APPG Vaping – COP 9 consultation response

The Independent European Vape Alliance (IEVA) represents vaping companies in Europe that are independent of tobacco companies. We unite manufacturers, wholesalers and trade bodies operating in the European Union, providing a credible voice for the sector.

According to the European Commission, a quarter of Europeans still smoke, and half of them will die from a smoking related disease (European Commission, 2017). This is a public health challenge we can overcome. Alongside traditional tobacco control measures, encouraging smokers to use less harmful nicotine delivery mechanisms, like vaping products, has the potential to improve tens of millions of lives.

We welcome the opportunity to respond to this consultation and applaud the APPG for undertaking an exercise in stakeholder engagement that - as far as we are aware - no party to the Convention has undertaken in its history. We provide in Annex I a brief history of the FCTC and its relationship with vaping products in the hope that this high level summary - or "cheat sheet" - will be helpful to members of the Committee.

1. What problems are these policies and positions supposed to address?

Before the COVID-19 pandemic tragically struck, it could be argued that the world's population was healthier than it had ever been. Through improvements in education, hygiene, medical infrastructure, antibiotics, vaccines and other medicines, much of the world's population are living healthier, happier and longer lives.

In addition to the advances in vaccine technology necessitated by the pandemic, the next great wave of public health advances will be made in the fight against non-communicable diseases (NCDs). Combined, these illnesses were responsible for 70% of all deaths each year pre-pandemic, over a third of which are the premature deaths of people between the ages of 30 and 69. While medical science continues to develop ever more effective treatments, much of this battle will be won in the field of prevention.

Independent European Vape Alliance
Square de Meeus, 37, 4th, 1000 Brussels, Belgium
Tel.: +32 (0)2 791 77 59, Email: s.herrmann@eurovape.eu
www.eurovape.eu

President: Dustin Dahlmann
Registration Number: 0760.401.410.
Transparency Register: 132577234842-10

Many of the gains made thus far have been as a result of a decades long battle to eliminate the horrendous toll of smoking and tobacco use. Millions of lives have been saved as governments have introduced measures designed to get people to quit and to prevent others from starting. These efforts have been further bolstered over the last 14 years as governments have worked to implement their commitments under the Framework Convention on Tobacco Control. Yet, despite these efforts, 7 million people will die this year due to tobacco related illness. That figure will rise to 8 million by 2030 (WHO, 2020). Without urgent action, tobacco will claim over a billion lives this century.

It is clear that regulatory measures alone cannot solve this epidemic. Government legislation offers no silver bullet. Numerous countries that have implemented comprehensive tobacco control regimes continue to have stubbornly high smoking rates and in some places they are actually on the rise. The reality is that many people, despite the best of intentions and repeated efforts, are unable to quit. The question for the WHO and governments is what to do with these tens of millions of smokers who simply can't give up.

The scale of the challenge, and the multitude of symmetrical approaches needed to overcome it, are encapsulated in the WHO's own goals. In a recent anti-smoking campaign announced in December 2020, WHO stated its ambition to help 100 million smokers quit using traditional medication and willpower (WHO, 2020). The campaign has been sponsored by major pharmaceutical companies and the organisation behind the "Allen Carr method". While the objectives of such a campaign may appear to be ambitious, they represent an objective to help a mere 10% of the affected global population.

In many countries, large numbers of smokers are dramatically reducing their risk of disease and premature death by switching to vaping. Leading tobacco control jurisdictions like the UK, Canada and New Zealand, as well as a growing chorus of tobacco control advocates, scientists and medical professionals have publicly stated that these products are significantly lower in risk than continued smoking. In embracing tobacco harm reduction, they are giving many smokers a choice they haven't previously had.

The Framework Convention on Tobacco Control speaks to the right of all people to the highest standard of health. It defines "tobacco control" as a range of supply, demand and harm reduction strategies that aim to improve health by eliminating or reducing consumption of tobacco products and exposure to tobacco smoke. Despite this, little has been done by the WHO and the Parties to the FCTC to seriously explore the life-changing potential of encouraging smokers to switch to

Independent European Vape Alliance
Square de Meeus, 37, 4th, 1000 Brussels, Belgium
Tel.: +32 (0)2 791 77 59, Email: s.herrmann@eurovape.eu
www.eurovape.eu

President: Dustin Dahlmann
Registration Number: 0760.401.410.
Transparency Register: 132577234842-10

electronic nicotine delivery systems (ENDS); and, in fact, much energy has been dedicated to discouraging this switch using a combination of questionable science and unjustified moral panic.

2. Justification of proposals

Over the course of the last five COPs, five separate reports by the WHO, FCTC Secretariat and a group of experts have been submitted to the Parties for their consideration (COP4, COP5, COP6, COP7, COP8). These reports have in their various forms represented the ongoing struggle of the WHO and FCTC Secretariat to grapple with the often incomplete and/or conflicting data they have relied upon to assess the potential risks and benefits of the category.

Despite no formal decisions on the matter, statements of the WHO and the FCTC Secretariat have been overwhelmingly negative on the subject of vaping products, indicating that many within the FCTC community seek evidence to justify the policy they want, rather than assessing the evidence to determine the policies that would best reduce the herms from smoking.

As a result, the recommendations contained in the five reports have exclusively focused on various possible measures to prevent and control the spread of vaping products. Among these have been recommendations that Parties consider banning vaping products. Other options have included regulating vaping products as tobacco products or as medicinal products; both of which are inappropriate since vaping products do not contain tobacco and manufacturers do not make medicinal claims.

Consistently throughout these reports, the WHO and FCTC Secretariat have raised alarm bells over the increased involvement of transnational tobacco companies in the manufacture, promotion and sale of these products. What is conspicuous in its absence from the reports is any consideration of measures by which to actively promote the trial and adoption of ENDS by adult smokers who are unable or unwilling to quit.

This has been the case despite the fact that harm reduction is coded into the treaty in the Article 1 definition of tobacco control, which is defined as "a range of supply, demand and *harm reduction strategies* that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke." [emphasis added]

Independent European Vape Alliance
Square de Meeus, 37, 4th, 1000 Brussels, Belgium
Tel.: +32 (0)2 791 77 59, Email: s.herrmann@eurovape.eu
www.eurovape.eu

President: Dustin Dahlmann
Registration Number: 0760.401.410.
Transparency Register: 132577234842-10

Despite the negative views of the WHO and the Secretariat, the only substantive decisions taken by the Parties have been more balanced in their approach in that Parties advocating for regulations to prevent and control the spread of ENDS have been unable to achieve a consensus in support of such measures. A Costa Rican proposal during COP6 that would have called on Parties to implement strict regulations and mandated the creation of an intersessional Working Group to develop guidelines was significantly amended as a result of lengthy negotiations between various country delegations. The resulting decision left a full range of regulatory options open to the Parties, while encouraging them to "consider banning or restricting advertising, promotion and sponsorship." The proposed mandate for the formation of a Working Group to develop guidelines was dropped in favor of a request to the WHO to prepare an expert report for COP7 on emerging evidence and potential policy options.

With respect to COP7 and the last decision to date to be adopted by the Parties with respect to vaping products, it merely calls on the Parties to "consider" a range of policy options outlined in the WHO's COP7 report as may be appropriate to their public health objectives. The decision also invites the WHO to update future COPs on emerging evidence and to report back on the development of regional and international standards for the testing and measuring of contents and emissions. A report on the latter will be provided to the Parties at COP9.

At COP8, a progress report on ENDS regulatory and market developments was presented to the Parties as a result of a request by the COP Bureau, the body representing the various WHO regions. The report, which is largely an update of previous reports, is notable only for the suggestion that the Convention Secretariat be given a mandate to explore the possibility of working with the WHO's International Agency for Research on Cancer (IARC) to develop a monograph on health effects and policy impacts. No such mandate was provided, and ENDS are not currently on IRAC's short to medium term research workplan.

Despite the provision of an ENDS update to the Parties at COP8, no ENDS decision was proposed. This lack of a proposal would appear to represent an acknowledgment by the WHO and Secretariat that the views of the Parties remained too divergent to overcome the lack of consensus they have encountered at previous COPs.

3. Transparency and consultation

Independent European Vape Alliance
Square de Meeus, 37, 4th, 1000 Brussels, Belgium
Tel.: +32 (0)2 791 77 59, Email: s.herrmann@eurovape.eu
www.eurovape.eu

President: Dustin Dahlmann
Registration Number: 0760.401.410.
Transparency Register: 132577234842-10

Neither the FCTC Secretariat, nor any of the Parties to the Convention in the European Union have, to our knowledge, ever consulted smokers, vapers or vaping product companies on the impact of its measures. This runs directly counter to the Commission's "Better Regulation" agenda and would be considered unacceptable in the UK policy making process.

Often, Parties to the Convention and the Convention Secretariat itself use Article 5.3 of this convention to justify their refusal to engage. Article 5.3 reads:

> *"In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."*

This Article does not forbid discussions with industry; does not cover participants in the vaping industry that are independent of the tobacco industry (such as IEVA), and certainly does not cover smokers and former smokers who have switched to vaping. However, the Convention Secretariat and its parties continue to refuse to accept input and evidence from these consumer groups.

The most egregious example of this was the refusal to permit a group of vaping product consumers to sit in as observers at COP8 (INNCO, 2018). The organisation had, at the time, refused to accept any industry funding. However, in light of this refusal to engage, INNCO accepted funding from the Foundation for a Smoke Free World. From their perspective this was an entirely logical decision: if they were to be treated like the tobacco industry, they reasoned, why not let their work benefit from its funding?

The juxtaposition with the treatment of pharmaceutical and other companies that profit both directly and indirectly from smoking is stark. The smoking cessation initiative mentioned above was sponsored in part by Johnson and Johnson, a manufacturer of nicotine replacement therapies, despite Randomized Control Trials demonstrating that such products are about half as effective in smoking cessation as vaping products (Hajek, 2019). The initiative also received sponsorship from the company marketing the *Allen Carr Easy Way to Quit Smoking*, despite this intervention not being medically approved (a criticism often levied at vaping products) and having lower 12 month cessation rates than vaping products (Keogan, 2018). The Committee should consider the biases that give rise to these discrepancies.

Independent European Vape Alliance
Square de Meeus, 37, 4th, 1000 Brussels, Belgium
Tel.: +32 (0)2 791 77 59, Email: s.herrmann@eurovape.eu
www.eurovape.eu

President: Dustin Dahlmann
Registration Number: 0760.401.410.
Transparency Register: 132577234842-10

In contrast, the UK Government has via Public Health England taken a far more rational approach, which we believe the FCTC Secretariat and the European Union would do well to mirror; there is a clear procedure for engagement with the manufacturers of all nicotine products (including those made by the pharmaceutical industry) with minutes of meetings made publicly available (PHE, 2018).

4. The threat of unintended consequences

60% of vaping product users in the United Kingdom cite their health as the primary driver of their choice (Action on Smoking and Health, 2020). The UK Government has for five years advised smokers that vaping is 95% less harmful than smoking cigarettes (PHE, 2015 and subsequent revisions) in the hope that those who cannot or will not stop smoking using more traditional methods will instead switch to vaping.

The actions of WHO and the FCTC Secretariat specifically undermine this UK public policy objective, an outcome which the UK Government has an interest in preventing, particularly given the level of public funding the UK provides for the implementation of the Framework Convention.

A clear example of this came in 2020 when WHO tweeted a number of misleading statements about vaping, overstating risks in language designed to induce moral panic. The series of tweets received significant coverage in the UK media (see, for example, Daily Mail 2020). The result is predictable: far more adult smokers now believe that vaping is less harmful despite government advice to the contrary.

5. Fit for purpose

For the reasons we state above, and even on its own terms, the FCTC and those working in its name no longer seem to be working to reduce the harms caused by smoking; choosing instead an ill-advised campaign against nicotine itself, which is not the primary cause of smoking related disease.

This is surprising given that one of the Treaty objectives is to advance harm reduction as a key component of tobacco control. Harm reduction is coded into the treaty in the Article 1 definition of tobacco control, which is defined as “a range of supply, demand and *harm reduction strategies* that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke."

Independent European Vape Alliance
Square de Meeus, 37, 4th, 1000 Brussels, Belgium
Tel.: +32 (0)2 791 77 59, Email: s.herrmann@eurovape.eu
www.eurovape.eu

President: Dustin Dahlmann
Registration Number: 0760.401.410.
Transparency Register: 132577234842-10

The Conference of the Parties (COP) should adopt a decision that reaffirms the commitment of the FCTC to the principle of harm reduction and calls on regulators to implement risk-proportionate regulation. This could ensure that the Treaty once again becomes fit for purpose.

At a minimum, the Parties to the treaty should ensure that any decisions adopted in relation to ENDS are based on sound scientific evidence and avoid recommendations that will unnecessarily limit the harm reduction benefits of the category. The UK Government should also insist on the removal of wording that seems to condone the prohibition of vaping products, as this runs directly counter to UK tobacco control policy and causes direct harm to its implementation.

Yours sincerely,

Dustin Dahlmann
President IEVA

Independent European Vape Alliance
Square de Meeus, 37, 4th, 1000 Brussels, Belgium
Tel.: +32 (0)2 791 77 59, Email: s.herrmann@eurovape.eu
www.eurovape.eu

President: Dustin Dahlmann
Registration Number: 0760.401.410.
Transparency Register: 132577234842-10