Luxembourg
SANTE.B.4/(2023)1723231

Inspectie Consumptieproducten
Galileelaan 5/2
1210 Brussels
@health.fgov.be

Dear [Name],

Thank you for your email of 09/12/2022 by which you communicated to the Commission services the planned amendments to Arrêté royal du 28 octobre 2016 relatif à la fabrication et à la mise dans le commerce des cigarettes électroniques which, among others, adds a new paragraph to Article 4 reading:

‘It is prohibited to place on the market electronic cigarettes in the form of an integral disposable product. An integral disposable product refers to a product that consists of a single component and is completely discarded after use.’ (1),


In this respect, I would like to recall that 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 such prohibition is based on grounds relating to the specific situation in that Member State and is justified by the need to protect public health, taking into account the high level of protection of human health achieved through that Directive. Such national provisions should be notified to the Commission together with the grounds for introducing them.

(1) ‘orig. : Il est interdit de mettre sur le marché des cigarettes électroniques sous la forme d'un produit jetable intégral. Un produit jetable intégral concerne un produit qui consiste en un seul élément et qui est entièrement jeté après usage.’
It also needs to be noted that such procedure can only cover disposable e-cigarettes that contain nicotine, as provided by Directive 2014/40/EU.

Although your communication of 9/12/2022 is accompanied by certain explanations as to the grounds for introducing the measure in question, the information provided does not allow the Commission to fully assess whether or not the measure concerned is justified, necessary and proportionate to its aim and whether or not it constitutes a means of arbitrary discrimination or a disguised restriction on trade between the Member States, as stipulated in Article 24(3) of Directive 2014/40/EU.

In order to allow the Commission to assess whether the proposed measure complies with the requirements laid down in Article 24(3) of Directive 2014/40/EU, we kindly request you to provide the following:

(a) Further explanations as to what the Belgian authorities consider to be the specific situation in Belgium that would justify the adoption of the proposed measure.

(b) Evidence supporting the proportionality of the proposed measure, in particular whether any alternative or less restrictive measures were considered to address the rise in the consumption of the products in question, and why they were not considered sufficient to address the issue.

(c) Information confirming that the measure in question cannot be considered as a means of arbitrary discrimination or a disguised restriction on trade between the Member States. In this context, could you please additionally clarify if there would be any national producers of tobacco or related products that could benefit from this ban?

In respect of the aforesaid, the Belgian authorities are invited to submit additional information on the Belgian tobacco control policy considered relevant in support of the proposed measures, especially in terms of the aims and goals pursued by the relevant legislation (such as a specific reduction in prevalence, decrease in young smokers/users, etc.) and the tobacco control measures already in place and any other information considered pertinent for the assessment of the proposed measure, including, where available:

- up-to-date data, assessments or impact assessments regarding the measures proposed,
- the expected effects of the proposed measure, demonstrating the justification of the need to protect public health in the light of the specific situation identified in Belgium.

If you have any supplementary details on the proposed measure, we would also appreciate to receive these. We remain available for any questions and clarification on this request.

In view of the foregoing, the Belgian authorities are kindly requested to submit their reply to: SANTE-TOBACCO-CONTROL@ec.europa.eu at the earliest convenience.
Please note that the six month time limit for the approval or rejection of the national provisions under Article 24(3) of Directive 2014/40/EU will start only from the receipt of additional information requested in this letter.

Kind regards,