>5</sup>. More specifically, the Belgian authorities highlight that the number of notifications of disposable electronic cigarettes rose by 245,5% between January 2021 and January 2022. By January 2023, their number further rose by 44,6% compared to January 2022 (for rechargeable and refillable electronic cigarettes and refill containers, that increase was much lower, at 0,85% in the first period and 8,1% in the second). By mid-August 2023, there have been around 8200 notifications for disposable electronic cigarettes submitted in the EU-CEG for Belgium, representing 69% of all notifications for electronic cigarette devices, while the share of refillable and rechargeable devices was only 31%.

- (26) Next, the Belgian authorities emphasise an alarming rise in the popularity and actual use of disposable electronic cigarettes, in particular among young people in Belgium, as evident from the conducted surveys and reports. The Belgian authorities underline that, according to the survey conducted by the Belgian Fund of Respiratory Disorders (FARES) in June 2022 among 11-24-year-olds in Belgium, the majority of young people surveyed (65%) knew about disposable electronic cigarettes. Out of those who knew about disposable electronic cigarettes, 24% actually used them<sup>6</sup>.
- (27) The alarm about the growing popularity and use of disposable electronic cigarettes by young people in Belgium is also being sounded by physicians and academics<sup>7</sup>, tobacco addiction specialists and doctors, parents and schools, both at primary and secondary level. They are addressing complaints and testimonies to the Belgian authorities about the growing use of disposable electronic cigarettes among pupils due to their accessibility and low price, as well as due to misperception of the risk associated with them. The increasing popularity of disposable electronic cigarettes especially in and around schools has been also regularly discussed in Belgian press.
- (28) In addition, the Belgian authorities submitted the results from the survey conducted in Belgium in 2021-2022 within the Health Behaviour in School-aged Children (HBSC) study. That survey, which was conducted among 20 000 young people in Flanders aged between 11 and 18 years, showed a significant increase in the use of electronic cigarettes, compared to the previous survey in 2018. The numbers of young persons using electronic cigarettes ‘daily’ and ‘ever’ have risen, and regular use of electronic cigarettes has even doubled. Specifically, in 2022, 11.9% of the young people surveyed stated that they had used an electronic cigarette over the past 30 days (current use), a doubling compared to the 5.1% in 2018. Current use of electronic cigarettes is growing especially among the 15-16 and 17–18-year-old age groups. This increase is also reflected in the latest survey of school pupils carried out by the *Vlaams expertisecentrum Alcohol en andere Drugs* (VAD) in 2021-2022, which included around 7 500 secondary school pupils between 12-18 years old. Among those, 23.3%

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<sup>5</sup> Established by Commission Implementing Decision 2015/2186/EU of 25 November 2015 on establishing a format for the submission and making available of information on tobacco products (OJ L 312, 27.11.2015, p. 5-18).

<sup>6</sup> They were using: disposable electronic cigarettes with nicotine (44%), both those with nicotine and those without (17%), disposable cigarettes without nicotine (32%), did not know which ones (7%).

<sup>7</sup> In an open letter to the Minister for Public Health and the Minister for the Environment and Sustainable Development, the Belgian Foundation against Cancer (*Stichting tegen Kanker*) requested on behalf of various physicians and academics that disposable electronic cigarettes be urgently withdrawn from the market. See <https://kanker.be/press-release/open-brief-aan-ministers-vandenbroucke-en-khattabi/>.

had tried electronic cigarettes at some point<sup>8</sup>, and regular use (5.1%) had doubled compared to the previous survey in 2018-2019. According to the latest survey, the average age of the first electronic cigarette use in Belgium is 15.3 years. Also, the Special Eurobarometer 506 found that 33% of Belgian young people (aged 15 to 24) had tried an electronic cigarette, which was higher than the Union average (25%).

- (29) The Belgian authorities stress that, although some of these surveys did not specifically ask about the category of electronic cigarettes used, the current alarming trend in the growth of use (including regular use) of electronic cigarettes is concurrent with the exponential increase in the share of disposable electronic cigarettes on the Belgian market.
- (30) In addition, and regarding the specific situation in Belgium, the Belgian authorities highlight that in routine intensive product inspections their market surveillance authorities identified a much higher regulatory non-compliance rate for nicotine containing disposable electronic cigarettes than for other categories of electronic cigarettes, in particular with respect to labelling and the ban on sales to minors (children under the age of 18). Based on a specific monitoring campaign in 2022, with respect to labelling, the proportion of non-compliant products was almost four times higher among disposable electronic cigarettes (56%) compared to rechargeable and refillable ones (15%), and with respect to illegal sales to minors more than five times higher. The Belgian authorities stress that, from January to mid-June of 2023, 98% of non-compliances regarding sales to minors related to the sale of disposable electronic cigarettes. In 2022, this number was 75%.
- (31) The Belgian authorities also underline that, despite a comprehensive ban on advertising of disposable electronic cigarettes, and the Belgian competent authorities attaching a great importance to its enforcement, the problem of attractiveness and popularity of these products in Belgium remains. Targeted advertising is increasingly taking place online and in private groups on social media (mostly used by young people), where it is particularly challenging to establish and control, and products continue to circulate between young people, leading to a form of word-of-mouth advertising, with or without peer pressure.
- (32) Regarding the expected impact of the proposed prohibition, the Belgian authorities underline that removing the supply of disposable electronic cigarettes will have a positive impact on the prevalence of disposable electronic cigarette use, in particular among young people, and will reduce the risk of young people starting smoking.
- (33) Finally, the Belgian authorities explain and illustrate the alternative measures implemented or carefully considered to combat the increasing sales, popularity and consumption of disposable electronic cigarettes in Belgium, but conclude that they do not or would not provide sufficient protection. None of those measures would have the necessary impact of the proposed prohibition of the placing on the market of disposable electronic cigarettes.
- (34) Specifically, the Belgian authorities address alternative measures such as those concerning the notification obligation, increasing the penalties and enforcement procedures, imposing stricter rules on the composition and the packaging of disposable electronic cigarettes, applying stricter sales arrangements, and stricter enforcement with respect to the ban on online selling and advertising of disposable electronic

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<sup>8</sup> Less than half of those since stopped the use, the majority continued, and most of them on a regular basis.

cigarettes. However, Belgium considers that these measures would not achieve the desired effect. According to Belgium, a removal of these products from the market is the only adequate response to counter the current alarming trend of an increase in the use of disposable electronic cigarettes and to prevent the creation of a new generation of nicotine addicts.

- (35) Finally, the Belgian authorities stress that the proposed measure is a measure to protect public health which will be applied in a non-discriminatory way to all producers and distributors. They expect a limited impact on the activities of businesses that currently focus on the production and/or distribution of disposable electronic cigarettes. Those companies will, however, still be able to offer refillable and rechargeable electronic cigarettes in Belgium and are not prevented from marketing disposable electronic cigarettes abroad.

### 2.3 Evaluation

- (36) Pursuant to Article 24(3) of Directive 2014/40/EU, the Commission has to verify whether or not the proposed national provisions are justified, necessary and proportionate to their aim and whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between the Member States.
- (37) Having regard to the detailed information that Belgium provided in its notification, the Commission accepts that the proposed measure is justified on public health grounds, as a measure to address the important health risks associated with the consumption of disposable electronic cigarettes containing nicotine, which is a highly addictive and toxic substance. Since a single disposable electronic cigarette corresponds to several packets of conventional cigarettes, young people can become heavily addicted to nicotine without even realising it. As highlighted by the Belgian authorities, in addition to its addictive effect, nicotine can have a detrimental effect on brain development, especially for young people.<sup>9</sup> The use of disposable electronic cigarettes also risks being a gateway to traditional tobacco consumption among young people and non-smokers. The available data and information submitted by the Belgian authorities show significant increases in market share and consumption of disposable electronic cigarettes in Belgium particularly among young people.
- (38) According to Special Eurobarometer 539, the majority of electronic cigarette users in the Union prefer a refillable device. However, Belgium is among those countries where electronic cigarette users are most likely to use a disposable device (75%), with only two Member States ahead. In this context, refillable and rechargeable electronic cigarettes are preferred by adults, while disposable electronic cigarettes are used more by younger people aged 15-24. This is particularly true in Belgium where 87% of 15-24 years old users reported the use of disposable electronic cigarettes, which is much higher than the Union average for that age group (49%).
- (39) The proposed measure would also address the environmental risk resulting from the use of disposable electronic cigarettes, which in turn represents a risk for public health (see also recital \\* MERGEFORMAT (19)). Unlike other categories of electronic cigarettes, disposable electronic cigarettes create plastic waste, e-waste (because of their circuitry and lithium-ion batteries) and hazardous waste (because they contain nicotine and other chemicals) after each full use, leading to a significantly higher frequency and amount of such waste generation.

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<sup>9</sup> See also Opinion on electronic cigarettes, adopted by Scientific Committee on Health, Environmental and Emerging Risks (SCHEER) on 16 April 2021, p. 52 et al.



- (40) It is apparent from the notification that the proposed national provisions are based on grounds relating to the specific situation in Belgium, where the consumption of electronic cigarettes among (very) young people is comparatively high (see recitals \\* MERGEFORMAT (25) to \\* MERGEFORMAT (29) above).
- (41) In this regard, available data and information submitted by the Belgian authorities in support of the notified measure reveal a significant and increasing market share of disposable electronic cigarettes on the Belgian market, despite measures to control market access specific for Belgium and intensive product inspections. In the EU-CEG more than 8 000 disposable electronic cigarettes<sup>10</sup> have been notified for the Belgian market by August 2023 (representing 69% of all notifications for electronic cigarette devices for Belgium), with an increase of 245,5% between 2021 and 2022. According to Euromonitor data<sup>11</sup>, from 2017 to 2022, the disposable electronic cigarettes market share in value exponentially increased by approximately [...]% (for refillable and rechargeable electronic cigarettes combined, this increase was only around [...]%), and the disposable electronic cigarettes market share as a percentage significantly increased from less than [...]% to around [...]%. Such increase shows that there has been a market development referred to in recital 54 of Directive 2014/40/EU, leading to important public health risks, and in particular an increased use of tobacco and related products, especially among young people and non-smokers.
- (42) The information submitted by the Belgian authorities also points to an important increase in consumption and popularity of electronic cigarettes and specifically disposable electronic cigarettes, particularly among young people in Belgium (see recitals (26) to (29) above). This has been confirmed by Special Eurobarometer 539, according to which 87% of 15-24 years electronic cigarette users in Belgium reported the use of disposable electronic cigarettes, which is a much higher percentage than the Union average of 49%. Further, in Belgium, disposable electronic cigarettes are used daily or weekly by almost 50% of electronic cigarette users, while the Union average is 18%.
- (43) In addition, routine intensive inspections conducted by the Belgian authorities showed a much higher regulatory non-compliance rate for disposable electronic cigarettes than for other categories of electronic cigarettes, in particular with respect to labelling and the prohibition of sales to minors, despite significant enforcement efforts of Belgian authorities and penalties and seizures imposed so far in case of non-compliant and unlawful sales.
- (44) In Belgium, there is also a comprehensive ban on advertising of disposable electronic cigarettes, and Belgian authorities are investing significant efforts in enforcing this ban. However, targeted online advertising, which is increasingly being used and taking place in private groups on social media, is particularly challenging to establish and control (see also recital (50)). According to information submitted by the Belgian authorities, young people use social media most intensively. The negative effects of social media advertising are thus most evident for that particular group. Also, many disposable electronic cigarettes have been placed on the Belgian market that already by their design and flavours target a very young population.

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<sup>10</sup> Of those, around 400 were disposable electronic cigarettes without nicotine. Notification of disposable electronic cigarettes without nicotine in the EU-CEG was required in Belgium only after mid July 2023.

<sup>11</sup> Source: Euromonitor International, Tobacco, 2023 industry edition 2023. Euromonitor International's annual industry editions are subject to change year on year, and while every attempt has been made to ensure accuracy and reliability, Euromonitor International cannot be held responsible for omissions or errors of historic figures or analyses.

- (45) In view of the above, the Commission considers that the proposed prohibition is appropriate to support the objective of preventing disposable electronic cigarettes from further taking root in Belgium, particularly among young people. The prohibition would remove access to those products, thereby reducing the risk of formation of nicotine addiction and dependence, particularly among young people.
- (46) In addition, the Commission accepts that the proposed measure prohibiting the placing on the market of disposable electronic cigarettes is necessary as regards the objective pursued and cannot be attained by a less restrictive alternative measure. In this context, as regards the objective to prevent the formation of addiction and dependence on nicotine containing disposable electronic cigarettes, especially among young people, the Commission recalls that nicotine is a particularly addictive toxic substance. Any measure that is less than a preventive measure, such as the proposed prohibition which operates at a stage before dependence on such products is established, would be less effective since it is manifestly much more difficult to diminish or cease addiction after dependence has been formed. The addictive nature of nicotine underscores the need and entitlement of Belgium to take timely preventive action, particularly in a context where there is a demonstrated risk of future widespread use and dependence.
- (47) In this regard, based on the information submitted by Belgian authorities, the Commission accepts that alternative measures implemented or considered by Belgium to curb the increasing consumption of disposable electronic cigarettes and thus prevent the formation of addiction and dependence, especially among young people, would not achieve the same result and would not protect public health in an as effective and timely manner.
- (48) First, the Commission agrees with the Belgian authorities that charging a higher notification fee for disposable electronic cigarettes than for other electronic cigarettes would not be justified because the fees must be proportionate for receiving, storing, handling, analysing and publishing the information.<sup>12</sup> The Commission also agrees that it is more effective to regulate the market than to ban the possession or use of disposable electronic cigarettes by young people, particularly as such a ban poses enforcement problems.
- (49) This is demonstrated by the significant difficulties that Belgium encounters in the enforcement of the sales ban to minors. Although the inspections on the ground and enforcement have already been strengthened, young people still manage to obtain disposable electronic cigarettes (e.g., through friends who are already off age, or online sales). Moreover, such a ban does not protect the whole young generation and other non-smokers who are also attracted by the concerned products.
- (50) Similarly, as Belgium has explained, the effective enforcement of the ban on online sales of disposable electronic cigarettes, as well as of the advertising ban for these products (that increasingly happens online and in closed groups on social media), have proven to be very difficult in practice. The Belgian authorities already conduct regular monitoring of online platforms. However, given the scale of the advertising online and the difficulty of continuously monitoring all platforms and social media groups, the impact of such measures is deemed insufficient, which stands in the way of achieving Belgium's public health aim.
- (51) Further, the Commission underlines that the information submitted by Belgium reveals that the growing popularity of disposable electronic cigarettes in Belgium, particularly

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<sup>12</sup> See also Article 5(8) of Directive 2014/40/EU.

among young people, is a cumulative result of several factors, such as their low price, their attractive design and ease of use, the variety of flavours, their widespread availability in many sales outlets, as well as their intensive targeted marketing to young people (see recitals (20) to (23) above).

- (52) In view of all these factors, the Commission accepts that, in the specific situation of Belgium, the alternative measures considered by Belgium would not necessarily sufficiently curb the growing use of disposable electronic cigarettes in Belgium and effectively protect public health. In this regard, the Commission takes account of the fact that the health and life of humans rank foremost among the assets and interests protected by the Treaty on the Functioning of the European Union and that it is for the Member States to determine the degree of protection which they wish to afford to public health and the way in which that degree of protection is to be achieved.<sup>13</sup>
- (53) Based on the considerations set out above and taking into account the high level of protection of human health achieved through Directive 2014/40/EU, the Commission concludes that the proposed prohibition on the placing on the market of disposable electronic cigarettes with nicotine is justified, necessary and proportionate to the aim of protecting public health.
- (54) Finally, based on the information supplied by the Belgian authorities, given that the scope of the prohibition would apply to domestic and imported products alike, the Commission considers that there is no reason to conclude that the prohibition of disposable electronic cigarettes would constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. Given that the ban applies to domestic and imported products alike, there are no grounds to consider that the measure would be of a particular benefit to national producers or distributors.

### III. CONCLUSION

- (55) On the basis of the considerations set out above, having regard to the information and data submitted by the Belgian authorities, and taking account of the objective of ensuring a high level of protection of human health achieved through Directive 2014/40/EU, the national prohibition of the placing on the market of disposable electronic cigarettes containing nicotine may be regarded as complying with the requirements laid down in Article 24(3) of the Directive.
- (56) It is therefore appropriate for the national measure prohibiting the placing on the market of disposable electronic cigarettes containing nicotine to be approved,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The national provisions prohibiting the placing on the market of disposable electronic cigarettes containing nicotine and notified by the Kingdom of Belgium in accordance with Article 24(3) of Directive 2014/40/EU, are approved.

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<sup>13</sup> See, for instance, judgment of the Court of 5 December 2023, *Nordic Info v Belgische Staat*, C-128/22, ECLI:EU:C:2023:951, paragraph 78.

*Article 2*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 18.3.2024

*For the Commission*  
*Stella KYRIAKIDES*  
*Member of the Commission*