

### FACTSHEET 3: SHOOTING IN THE DARK

## Too many missing pieces in assessments of the Tobacco Control Bill's socio-economic impact

*Shortcomings in the Socio-Economic Impact Assessment (SEIA) process raise significant concerns about the foundation upon which the current version of the Tobacco Products and Electronic Delivery Systems Control Bill is being considered.*

The Socio-Economic Impact Assessment (SEIA) process was introduced to ensure a thorough consideration of the full costs and economic impacts of new laws in South Africa. They form a critical part of law-making, as they help law-makers understand the consequences of any new legislation they may be considering.

When it comes to the Tobacco Products and Electronic Delivery Systems Control Bill (also known as the TCB), there are some serious questions about whether this process has been done properly and independently – which has resulted in some valid concerns about the legislation itself.

First, some background:

- **Potential bias in initial assessment:** The 2016 initial SEIA was conducted by the University of Cape Town's Economics of Tobacco Control Project (ETCP), which is funded by the Bill and Melinda Gates Foundation. This arrangement raises questions about the impartiality of the assessment, given the foundation's known anti-tobacco stance.
- **Lack of transparency:** The 2018 version of the Bill was published for public comment without the accompanying SEIA or Explanatory Memorandum, contrary to SEIA guidelines.
- **Failure to account for market changes:** Significant market shifts occurred due to the COVID-19 pandemic and the 2020 tobacco sales ban, particularly affecting illicit trade. These changes are not reflected in any updated SEIA.
- **Lack of harm reduction assessment:** The SEIA process failed to include an assessment from a harm reduction perspective. This omission is significant, as it overlooks potential public health benefits that could arise from less harmful alternatives to traditional tobacco products. A comprehensive SEIA should consider the potential impact of harm reduction strategies on both public health outcomes and economic factors.
- **Non-compliance with DPME conditions:** The Department of Planning, Monitoring and Evaluation (DPME) issued a SEIA certificate in 2022 contingent on a comprehensive cost-benefit analysis. This analysis remains outstanding, which raises questions about whether the SEIA certificate is valid.
- **Substantive changes without new assessment:** The 2022 version of the Bill, tabled in the National Assembly in December of that year, contains significant amendments compared to the 2018 version -- yet no new SEIA has been conducted on these changes.

- **Inadequate interdepartmental consultation:** The SEIA process appears to have dismissed or inadequately addressed concerns raised by other government departments, including the Department of Tourism and the South African Police Service. Also, it can be questioned if other government departments whose mandates are directly affected by the Bill have been sufficiently consulted, including:
  - a. **Department of Trade, Industry and Competition (DTIC):** The Bill proposes setting product standards for tobacco and electronic delivery systems, a function that typically falls under the DTIC's purview. There is no indication of meaningful consultation with DTIC on this matter, potentially leading to conflicts in regulatory oversight and implementation challenges.
  - b. **Ministry of Police:** The Bill introduces severe penalties that would require enforcement by the police. However, there's no evidence of substantial consultation with the Ministry of Police regarding the feasibility of enforcing these penalties or the potential impact on police resources and priorities.
  - c. **Department of Agriculture:** Such a draconian bill will further benefit illicit operators. Due to a 70% illicit market, leaf production has already declined by more than 40% since Covid, decimating thousands of jobs in rural areas. More job losses cannot be allowed.
- **Questionable claims of no cost implications:** The Explanatory Memorandum to the 2022 Bill claims no cost implications for the State, a statement that appears unsupported without a comprehensive cost-benefit analysis.

### So what should be done?

Given that an up-to-date, comprehensive SEIA is central to the consideration of any new legislation, SATTA proposes that the following steps should be taken before the Tobacco Control Bill legislative process goes any further:

1. The **Department of Health** should be directed to provide a complete and up-to-date SEIA document, including an unbiased and comprehensive cost-benefit analysis.
2. The Bill itself should be referred to **Nedlac**, with a mandate to conduct an independent and thorough cost-benefit analysis as part of the consultation process between stakeholders.
3. Further deliberations on the Bill should be delayed until a proper **SEIA**, reflective of current market realities and inclusive of all stakeholder concerns, has been completed and reviewed.
4. A comprehensive review should be undertaken of **interdepartmental consultations** and discussion by the relevant Parliamentary Committees, in particular Trade & Industry and Police. This process should require evidence of follow-through on commitments, allow adequate time for departments to present impact evidence in their sectors, and ensure a comprehensive understanding of the Bill's potential cross-sectoral impacts.

### We need evidence-based solutions

The shortcomings in the current SEIA process raise significant concerns about the foundation upon which the Tobacco Products and Electronic Delivery Systems Control Bill is being considered. This foundation is of critical importance as it becomes increasingly apparent that the Bill will require amendments to be fit for purpose and evidence based.

Without a solid foundation of comprehensive socio-economic impact assessment, including a robust cost-benefit analysis and thorough stakeholder consultation, the Portfolio Committee on Health risks recommending amendments that may have unintended consequences or fail to achieve the Bill's intended objectives.