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Waterpipes, waterpipe tobacco and herbal products for smoking



Introduction

In accordance with section 6 of the Tobacco Act (549/2016), the National Supervisory Authority for Welfare and Health (Valvira) provides guidelines on the Tobacco Act's application to the use of waterpipes. These guidelines are intended to function as a handbook and aid for municipal officials in charge of the supervision of the Tobacco Act and for economic operators in complying with and applying regulations concerning waterpipes and the products used in them. The use of waterpipes has increased in Finland in recent years and several waterpipe cafés and restaurants have been established. Waterpipes and the products used in them are also sold in specialised shops. In Finland, waterpipes are a fairly recent phenomenon departing from traditional tobacco products, due to which there is a need for guidelines on the legislation applicable to waterpipes.

Legislation

According to section 1 of the Tobacco Act, the objective of the Act is to end the use of tobacco products and other nicotine-containing products that are toxic to humans and cause addiction.

According to section 10 of the Tobacco Act, the manufacturers and importers of tobacco products are responsible for ensuring that a tobacco product intended for commercial sale or other supply complies with the applicable provisions. The obligation to provide Valvira and the European Commission (the Commission) as well as the competent authorities of other EU Member States with the information required lies primarily with the manufacturer, if the manufacturer is established in the European Union. The obligation to provide the information lies primarily with the importer if the manufacturer is established outside the EU and the importer is established inside the European Union. The obligation to provide the information lies jointly with the manufacturer and the importer if they both are established outside the EU.

According to section 11 of the Tobacco Act, it is prohibited to sell or otherwise supply to consumers tobacco products for smoking containing additives that facilitate nicotine uptake or the inhalation of smoke.

According to section 31 of the Tobacco Act, tobacco products and herbal products for smoking may be sold and otherwise supplied to consumers only in unit packets that comply with the Act and the provisions issued under it as well as with relevant EU legislation.

According to section 44 of the Tobacco Act, tobacco products and nicotine-containing liquids may only be sold or otherwise supplied under a retail licence that is specific to the sales outlet and licence holder and granted by the municipality where the sales outlet is located.

According to section 52 a of the Tobacco Act, products aiming to achieve an aroma or flavour characteristic of a tobacco product may not be sold or otherwise supplied to consumers.

According to section 54 of the Tobacco Act, an economic operator selling tobacco products, tobacco substitutes, smoking accessories, electronic cigarettes or nicotine-containing liquids must, at their own expense, draw up and implement a self-monitoring plan for complying with the prohibitions laid down in section 53, subsections 1 and 2 of the Act and for ensuring that notifications on the products pursuant to the Tobacco Act have been submitted and that the products' unit packets comply with the requirements provided in the Act.

According to section 68 of the Tobacco Act, the marketing of tobacco products, tobacco substitutes, smoking accessories, tobacco imitations, electronic cigarettes or nicotine-containing liquids is prohibited.

According to section 71 of the Tobacco Act, it is prohibited to display tobacco products, tobacco substitutes, electronic cigarettes, nicotine-containing liquids, smoking accessories intended for the heating of tobacco products and the trademarks thereof in the retail sale of tobacco products, tobacco substitutes, smoking accessories, tobacco imitations, electronic cigarettes and nicotine-containing liquids. However, the display ban does not apply to sales outlets which have a separate entrance, and which sell almost exclusively the products referred to in the Act, provided that the products and their trademarks are not visible from outside the sales outlet.

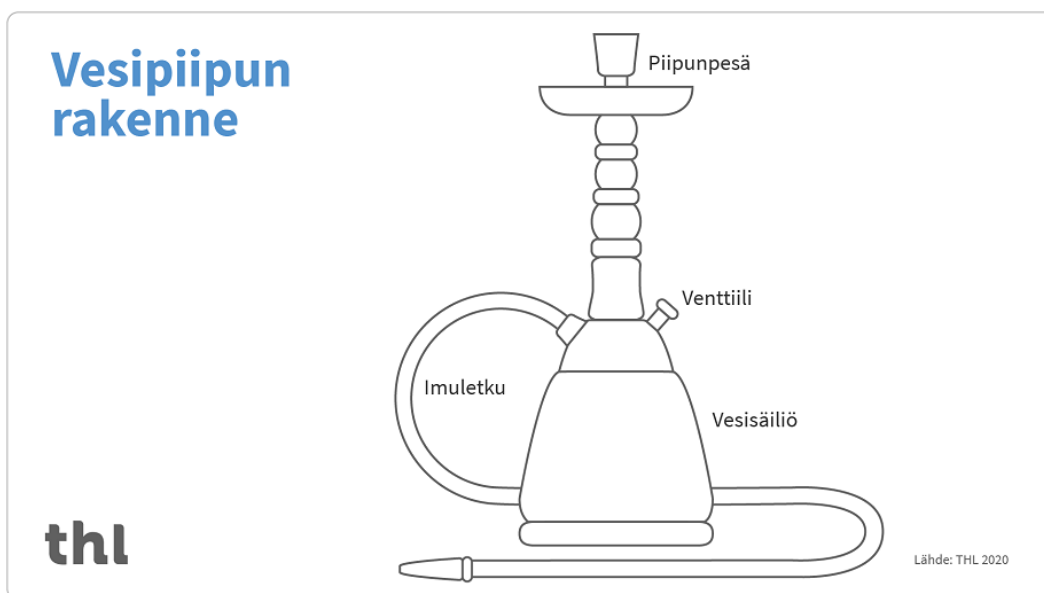
According to section 72 of the Tobacco Act, notwithstanding the provisions of sections 68 and 71, a retailer may show purchasers at their request a printed catalogue presenting the products or unit packets thereof on sale at the sales outlet. The printed catalogue may also display a product's trademark. At the purchaser's request, a retailer may also give to a purchaser a printed list of said products and their prices.

According to section 76 of the Tobacco Act, smoking may be allowed in a separate smoking area that has been approved for smoking purposes under the Land Use and Building Act (132/1999). In such cases, it must be ensured that tobacco smoke cannot enter areas where smoking is prohibited. Smoking areas may not be located within indoor areas that are mainly used by persons under the age of 18. Apart from work that is necessary for maintaining order, fire and rescue services and work that is necessary for ensuring safety, working is prohibited in smoking areas. The smoking area may be cleaned only after it has been carefully aired. If a smoking area is established in a restaurant, it must be reasonably large in proportion to the size and seating capacity of the business premises. It is prohibited to serve or consume food and drink in the smoking area. An economic operator must draw up a self-monitoring plan describing how the functionality of the smoking area is to be ensured and how the conditions and order in the smoking area can be supervised from outside the area.

According to section 77 of the Tobacco Act, if a smoking area referred to in section 76 of the Act is established in a restaurant, it must be reasonably large in proportion to the size and seating capacity of the business premises. It is prohibited to serve or consume food and drink in the smoking area. An economic operator must draw up a self-monitoring plan describing how the functionality of the smoking area is to be ensured and how the conditions and order in the smoking area can be supervised from outside the area.

Definitions

A **waterpipe** is a smoking accessory used for smoking tobacco products, for example, in which the smoke is led to the mouth and lungs through water. Waterpipes are most often used to consume tobacco products such as waterpipe tobacco as well as tobacco substitutes, such as herbal products for smoking or steam stones.



Picture 1 Translation

Vesipiipun rakenne	The structure of a waterpipe
Piipunpesä	Bowl
Venttiili	Valve
Imuletku	Hose
Vesisäiliö	Water jar

Waterpipe tobacco means a tobacco product that can be exclusively consumed via a waterpipe (section 2, subsection 9 of the Tobacco Act). Among other designations, waterpipe tobacco is also known as maassel, tumbak, jurak, hookah tobacco, shisha tobacco.

Tobacco substitute means a product which corresponds to tobacco in its intended use but does not contain tobacco (section 2, subsection 14 of the Tobacco Act). Tobacco substitutes include herbal products for smoking and steam stones.

Herbal product for smoking means a tobacco substitute that is made of plants and intended for consumption via a combustion process (section 2, subsection 15 of the Tobacco Act). These include herbal mixtures used in waterpipes which do not contain the tobacco plant, called herbal shisha and herbal molasses. They are composed of sugar cane, molasses (treacle), herbs and flavourings.

Smoking accessory means equipment or supplies mainly intended for smoking or the preparation thereof (section 2, subsection 16 of the Tobacco Act). Smoking accessories include waterpipes and the charcoals used in them.

Unit packet means the smallest individual packaging of a tobacco product, or any other product referred to in the Tobacco Act that is placed on the market (section 2, subsection 31 of the Tobacco Act).

Marketing means advertising, indirect advertising and other promotion efforts as well as tobacco sponsorship (section 2, subsection 35 of the Tobacco Act). Its relevance in this context involves a full-scale marketing ban, covering all measures aiming to result in or promote the consumption and demand for the products referred to in the Tobacco Act.

Smoking means the use of tobacco products intended for consumption via a combustion process or other form of heating (section 2, subsection 38 of the Tobacco Act). What is provided in the Tobacco Act regarding smoking and tobacco smoke also applies to the consumption of herbal products for smoking and the use of electronic cigarettes as well as the resulting smoke, vapour and particles. The combustion of waterpipe tobacco and herbal products for smoking in a waterpipe constitutes smoking.

Indoor area means a closed indoor space with ceiling, floor and walls or an area of which it is possible to construct a closed space by installing an additional plane structure and which is intended for living or staying or as a waiting or working area (section 2, subsection 39 of the Tobacco Act).

Smoking area means a separate space in an indoor area that has been approved by building inspection authorities for smoking purposes (section 2, subsection 40 of the Tobacco Act).

Retails sales

Waterpipe tobacco may only be sold or otherwise supplied under a retail licence that is specific to the sales outlet and licence holder and granted by the municipality where the sales outlet is located (section 44 of the Tobacco Act). A retail licence is also a precondition for the purchase of these products from wholesale for retail purposes. Further information on applying for a retail licence, the preconditions for granting a licence and a licence holder's obligations can be found in Valvira's guidelines on the retail sales of tobacco products and nicotine-containing liquids subject to a licence.

Manufacturers and importers must submit notifications and other information concerning waterpipe tobacco and herbal products for smoking to Valvira (section 10 of the Tobacco Act). A retailer must ensure, through their own self-monitoring, that the aforementioned notifications on the products have been made (section 54 of the Tobacco Act). A product for which the notification in question has not been made may not be sold.

Although characteristic aromas and flavours are not prohibited in respect of waterpipe tobacco, one must note that they may not contain additives that facilitate nicotine uptake or the inhalation of smoke, such as menthol (section 11 of the Tobacco Act). The sale or other supply of products intended for the flavouring of waterpipe tobacco is also prohibited (section 52 a of the Tobacco Act; transition period continues until the end of April 2023, provided that the products have been manufactured or released for free circulation prior to 1 May 2022).

The self-monitoring obligation pursuant to section 54 of the Tobacco Act applies to all sellers of tobacco products, tobacco substitutes and smoking accessories. The self-monitoring serves to ensure that the aforementioned products are not sold or otherwise supplied to minors. A person engaging in the sale of the products in question must also be at least 18 years of age (section 56 of the Tobacco Act). However, a person younger than that may sell the said products, if they are sold under the supervision of a person who has reached the age of 18. Self-monitoring is discussed in more detail in Valvira's guidelines on the self-monitoring of products subject to the Tobacco Act.

In accordance with section 71 of the Tobacco Act, tobacco products or tobacco substitutes may not be displayed at the sales outlet. Smoking accessories may be displayed if they do not display the trademark of a tobacco product, tobacco substitute, electronic cigarette, nicotine-containing liquid or a smoking accessory intended for the heating of a tobacco product. This rule does not apply to specialised shops in which the products and their trademarks can be

displayed, provided that they are not visible from outside the sales outlet. However, the products' presentation in a specialised shop may not violate the marketing ban. Notwithstanding the display and marketing ban, a retailer may show purchasers at their request a printed catalogue presenting the products or unit packets thereof on sale at the sales outlet or give to a purchaser at their request a printed list of said products and their prices (section 72 of the Tobacco Act). The display ban is discussed in more detail in Valvira's guidelines on the display of products subject to the Tobacco Act.

The sale of tobacco products may only be indicated by keeping the retail licence on display (section 47 of the Tobacco Act) and the age limits applicable to the sale of tobacco products and tobacco substitutes by keeping a clearly noticeable sign to that end on display (section 53 of the Act). The marketing of tobacco products, tobacco substitutes, smoking accessories, tobacco imitations, electronic cigarettes or nicotine-containing liquids is prohibited (section 68 of the Tobacco Act). Marketing is by nature commercial communication, the objective or direct or indirect effect of which is to promote the sale of the product on sale. The marketing is prohibited in all marketing media.

Unit packets

Tobacco products and herbal products for smoking may be sold and otherwise supplied to consumers only in unit packets that comply with the Tobacco Act and the provisions issued under it as well as with relevant EU legislation (section 31 of the Tobacco Act). Therefore, waterpipe tobacco or an herbal product for smoking may not be sold to a customer without a unit packet, i.e. by portioning it out into the bowl of a waterpipe, for example. However, a unit packet may be opened once the customer has purchased it, after which the product can be portioned into a waterpipe bowl and the customer offered the opportunity to keep the packet. The entire contents of the packet must be handed over to the customer; alternatively, any remaining content must be disposed of. The remaining contents of the product may not be sold. Nor may a retailer open a packet themselves and divide the product into smaller unit packets. A retailer must also ensure, in the context of their self-monitoring, that the products' unit packets comply with the requirements provided in the Tobacco Act (section 54 of the Tobacco Act).

The marketing ban pursuant to section 68 of the Tobacco Act applies to the unit packets of all products subject to the Tobacco Act. This being the case, nor may the unit packets of waterpipe tobacco, tobacco substitutes or smoking accessories or their labelling result in or promote the consumption or demand for the products in question. The labelling of unit packets are discussed in more

detail on Valvira's website and in the appendix to the template for a self-monitoring plan.

Waterpipe tobacco

The unit packets of waterpipe tobacco must carry text warnings in Finnish and in Swedish of the adverse health effects of tobacco products and picture warnings of the adverse health effects of tobacco products as well as an information message about the harmfulness of tobacco smoke and information on the cessation of smoking (section 32 of the Tobacco Act). As of 20 May 2024, the unit packets of waterpipe tobacco must also contain a unique identifier to ensure the traceability of a unit packet and a tamper-proof security feature, composed of visible and invisible elements.

Due to what is referred to as the plain packaging regulation, as of 1 May 2023, a unit packet of waterpipe tobacco may, in addition to the aforementioned markings, display only the tobacco product's brand name and tobacco product category, the manufacturer's or importer's business name and contact information as well as the packet size and bar code of the product in such a way that the unit packet is not, in respect of its labelling, distinguishable from other unit packets of the same tobacco product category, and that the labelling does not promote the product's sales.

Herbal products for smoking

The unit packet of an herbal product for smoking must carry text warnings in Finnish and in Swedish of the product's adverse health effects.

Labelling elements prohibited in waterpipe tobacco and herbal products for smoking

The labelling on unit packets may not (sections 33 and 39 of the Tobacco Act):

- promote the product or encourage its consumption by creating an erroneous impression about its characteristics, health effects, risks or emissions;
- include any information about the nicotine, tar or carbon monoxide content of the product;
- suggest that the product is less harmful than others or aims to reduce the effect of some harmful components of smoke (e.g. natural, organic, additive-free);

- suggest that the product has vitalising, energetic, healing, rejuvenating, natural or organic properties or that its use has other health or lifestyle benefits (e.g. energy, organic);
- resemble a food or a cosmetic product;
- suggest that the product has environmental advantages;
- suggest that the product is fire safe or otherwise create an impression that the product is not dangerous or that it has a reduced fire risk compared to other similar products;
- refer to the absence of taste, smell, any flavourings or other additives (e.g. no flavourings).
- The labelling on a unit packet of waterpipe tobacco may not refer to taste, smell, any flavourings or other additives.
- The labelling on a unit packet of waterpipe tobacco may not suggest that the product has environmental advantages.
- The labelling on a unit packet of waterpipe tobacco may not suggest that the product is fire safe or otherwise create an impression that the product is not dangerous or that it has a reduced fire risk compared to other similar products.

Waterpipe cafés and restaurants

The smoking of waterpipe tobacco and herbal products for smoking in a waterpipe indoors may be allowed only in a separate smoking area that has been approved for smoking purposes under the Land Use and Building Act (132/1999) (section 76 of the Tobacco Act). The Government Decree on Smoking Areas and Housing Corporations' Applications for Smoking Bans (601/2016) lays down more detailed provisions on the structural engineering requirements applicable to a smoking area's structure and functionality.

Any smoking prohibitions imposed with regard to public events held outdoors must be taken into account. Smoking prohibitions regarding public events are discussed in more detail in Valvira's guidelines on smoking prohibitions pursuant to the Tobacco Act at public events, playgrounds and beaches.

Apart from work that is necessary for maintaining order, or for fire and rescue services and work that is necessary for ensuring safety, working is prohibited in smoking areas. A smoking area may be cleaned only after it has been carefully aired (section 76 of the Tobacco Act). This means that an employee or economic operator may not carry a waterpipe to a customer in a smoking area, prepare it for use or visit the smoking area to make sure that it works. Nor may

waterpipes be collected from the smoking area once customers no longer use them before the area has been carefully aired. The serving or consumption of food and drink in the smoking area is prohibited. Given that the area is intended solely for smoking, nor may any ancillary activities, such as games or television, be provided in the area (Government Bill HE 226/2005 vp.).

The proprietors of indoor or outdoor areas and organisers of public events must put up signs indicating areas where smoking is prohibited and where smoking is allowed (section 80 of the Tobacco Act). To facilitate the maintenance of order, a sign indicating the area's maximum number of users should also be put on display outside the smoking area.

An economic operator must draw up a self-monitoring plan describing how the functionality of the smoking area is ensured and how the conditions and order in the smoking area can be supervised from outside the area (section 77 of the Tobacco Act). The smoking area or an exhaust air duct must be furnished with a fixed measuring device which allows the exhaust air to be checked outside the smoking area. The smoking area's ventilation must be inspected regularly, and a record must be kept of the observations. A restaurant's smoking area must also be built in such a way that it can be supervised from outside the area or the supervision must be arranged in some other way (section 3 of the Government Decree on Smoking Areas and Housing Corporations' Applications for Smoking Bans).

It should be noted that smoking and activities comparable to it are also prohibited in outdoor serving areas if such an area can be considered an indoor area pursuant to the Tobacco Act, i.e. the area does not have two open wall planes.

The corporate image marketing of a waterpipe café or restaurant is permitted, meaning that the restaurant itself can be marketed. In contrast, waterpipes and their parts are smoking accessories and the products smoked in them are tobacco products and tobacco substitutes, which may not be marketed due to the marketing ban provided in section 68 of the Tobacco Act. Therefore, the possibility of smoking a waterpipe cannot be marketed to consumers, nor may the products' sales be promoted in any other way. Given that the marketing is prohibited in all marketing media, nor may a waterpipe café or the possibility of smoking a waterpipe be marketed on the company's website or on social media, for example.

The Tobacco Act does not prohibit the display of waterpipes, provided that they are not furnished with the trademarks of tobacco products, tobacco substitutes, electronic cigarettes or nicotine-containing liquids. However, the presentation of

the waterpipes may not be promotional. The promotional placement of waterpipes in a manner that would in some way highlight the products could be considered promotional. Nor may the waterpipes be visible from outside the restaurant in a promotional manner, meaning that they cannot be placed in a display window, for example. Tobacco substitutes, on the other hand, may not be kept on display in a restaurant, because tobacco products and tobacco substitutes are subject to the display ban pursuant to section 71 of the Tobacco Act. The marketing ban also includes a prohibition to link the products referred to in the Tobacco Act to the sale or supply of other products or the provision of services. Therefore, beverage offers or the like cannot be linked to the smoking of a waterpipe in a waterpipe café, for example.

Supervision

According to section 8, subsection 1 of the Tobacco Act, municipalities must supervise, within their territories, compliance with provisions on the sale or other supply of tobacco products, tobacco substitutes, smoking accessories, electronic cigarettes and nicotine-containing liquids; compliance with provisions on the marketing and display bans laid down in the Act; and compliance with the provisions on smoking prohibitions and restrictions.

According to section 6 of the Tobacco Act, Valvira guides regional state administrative agencies and municipalities in carrying out the tasks assigned to them under the Tobacco Act.

Consequences

According to section 96 of the Tobacco Act, if a municipality performing its supervisory duties observes within its territory activities that violate the Tobacco Act or the provisions issued under it, the municipality may prohibit such activities. Further, according to section 105, to enforce a prohibition or an order issued under the provisions of the Tobacco Act, a municipality may issue a notice of a conditional fine or a notice of enforced compliance, which means that a measure that has not been implemented within the time limit set will be carried out at the defaulter's expense.

According to section 97, subsection 1 of the Tobacco Act, a municipality may cancel a retail licence referred to in section 44 for a fixed period of at least one week and not more than six months, if the holder of the retail licence despite a written warning or a criminal sanction issued by the municipality or other supervisory authority markets tobacco products, tobacco substitutes, smoking accessories, tobacco imitations, electronic cigarettes or nicotine-containing

liquids in violation of section 68 or displays tobacco products, tobacco substitutes, electronic cigarettes, nicotine-containing liquids, smoking accessories intended for the heating of a tobacco product or their trademarks at the sales outlet in violation of section 71. Further according to subsection 2, a municipality may permanently cancel a retail licence, if the holder of the retail licence continues or resumes the illegal activity referred to in subsection 1 despite the temporary cancellation of the licence and if the act cannot be considered minor.

According to section 110 of the Tobacco Act, a party who intentionally markets a tobacco product, tobacco substitute, smoking accessory, tobacco imitation, electronic cigarette or nicotine-containing liquid in violation of section 68 or displays tobacco products, tobacco substitutes, electronic cigarettes, nicotine-containing liquids, smoking accessories intended for the heating of a tobacco product or the trademarks thereof at the sales outlet in violation of section 71 must be sentenced to a fine for a tobacco marketing violation. The same applies to the party or their employee commissioning or implementing a marketing action.

According to section 114 of the Tobacco Act, the proprietor of a means of public transport, indoor areas or outdoor areas, or their representative, or an organiser of a public event who intentionally or through gross negligence allows smoking in indoor or outdoor areas where it is prohibited, in violation of section 74, subsection 1; or allows working in a smoking area in violation of section 76, subsection 2 or allows food or drink to be served or consumed in a smoking area in violation of section 77, subsection 1 must, unless the failure is deemed to be petty or a more severe penalty has been provided elsewhere in law for the act, be sentenced to a fine for a failure to take protective measures against exposure to tobacco smoke. What is provided in subsection 1 on smoking also applies to smoking an herbal product for smoking and using an electronic cigarette.

Further information:

Further information is provided by

Decision-maker Jussi Holmalahti, Director

Referendary Pia Malm, Senior Officer

Further information can be inquired by sending an email to tupakka@valvira.fi



National Supervisory Authority
for Welfare and Health, Valvira

Ratapihantie 9, 00520 Helsinki, Finland
P.O. Box 43, 00521 Helsinki, Finland
Koskenranta 3, 96100 Rovaniemi, Finland

Tel. +358 295 209 111
kirjaamo@valvira.fi
valvira.fi