Approaches to Transposing the European Union Tobacco Products Directive E-cigarette Rules into Legislation by European Union Member States

Ayodeji Awopegb, Ryan David Kennedy, Joanna Cohen

Background

• The 2014 European Union (EU) Tobacco Product Directive (TPD) mandates and suggests a range of policy domains for regulating nicotine-containing e-cigarettes
• Nine mandated provisions include: reporting and notification, safety and quality (five provisions), packaging and labeling (two provisions), advertising/promotion/sponsorship; suggested provisions include regulations around importation and cross border sales, application of taxes, vape-free laws, minimum age of purchase
• All 28 EU Member States were required to transpose these rules by May 20, 2016
• Objective: to identify which EU Member States have implemented the TPD and assess the extent of implementation

Methods

• As part of an ongoing effort to capture how countries are regulating e-cigarettes, national policies regulating e-cigarettes in the 28 EU Member States were identified through searching the respective Ministry of Health websites, as well as media monitoring and general web searches
• Findings report data through December 31, 2016
• Policy domains identified include mandated provisions, as well suggested provisions
• The interpretation of each policy was reviewed by a country expert

Results

• 14 of the 28 EU countries have implemented the TPD provisions regarding e-cigarettes as of December 31, 2016
• Approach to implementing provisions on health warning labeling varies across countries
• Of the 13 countries with rules on labeling, nine countries require warnings that cover 30%, two countries specify 32%, and two are unclear about coverage
• 12 EU countries have transposed some of the recommended provisions of the TPD as of December 31, 2016 (Figure 1)
• In regards to regulating cross-border distance sales, six countries prohibit cross-border distance sales, while six countries require manufacturers/importers/retailers to register with the competent authorities in the relevant countries

Policies that transcend EU TPD mandates or recommendations

• Applying the TPD to non-nicotine e-cigarettes (Denmark, Germany and Malta)
• Prohibiting use by minors (Estonia, Germany, and Lithuania)
• Prohibiting possession by minors (Finland and Lithuania)
• Prohibiting use on school premises (France, Italy)

Figure 1: Implementation of non-mandatory provisions of the TPD across EU countries

<table>
<thead>
<tr>
<th>Provision</th>
<th>Number of EU countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Importation</td>
<td></td>
</tr>
<tr>
<td>Tax</td>
<td></td>
</tr>
<tr>
<td>Vape-free</td>
<td></td>
</tr>
<tr>
<td>Minimum age</td>
<td></td>
</tr>
<tr>
<td>Registration of cross-border sales</td>
<td></td>
</tr>
<tr>
<td>Ban on cross border sales</td>
<td></td>
</tr>
</tbody>
</table>

Note: the 14 countries identified as having implemented the TPD include: Austria, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Portugal and the United Kingdom

Legal challenge: Belgium is in the process of reworking its policy due to a legal challenge by an e-cigarette company

Conclusion and Implication

• A number of EU countries have not transposed the EU TPD provisions; among countries that have implemented the TPD, there are inconsistencies or variations in how certain provisions are implemented
• Inconsistencies in implementation may undermine the EU’s TPD intended impact on public health and present enforcement challenges