

Reference: 2016/TACU/11 v2

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Guidance

Commercial communications restrictions for e-cigarettes and refill containers

The purpose of this guidance is to provide assistance to those advertising e-cigarettes or refill containers under Regulation 31 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 ([S.I. No. 271 of 2016](#)). The amendments introduced in the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) (Amendment) Regulations 2017 ([S.I. No. 252 of 2017](#)) do not impact on this guidance document.

As interpretation of the law is a matter for the Courts, this guidance is intended to provide general information on the above Regulations and should not be construed as legal advice. It is without prejudice to any other legal obligations under criminal or civil law.

Background

The [Tobacco Products Directive 2014/14/EU \(TPD\)](#)¹ introduces new rules for commercial communications relating to e-cigarettes and refill containers (Article 20 (5)). These new rules were transposed into Irish legislation by Regulation 31 of the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016 and are effective from 20th May 2016.

The Health Service Executive (HSE) is responsible for implementing and enforcing the provisions under Regulation 31.

1. The new rules (subject to the exemptions at 2) prohibit :
 - i. commercial communications in information society services with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers;
 - ii. commercial communications in the press, with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers;
 - iii. commercial communications in other printed publications, with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers;
 - iv. commercial communications on the radio, with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers;
 - v. any form of public or private contribution to radio programmes with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers;

¹ The Directive has EEA relevance

- vi. any form of public or private contribution to any event with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers and involving or taking place in two or more Member States or otherwise having cross-border effects;
- vii. any form of public or private contribution to any activity with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers and involving or taking place in several Member States or otherwise having cross-border effects;
- viii. any form of public or private contribution to any individual person with the aim or direct or indirect effect of promoting electronic cigarettes or refill containers and involving or taking place in several Member States or otherwise having cross-border effects;
- ix. audiovisual commercial communications to which the [Broadcasting Act 2009 \(No. 18 of 2009\)](#) and the [European Communities \(Audiovisual Media Services\) Regulations 2010 \(S.I. 258 of 2010\)](#) applies for electronic cigarettes and refill containers.

2. An exemption is provided for the advertisement of e-cigarettes and refill containers:

- i. in publications that are intended exclusively for professionals in the trade of electronic cigarettes or refill containers, and
- ii. in publications that are not principally intended for the European Union market where such publications are printed and published in third countries.

3. The new rules do not apply to the advertisement of e-cigarettes and refill containers:

- i. at the point of sale in retail outlets where electronic cigarettes and refill containers are sold;
- ii. in or on outdoor areas such as billboards, posters and bus shelters; and,
- iii. at events that have no cross-border effects (and which are not going to be broadcast).

The table below outlines in more detail what is now prohibited under the Regulations and what is permitted under the Regulations.

Type of advertising	Legislation
Broadcast TV advertising and sponsorship	Prohibited
Broadcast TV product placement	Prohibited
Radio advertising and sponsorship	Prohibited
On-demand television advertising, sponsorship and product placement	Prohibited
Newspapers, magazines and periodicals – except trade publications, trade to trade communications and third county publications	Prohibited

Leaflets, mailshots, brochures, pamphlets and fliers	Prohibited
Internet display advertising, email and text message advertising - except trade publications and third country publications	Prohibited
Sponsorship of event/activity/individuals involving or taking place in several Member States or otherwise having cross-border effects	Prohibited
Company's own websites, and other non-paid-for online space under their control	No advertising or promotion but factual information about products, factual 'how to' videos permitted
Retailer sites	No advertising or promotion but factual information about products, factual 'how to' videos and sales lists permitted
E-cigarette trade press and trade to trade communications	Permitted
Point of sale in retail outlets (where e-cigarettes are sold)	Permitted
Outdoor posters, posters on sides of buses, trains etc (not travelling outside of the Republic of Ireland).	Permitted
Blogs/tweets/independently compiled, non-paid for reviews	Permitted
Events taking place in Ireland with no cross-border effects which are not going to be broadcast	Permitted

Contact

- To contact the Tobacco and Alcohol Control Unit of the Department of Health, please email tobacco@health.gov.ie
- To contact the National Tobacco Control Operational Unit of the Health Service Executive, please email info.tpd@hse.ie.

Further Guidance on Electronic Cigarettes and Refill Containers

The Department has also issued guidance documents in relation to other aspects of the TPD namely:

- notification requirements for manufacturers and importers of e-cigarettes and refill containers.
- mandatory registration for retailers engaged in cross-border distance sales of e-cigarettes or refill containers in Member States where such sales are not prohibited.
- safety and quality requirements, refill mechanisms, information and labelling requirements, product presentation and public health concerns (see guidance on electronic cigarettes and/or refill containers).

Discussion papers were developed by Member States and are set out below. These papers provide guidance to manufacturers and importers submitting notifications for their products and are as follows:

- [Chapter 1 – Submission Type](#)
- [Chapter 2 – Product Type](#)
- [Chapter 3 – Emissions from Electronic Cigarettes](#)
- [Chapter 4 – Dose of Nicotine Delivered & Uptake and Consistency of Dose](#)