The EU survey on tobacco and nicotine regulation

On 22 May 2026, the European Commission published a survey [Tobacco products and tobacco advertising – revision of EU rules] to support the development of the next round of tobacco and nicotine product regulation, with Commission proposals expected later in 2026.

The survey is impossible to answer for anyone with an understanding of the differences in risk between different tobacco and nicotine products and a rational public health interest in the role that low-risk alternatives to smoking could play in reducing the burden of cancer, cardiovascular and respiratory disease in the European Union.

Around one hundred million European Union adult citizens are currently smokers, vapers, or other nicotine users, and around 700,000 die from smoking-related disease each year. The survey betrays a lack of seriousness about the size of this population, the toll of disease and death, and the options available to address it. In particular, it signals a contemptuous attitude towards the views of citizens who have an evidence-based, nuanced public health case for tobacco harm reduction. Finally, it shows the Commission has fixed views about the development of tobacco and nicotine legislation. The questionnaire's design shows that it does not intend to conduct a genuine consultation but is determined to frame questions that will create the illusion of support for a simplistic prohibitionist policy agenda.

In this briefing, we identify eight generic problems with the consultation questionnaire and provide an annex with more specific comments on the twenty-three questions.

Generic issues with the consultation questionnaire

1. Inadequate breadth or subtlety of available answers. There are multiple questions for which the only credible answer is "it depends". For example, Question 1 asks whether tobacco and nicotine measures and policies are beneficial for society. The appropriate answer is "it depends on what the measure is and whether it works as intended". In reality, there are three classes of measures:

1. those that may be beneficial if specified carefully and proportionately (e.g. controls on toxicants and ingredients, as long as these are risk-based);
2. those that may be well-intentioned but subject to unintended consequences (nicotine limits that cause deeper inhalation or flavour bans that trigger illicit trade); and
3. those that are unambiguously ill-conceived and harmful, and without any supporting evidence of benefits (the EU's ban on oral tobacco since 1992).

Faced with simplistic choices, the informed respondent can only answer “Neither agree nor disagree”. But that renders their response irrelevant, suppresses their insights, and lends weight to responses from those holding simplistic views on policymaking issues.

2. Inappropriate aggregation of very different products. Multiple questions group together all tobacco and nicotine products as if they have the same risks and consequences, and that all products should be regulated in the same way as the most dangerous products. In fact, there are likely two orders of magnitude differences in risk between the most and least dangerous. The survey respondent is unable to provide differentiated responses across product categories based on their riskiness, yet this is the most important emerging feature of the nicotine market that the European Union seeks to regulate. This risk-blind framing leaves the respondent with only the option to answer “neither agree nor disagree.”

3. No recognition of likely unintended consequences. The survey does not provide any context or even recognise that some forms of regulation can have harmful unintended consequences, nor does it invite views on these risks. It is, therefore, shielding the respondent from one of the most important policy design considerations and encouraging them to ignore the real-world consequences of their choices. The likely unintended consequences include:

1. Adverse behavioural responses leading to a rebound to more smoking,
2. Growth of illicit trade and criminality, and loss of regulatory control
3. Risky workarounds, such as home-mixing flavours.

Compelling evidence exists for all three, yet it has been ignored in the survey. For example, the Fraunhofer Institute recently estimated that 48% of European Union vapes are now sold via irregular or illicit channels. There is evidence from the United States indicating that vape flavour bans have increased smoking. There have been multiple workarounds to overcome the EU menthol cigarette ban.

4. Missing counterfactual to youth vaping: many young people would otherwise have smoked. Several questions are asked about the attractiveness, uptake or marketing of certain low-risk nicotine products (vapes, pouches, heated tobacco) as if the intent is to define this as problematic and justify intervention to control it. However, this is a gross simplification, without any acknowledgement that these products are, at least to some extent, displacing cigarette use among young people. None of the questions is framed to even recognise this possibility, but it means that youth uptake of vapes may be beneficial if the young person would otherwise have started smoking in the absence of vapes. It also means that more punitive regulation could easily be counterproductive. No questions recognise the concept of a counterfactual or that a significant impact of vapes is to divert young people from smoking at the point of initiation.

5. No recognition of trade-offs in framing questions. One of the most useful functions of policymaking surveys is to test opinion on how trade-offs would be made, though the framing of a trade-off must be done carefully. This survey has a high degree of focus on young people taking up newer nicotine products (vapes, pouches, heated tobacco). However, that near-exclusive focus has several values-based trade-offs embodied in its framing. For example, there is a trade-off between the interests of young people who would otherwise have smoked and those who would never have used nicotine in any form. There is a trade-

off between the interests of middle-aged adults who smoke and are at immediate and far greater risk of serious disease than young people who take up smoke-free products, with low risks and a distant and small risk of serious disease. Nothing in the survey engages the respondent in these trade-offs.

6. Asking for opinions on factual matters. In several places, the survey asks for respondents' opinions on objective data rather than presenting the data and asking how it should be interpreted (e.g. by asking at what age young people take up tobacco or nicotine use). The aggregate opinions of survey respondents offer worse-than-useless input to the formulation of EU policy because respondents have no way of knowing what happens at the population level, the sample will not be representative of the population, and many respondents will approach the survey with strong policy biases.

7. Ignoring respondent risk perceptions. A key question missing from the survey concerns respondents' risk perceptions. If respondents (incorrectly) believe that vapes, pouches, or heated tobacco have similar or greater risks than smoking, then they are likely to hold beliefs about regulation that would be counterproductive for health and the smooth operation of the internal market. If they believe there is no difference in risk, they would see no merit in encouraging people who smoke to migrate to vaping, pouches or heated tobacco. Any analysis of the survey results should be disaggregated by risk perceptions, and the views of those with false risk perceptions should be treated accordingly.

8. No deregulation options are considered. There are existing EU tobacco and nicotine measures in the 2014 Tobacco Products Directive (2014/40/EU) that may be incompatible with public health or the smooth functioning of the internal market. These include:

- The ban on oral tobacco or snus (Article 17), even though snus has successfully displaced smoking and reduced smoking-related disease in Sweden and Norway.
- The 2 ml tank size limit for e-cigarettes (Article 20.3(a)) means more filling or more waste per unit of nicotine consumed compared to large-capacity devices supplied in the illicit trade and in other jurisdictions, which are now typically 10-16 ml.
- The requirement not to suggest "*that a particular tobacco product is less harmful than others or aims to reduce the effect of some harmful components of smoke*" (Article 13.1(b)) is misinformation by omission. It prevents realistic risk communication with consumers and likely sustains smoking and protects the cigarette trade.
- There are plausible unintended consequences and distortions arising from e-liquid nicotine concentration limits (Article 20.3(b)), advertising bans (Article 20.5), and the warnings required on ENDS (Articles 20.4 and 12.2), which may be deterring switching to safer products by failing to present realistic risk communications.

To summarise, the questionnaire is not fit for purpose. It is unlikely to elicit useful or representative views from anyone. In particular, it will exclude the views of approximately 1 in 4 European Union citizens who smoke or use other nicotine products and whose interests are most affected by regulation in this area. The questions appear to have been designed to provide affirmation for simplistic, indiscriminate prohibitionist policies favoured by Brussels-based health lobbyists with little interest in whether the measures will work, or do more harm than good.

Annex: Comments on the individual survey questions

The text below reproduces the 23 survey questions and available answers, with a brief critique of the questions (in red) from the perspective of a rational policymaker.

1. To what extent do you agree with the following statement:
Measures and policies aimed at protecting people from the effects of tobacco and nicotine consumption, as well as from second-hand tobacco smoke and aerosols, are beneficial for society.

- Agree
- Partly agree
- Neither agree nor disagree
- Partly disagree
- Disagree
- Don't know

Q1 Comment
The question is unanswerable because it depends on what the measures and policies are. Some policies are beneficial, others cause unintended consequences such as illicit trade and increased criminality, or adverse behavioural change such as a rebound to smoking, or encourage users or suppliers to engage in risky workarounds. Some measures are unambiguously harmful, such as prohibiting the safest products in a market dominated by the most dangerous.

All policies involve trade-offs: some policies place undue weight on addressing relatively minor problems (youth vaping or pouch use) at the expense of much larger and more immediate public health problems in far larger populations at risk, for example, the 94 million European Union adults who still smoke - almost 1 in 4.

2. In your view, which products are most attractive to young people
Between 1 and 3 selections

- Nicotine e-cigarettes, including e-cigarettes with flavours and disposable e-cigarettes
- Nicotine-free e-cigarettes, including those with flavours
- Heated tobacco products
- Nicotine pouches, including those with flavours
- Cigarettes/roll-your-own tobacco
- Waterpipe tobacco, including those with flavours
- Other (specify)
- Don't know

Q2 Comment
The question seeks opinions on objective data that the Commission should already have answers to. It should not be asking for public opinions on data questions. Respondents to this questionnaire will not be representative and are likely to have a prior policy agenda that will affect their answers.

The question does not recognise a counterfactual: whether these new products are positive for the internal market operating with a high level of health protection depends on what these young people would do in the absence of each product. Many would have smoked.

A realistic framing of the youth use of these products is that many will be using safer products as an alternative to cigarettes. For them, there is a major health benefit. There may be some users of new products who would never have used nicotine, who have taken up vaping. For them, there is a small detriment and their use is more likely to be transient.

The question is framed in terms of attractiveness, not risk or harm. The purpose of regulation is to manage risks, not consumer preferences. Risks depend on the behaviour change triggered by changes in consumer preferences. Making safer products more attractive could benefit health.

3. In your view, which products are most attractive to those aged 25 and over
Between 1 and 3 selections

- Nicotine e-cigarettes, including e-cigarettes with flavours and disposable e-cigarettes
- Nicotine-free e-cigarettes, including those with flavours
- Heated tobacco products
- Nicotine pouches, including those with flavours
- Cigarettes/roll-your-own tobacco
- Waterpipe tobacco, including those with flavours
- Other (specify)
- Don't know

Q3 Comment
The question seeks opinions on objective data that the Commission should already have answers to. The people answering this survey do not constitute a representative sample, and many will have prior political preferences regarding the policy outcomes of the TPD revision. No useful information can be drawn from the responses to this question.

The issue here is that smoking does remain popular for older smokers. However, it would be better if far safer nicotine products were more attractive to this group, especially those over 35. This group contains the population at greatest risk of serious harm - middle-aged adults who have smoked for two or more decades.

4. Are you a current user or ex-user of tobacco, nicotine or non-nicotine products?

- Yes
- No

Q4 Comment
The question flattens the experience of nicotine use into a poorly defined single binary status [ever-use or never-use]. It is hard to see what possible use could be made of such information. If there were any interest in the nicotine use status of respondents, it would be important to distinguish between use of different categories, between current and past use, between recent and distant past use, and between inconsequential use and sustained use.

The question is seemingly neutral, but on past form, it is likely to be used to disregard or dismiss the views of people disclosing their nicotine user status as organised consumer activism. In fact, this group bears by far the greatest costs of tobacco use and tobacco policy. They are the primary stakeholders, not the medical and health activists. The views of people who use nicotine products should be given the greatest weight.

Further, taken literally, the question is nonsensical; all respondents use “non-nicotine products”.

6. At what age do you think young people start using tobacco, nicotine or non-nicotine products?

	Under 16 years	16-18 years	19-24 years	Don't know
*Tobacco products	○	○	○	○
*Nicotine products	○	○	○	○
*Nicotine-free e-cigarettes and herbal products	○	○	○	○

Q6 Comment

The question is meaningless. Young people start at different ages, with the age of initiation usually conditioned by underlying psychosocial risk factors, such as their mental health, rebelliousness, or parental smoking. Even if the question made sense and the respondent could enter a percentage in each box, there is still nothing to be gained from asking for opinions about objective facts.

Eurobarmeter 539 (2023 data) provides some data. The average age of initiation in the youngest age group (15-24) is 17.

QD12a How old were you when you started smoking or using regularly these products? (% - EU)

	Less than 15 years old	Between 15 and 18 years old	Between 19 and 25 years old	Refusal	Don't know	Average
EU27	13	40	39	1	1	18
Gender						
Man	15	42	38	1	1	17
Woman	11	38	41	1	1	18
Age						
15-24	15	50	30	2	2	17
25-39	12	41	41	1	1	18
40-54	13	39	41	1	1	18
55 +	14	38	40	1	1	18

Why waste respondents’ time asking for their opinions when there is an EU survey that has relevant data?

Nevertheless, that is not the main issue with this question. The date at which a young person starts experimentation is less important than their established smoking or nicotine use status as they enter adulthood.

7. In your view, through which channels do young people most commonly obtain tobacco, nicotine and non-nicotine products?

	Friends	Family members	Retail shops (in-person)	Online retailers from the young people's country	Online retailers other than from the young people's country	Sellers on social media/messaging apps	Informal sellers/black market	Other (specify)	Don't know
*Tobacco products	☐	☐	☐	☐	☐	☐	☐	☐	☐
*Nicotine products	☐	☐	☐	☐	☐	☐	☐	☐	☐
*Nicotine-free e-cigarettes and herbal products	☐	☐	☐	☐	☐	☐	☐	☐	☐

Q7 Comment

The question seeks opinions on objective data that the Commission should already have answers to. The anecdotal experiences of individual respondents who choose to complete this survey cannot provide any reliable evidence for the process of formulating a revised TPD.

8. The heated tobacco products market (including tobacco heating devices) reached 12.5 billion EUR in 2023, compared to just 4 million EUR in 2013. The EU e-cigarette market grew from 909 million EUR in 2012 to 5 billion EUR in 2023. Nicotine pouches have seen a similar surge, with sales value increasing from 61 million EUR in 2018 to 1 billion EUR in 2023.

To what extent do you agree with the following statement:
Market developments and consumption trends have increased the availability, popularity and use of heated tobacco products, e-cigarettes, and nicotine pouches, particularly among the following groups.

	Agree	Partly agree	Neither agree nor disagree	Partly disagree	Disagree	Don't know
*Among people aged 24 years or less (young people)	○	○	○	○	○	○
*Among people aged between 25 and 34 years	○	○	○	○	○	○
*Among people aged between 35 and 54 years	○	○	○	○	○	○
*Among people aged 55 years or more	○	○	○	○	○	○

Q8 Comment

It is obvious that new (safer) products that have entered the market and grown since 2013 have become more popular and attracted a greater share of the nicotine market. That is what happens with new and better products. The question is what behaviours have they

displaced or added to, and what effect have they had on the pattern of nicotine use. Again, the question is posed without appropriate contextual framing. The available answers are uninformative if the questions are not framed correctly.

9. New forms of digital promotion of tobacco and nicotine products have emerged since the adoption of the TAD in 2003. These include promotion on social media platforms, online marketplaces, through influencers, on streaming services, in online video games, in music videos, and in user-generated content without any financial consideration. User-generated content is any content made by individuals without any financial consideration, not by a brand or professional publisher.
To what extent do you agree with the following statement:
The exposure of young people to these new forms of digital promotion of tobacco and nicotine products influences their use and/or uptake of use.

- Agree
- Partly agree
- Neither agree nor disagree
- Partly disagree
- Disagree
- Don't know

Q9 Comment
Again, this is a scientific question, not something that the aggregated opinions of the respondents can establish.

The question asks respondents to assert a causal relationship, which is difficult to establish scientifically. The key problem is that people interested in tobacco and nicotine products may be drawn to content that aligns with this interest (reverse causation), or to content that presents such information because they fall into a broad “rebel” category (confounding).

Better questions would address the limitations of the definitions of “commercial communication” used in the TAD and TPD2. It would be useful to seek opinions on whether it is right to intervene to address content for which there is no commercial basis.

10. To what extent do you agree with the following statement:
Further EU action under the EU tobacco control legislation is needed regarding the following promotion practices to reduce the uptake of tobacco, nicotine and non-nicotine products.

	Agree	Partly agree	Neither agree nor disagree	Partly disagree	Disagree	Don't know
*User-generated content from individuals other than influencers	○	○	○	○	○	○
*Brand or corporate promotion including through influencers	○	○	○	○	○	○

Q10 Comment
The first question (user-generated content) raises broader questions about policing the internet and would raise many issues of principle that extend beyond tobacco. The user-

generated content in the tobacco and nicotine field is relatively innocuous compared to violent, pornographic, bigoted, and manipulative content related to self-harm, suicide, etc.

The second question should be informed by the Commission, which needs to explain any shortcomings of existing legislation before asking whether respondents agree to further powers of intervention.

A further question is whether this promotional activity is beneficial for public health. If it causes people to switch from smoking to a lower-risk product, then it is likely beneficial.

11. Across the EU Member States, there are differing national laws covering different aspects of tobacco, nicotine, and non-nicotine products. This means that economic operators must comply with these different rules to place their products on the markets of the various Member States.

To what extent do you agree with the following statement:
Differing national laws create legal complexities and hinder the smooth functioning of the EU single market.

- Agree
- Partly agree
- Neither agree nor disagree
- Partly disagree
- Disagree
- Don't know

Q11 Comment

Generally, harmonisation is a good, enduring principle in EU policy. However, it must be aligned with other EU principles: subsidiarity, proportionality, conferral and equal treatment. While harmonisation can be valuable, that is only so if the harmonised regulation is welfare-enhancing. The smooth functioning of the internal market should not involve prohibitions (such as on snus) or restrictions on consumer choice (flavour bans), which cause European citizens to defect from the internal market and seek the products they want from illicit suppliers with unregulated products and commercial practices.

12. How important is it to you that the EU tobacco control legislation supports the following objectives with regard to tobacco, nicotine and non-nicotine products?

	Not important	Barely important	Moderately important	Very important	Essential	Don't know
*Preventing the initiation of use	○	○	○	○	○	○
*Supporting the cessation of use	○	○	○	○	○	○
*Ensuring that these products do not have attractive features and do not appeal, particularly to young people	○	○	○	○	○	○
*Ensuring that consumers are well informed about the health risks	○	○	○	○	○	○
*Minimising the administrative burden on Member States	○	○	○	○	○	○
*Minimising the administrative burden on business	○	○	○	○	○	○
*Ensuring that the same conditions for the manufacture, presentation, sale and advertising apply across the EU	○	○	○	○	○	○
*Ensuring that manufacturers and importers can report the necessary information easily and quickly to national and EU authorities	○	○	○	○	○	○

Q12 Comment

The question is heavily loaded. It does not differentiate between different tobacco and nicotine products that have very different levels of risk. A reasonable public health strategy would aim to substitute high-risk use (smoking) with low-risk use (vaping pouches, etc.) among people who are likely to use nicotine, including those likely to initiate nicotine use. So, for example, good public health outcomes arise from smoking cessation using smoke-free nicotine products. It is a public health gain if a young person takes up vaping instead.

The question mixes regulatory outcomes (initiation and cessation) with outputs (attractive features, information) and inputs (administrative burdens). Yet, it misses major outcome objectives (reducing the burden of smoking-related disease) that can be attained by switching from high-risk to low-risk products.

13. To what extent do you agree with the following statements:
The following measures are effective in reducing the uptake and/or harmful effects of consuming nicotine and non-nicotine products.

	Agree	Partly agree	Neither agree nor disagree	Partly disagree	Disagree	Don't know
*Prohibiting flavours	○	○	○	○	○	○
*Prohibiting flavour descriptions and visuals on the packaging	○	○	○	○	○	○
*Reducing nicotine concentration in the product	○	○	○	○	○	○
*Standardising the form and size of tanks, refill containers and cartridges for e-cigarettes	○	○	○	○	○	○
*Setting limits for the nicotine content and/or dose of nicotine pouches	○	○	○	○	○	○
*Strengthening product standards for device safety (e.g. leakage, overheating, battery safety)	○	○	○	○	○	○
*Introducing product design requirements to reduce appeal (e.g. restrictions on device appearance, lighting, “toy-like” features)	○	○	○	○	○	○
*Introducing restrictions on disposable products	○	○	○	○	○	○
*Introducing a ban on disposable e-cigarettes	○	○	○	○	○	○
*Requiring mandatory child-resistant and tamper-evident packaging	○	○	○	○	○	○
*Strengthening restrictions on the ingredients to be used in nicotine and non-nicotine products	○	○	○	○	○	○
*Requiring reporting and testing by manufacturers and importers on product composition and, emissions or aerosol constituents	○	○	○	○	○	○
*Introducing requirements on the traceability	○	○	○	○	○	○

Q13 Comment

This question is both the most facile and consequential of all the questions asked. For policymakers, each of these raises multiple issues that cannot be reduced to a simplistic agree/disagree response. The question and answers do not allow for risk-proportionate regulation or for a regulatory system designed to migrate the internal market for nicotine from high-risk to low-risk use. The options offered are unclear and leave no room for nuance. Let us consider some of the policies on offer:

- Prohibiting flavours: the question is unclear. Does this mean banning every flavouring ingredient, everything but tobacco flavour, some flavours thought to be youth-

appealing, or just flavouring agents that may be toxic? For a policy like a flavour ban, many nuances go beyond agree/disagree answers. What if the respondent supported this ban for some categories, but not others? The questionnaire does not provide any opportunity to comment on likely unintended consequences or trade-offs, nor does it include this in its framing.

- Prohibiting flavour description might be justified if they are frivolous, misleading, or child-oriented, but not if they accurately describe the flavour in neutral terms. Again, a rational answer is precluded, or relegated to irrelevance by requiring the answer, “Neither agree nor disagree”.

- Whether nicotine concentration should be reduced depends on which product and several other considerations. For example, would this apply to cigarettes? If so, any reduction would need to be deep enough to make compensatory smoking impossible, but that would amount to a prohibition of cigarettes with significant implications for illicit trade and excise revenues. Conversely, there is no case for reducing the concentration of nicotine e-liquids, which were already limited to 20mg/ml under TPD-2, and, if anything, there is a case for relaxing this limit, especially when linked to the liquid’s pH. In the case of pouches, there is a case for limiting total nicotine content, but not concentration, at 15-20 mg to exclude rogue products, but not so low to make pouch products uncompetitive with cigarettes, to cause people to use two at once, or generate an illicit market. There is no pattern of boxes to tick that would capture these reasonable evidence-based positions.

- Whether product safety standards should be “strengthened” depends on which standards are being referred to and how the strengthening would affect the user experience. For example, a standard that improved battery safety would be welcome, but a standard that made refilling difficult or impossible to reduce leakage would not.

- Whether “strengthening” ingredient restrictions (or any other restriction) makes sense depends on which restrictions, to which products they apply, the degree of strengthening, the likelihood of achieving the policy aim, and the plausibility of unintended consequences.

- Requirements for traceability might have superficial appeal, but if they were excessively burdensome, they would cause concentration in the marketplace in favour of high-volume commodity products. They may lead to other products being supplied illegally.

- There is no option to state where regulation is excessive or counterproductive. For example, since the snus ban of 1992, twenty million European Union citizens have died from smoking-related disease. Yet, snus has enabled Sweden to have the lowest smoking rates and the lowest rates of smoking-related disease.

The questionnaire does not allow for realistic or nuanced answers to the questions for informed consumers. Again, it favours those with a simplistic and hostile policy agenda. It does not allow the directly affected stakeholders to contribute reality-based insights.

14. The scope of the current EU tobacco control legislation covers only tobacco products, nicotine-containing e-cigarettes, and herbal products for smoking. It does not include other nicotine products, herbal products not used for smoking and nicotine-free e-cigarettes, which have been introduced in the market since 2012.
As observed in the evaluation of the TPD (https://health.ec.europa.eu/tobacco/evaluation-legislative-framework-tobaccocontrol_
en), nicotine pouches' sales value has increased from 60.8 million EUR in 2018 to 1.09 billion EUR in 2023, whereas traditional tobacco products' sales value has decreased from 153.87 billion in 2012 to 140.75 billion in 2023.

To what extent do you agree with the following statement:
The scope of the EU tobacco control legislation has not kept pace with market developments.

- Agree
- Partly agree
- Neither agree nor disagree
- Partly disagree
- Disagree
- Don't know

Q14 Comment
The Commission provides the data to support the obvious answer. However, whether the EU should have jurisdiction depends on what form of regulation should apply. If the EU proposes a ban on pouches, following some member states and by analogy with the oral tobacco ban, then it will simply be repeating the mistakes of past regulation.

The relevant question regarding the scope of European regulation is which considerations should inform regulatory design. But no questions are asked about this.

15. How important is it to you that the following products – currently not covered by the legislation – would fall within the scope of the EU tobacco control legislation?

	Not important	Barely important	Moderately important	Very important	Essential	Don't know
*Nicotine pouches and other nicotine products without tobacco	○	○	○	○	○	○
*Nicotine-free e-cigarettes, including their devices and tanks, refill containers and cartridges	○	○	○	○	○	○
*Heated herbal products and other new types of herbal products	○	○	○	○	○	○
*Devices, accessories and items used for the consumption of tobacco and nicotine products	○	○	○	○	○	○
*Future products	○	○	○	○	○	○

Q15 Comment
Again, the answer depends on the regulatory objectives and the likelihood that it would work as intended. If the aim is to ensure a reasonable level of consumer protection and safety

standards, then the EU has a valuable role to play. If, on the other hand, the regulatory intent is to deny adults products they wish to use in their own interests, in the mistaken belief that this will protect children, then member states should be free to reject such measures or deny the European Union a role.

16. To what extent do you agree with the following statement:
EU rules need to include a regulatory mechanism that allows the European Commission to react quickly to market, scientific, and technical developments.

- Agree
- Partly agree
- Neither agree nor disagree
- Partly disagree
- Disagree
- Don't know

Q16 Comment
Again, the appropriate response depends on how the Commission would respond to what sort of developments and with what limits to its competence. A generalised answer is not possible. The EU must not create pockets of unaccountability in which the Commission can unilaterally extend its powers in response to technological developments as it sees fit. Further, it should not be able to use technological advances as a pretext to bypass the legislature.

17. Technology-neutral definitions focus on the general characteristics of a product and could help ensure that all products of the same definition are covered by the legislation, regardless of technological developments. This would allow products which are not on the market when the legislation came into force to also be covered if they fall under the specified technical definition.
To what extent do you agree with the following statement:
Technology-neutral definitions for products are important in ensuring the objectives of the tobacco control legislation.

- Agree
- Partly agree
- Neither agree nor disagree
- Partly disagree
- Disagree
- Don't know

Q17 Comment
The question is obscure and conceals complexity. There is an argument for technology-neutral definitions in regulation generally, as they are less vulnerable to technological innovation and change. However, providing this flexibility must be contingent on carefully characterising important differences between product categories. So if the general characteristic chosen is “all products containing nicotine”, then that would be inadequate to reflect the two orders of magnitude difference in risk between products. A better 4-segment general characterisation would be:

- Nicotine products that involve combustion and smoke inhalation
- Nicotine products that involve heating and aerosol inhalation

- Nicotine products that do not involve heat
- Therapeutic nicotine products

The problem with the survey is that it is asking for an opinion on technology neutrality without specifying what the alternative system would be. In the absence of a credible scheme for segmenting technology by risk, the appropriate answer is to stick with technology-specific definitions.

18. Plain (or standardised) packaging is defined by the World Health Organisation as "measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in a standard colour and font style". The TPD allows an EU Member State to introduce further of such standardisation requirements regarding the packaging of tobacco products, including plain packaging.
To what extent do you agree with the following statement:
Mandatory plain packaging requirements under EU tobacco control legislation would strengthen the functioning of the EU internal market and/or the protection of public health.

	Agree	Partly agree	Neither agree nor disagree	Partly disagree	Disagree	Don't know
*Functioning of the EU internal market	○	○	○	○	○	○
*Protection of public health	○	○	○	○	○	○

Q18 Comment
The questionnaire only allows a negative rejection of a positive assertion in favour of plain packaging. It does not provide any insight into potential unintended consequences, such as implicit risk miscommunication, making lower-risk products relatively less attractive, or a tendency to lower prices by favouring budget brands.

Also, it provides no option to differentiate between tobacco product categories that differ substantially in risk, such as pouches and cigarettes.

19. To what extent do you agree with the following statement:
The following labelling and packaging measures are effective in ensuring the objectives of the tobacco control legislation.

	Agree	Partly agree	Neither agree nor disagree	Partly disagree	Disagree	Don't know
*Large health warnings with pictures depicting medical conditions associated with the use of tobacco and nicotine products	○	○	○	○	○	○
*Plain or standardised packaging of the products	○	○	○	○	○	○
*Standardised form and size of tanks, refill containers and cartridges for e-cigarettes	○	○	○	○	○	○
*Prohibition of misleading descriptors on the packaging (e.g. “natural”, “organic”, “nicotine-free”)	○	○	○	○	○	○
*Leaflets/inserts with quitting information	○	○	○	○	○	○
*Prohibition of elements that promote the product or encourage its consumption by creating an erroneous impression about its characteristics, health effects or risks	○	○	○	○	○	○

Q19 Comment

The effectiveness of policies should be a research question, not a matter of opinion. Some of these policies have been tried in the European Union or elsewhere; the Commission should present or conduct evaluation research.

There are several issues in answering these questions, mostly because the question of whether a regulation is a good idea depends on how it is specified.

- **Large pictorial warnings** convey little meaningful risk information (i.e., the likelihood that the user will experience the pictured condition and the time period over which it will occur). They rely on a shock effect to deter use and are a form of negative marketing, which is poorly scrutinised. The danger with applying such warnings to much safer products is that they misrepresent risks, present health effects for which there is little evidence, and obstruct beneficial behaviour change.

- **Plain packaging** prevents the pack from being used to create brand appeal. That could be useful for the most dangerous products, though there are potential unintended consequences, such as price reductions. For safer products, it may degrade the appeal compared to cigarettes and reduce switching.

- **Standardised tanks and refills**. Standardisation may be beneficial if it improves consumer choice through interoperability and reduces compliance costs; however, the existing limits (2ml for tanks, 10ml for containers) are too low, increasing refill activity, waste generation, and the likelihood of running out.

- **Misleading descriptors**. There is an obvious case for prohibiting anything misleading, which is normally covered by standard consumer protection legislation, including the Unfair Commercial Practices Directive 2005/29/EC (Articles 6 and 7). The question here is what additional protections are required and justified in the special case of tobacco and nicotine products. A further issue is EU mandates that

would require the consumer to be misled, for example, by exaggeration of risk in graphic health warnings or by the TPD-2 provision Article 13.1(b), which does not allow manufacturers to suggest "*that a particular tobacco product is less harmful than others or aims to reduce the effect of some harmful components of smoke*" even though there is a two-orders of magnitude span in risks.

- **Leaflets**. It depends on what the leaflets say, and whether they are required for all products. They could potentially help users understand risks, or they could add to confusion and risk misperceptions. The TPD requires an information leaflet for vapes (TPD-2 Article 20.4(a)) but not for cigarettes. Why?
- **Prohibiting elements that mislead about characteristics or risks**. Again, it depends on what is defined as misleading and whether the regulation would prevent communication of genuine differences in risks or characteristics that would be beneficial to the user.

20. E-cigarettes and nicotine pouches can come in variety of flavours (such as fruit, herb, candy or ice cream). The evaluation of the tobacco control framework has shown that flavours seem to play a key factor influencing young people's decision to start using these products. Flavours can create the impression that the product is less harmful and make the product more attractive and easier to use. Some EU Member States have prohibited flavours in e-cigarettes and refill containers, while others have not.
To what extent do you agree with the following statement:
A prohibition of flavours in e-cigarettes and nicotine pouches would strengthen the functioning of the EU internal market (by eliminating different approaches across the Member States) and/or the protection of public health.

	Agree	Partly agree	Neither agree nor disagree	Partly disagree	Disagree	Don't know
*Functioning of the EU internal market	○	○	○	○	○	○
*Protection of public health	○	○	○	○	○	○

Q20 Comment
The context provided with the question is highly selective and strongly leading, presenting a series of contested causal claims that relate only to youth and offer no consideration of trade-offs, counterfactuals (vaping is beneficial for young people who would otherwise smoke), or unintended consequences of such bans (increased smoking, more illicit trade, and workarounds such as adding flavours sold separately).

21. The EU tobacco traceability system records the movements of legal tobacco products across the EU. It allows EU Member States to determine whether a product has been diverted into the illicit market. The traceability system currently covers only tobacco products and does not extend to e-cigarettes and other nicotine or non-nicotine products.
To what extent do you agree with the following statement:

The EU tobacco traceability system should also cover products other than tobacco products.

- Agree
- Partly agree
- Neither agree nor disagree
- Partly disagree
- Disagree
- Don't know

Q21 Comment

The issue will be too technical for most respondents, so the clear aim of the question is to encourage unqualified positive responses to a complex question. Far too little information is contained to allow any non-specialist to answer this question. The requirement for a traceability system would likely favour large companies with established distribution systems. While it might help verify legal products or detect illicit ones, it may ultimately increase illicit trade as more supply falls outside the traceable system. It's like asking the public for its views on any other specialised technical subject: preferred methods of heart surgery, protection of undersea cables or pipelines, or cryptography standards. Similar questions are asked in Q13 and in Q22.

22. How important is it that the EU tobacco control legislation be strengthened in the following areas?

	Not important	Barely important	Moderately important	Very important	Essential	Don't know
*Reporting of accurate and complete information on the products by manufacturers and importers for the European Commission and the Member States' enforcement authorities	○	○	○	○	○	○
*Traceability tools to assist Member States in detecting illicit trade practices	○	○	○	○	○	○
*The adaptability of the legislation to respond to new market developments	○	○	○	○	○	○

Q22 Comment

The question is unanswerable. In each case, it depends on the specific measures envisaged - some of which might be helpful, others might do more harm than good.

- **Reporting**. The only reporting required should have a definable purpose - consumer protection or regulatory oversight - and regulation should be efficient. The danger is that the Commission sees compliance burdens as a benefit rather than a cost.
- **Traceability tools.** Whether these are worthwhile demands a value-for-money assessment, not an arbitrary opinion poll. The question is what works and to what

end (does it validate legal products, assist in the seizure of illegal products, or reduce illicit supply?). The distorting effects of regulatory burdens may undermine the smooth operation of the internal market.

- **Adaptability of legislation.** The value of adapting (i.e., changing) legislation depends on what falls within the scope of delegated powers and on the conditions under which the Commission can exercise these powers. Legislation should be technology-neutral to the extent possible, but that does not mean ignoring pronounced differences in the risk characteristics of products (such as the two orders-of-magnitude difference in risk across nicotine products).

23. If you wish to upload a concise document, please do so below. The maximal file size is 1MB.
Please note that the uploaded document will be published alongside your response to the questionnaire, which is the essential input to this open consultation. The document is an optional complement and serves as additional background to better understand your position.

Q23 Comment
There is no justifiable reason to set a file size limit at 1 MB.

END OF SURVEY – THANK YOU FOR YOUR PARTICIPATION