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JUUL Labs Submission to the All-Parliamentary Party Group for Vaping Inquiry into COP9

“If the great majority of tobacco smokers who are unable or unwilling to quit would switch without delay to using an alternative source of nicotine with lower health risks, and eventually stop using it, this would represent a significant contemporary public health achievement. This would only be the case if the recruitment of minors and non-smokers into the nicotine-dependent population is no higher than it is for smoking, and eventually decreases to zero.” (Paragraph 5)

WORLD HEALTH ORGANISATION, FCTC/COP/7/11 Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems 2016

Introduction

Thank you for this opportunity to submit evidence to the APPG for Vaping inquiry into COP9. COP9 or the 9th Conference of the Parties of the Framework Convention on Tobacco Control (FCTC) is an important milestone in the drive to accelerate tobacco control and an important opportunity for national governments to make their voices heard.

A COP is a meeting of the Parties, or governments, that have ratified or acceded to a treaty in international law, in this case the FCTC.

What happens at COP9 will have a global impact, affecting domestic policies in the 180+ countries, including the UK, that are Parties to the FCTC - and while the WHO is the convener of the COP, it does not have an official voice in negotiations. It is the Parties - the national governments that have the power of decision making at this WHO-hosted event. It is the Parties that bring new proposals to the table and it is the Parties that decide whether to take these proposals forward. The quality of the proposals and the outcomes of the COP are, therefore, largely in the hands of the national governments that make up the FCTC COP. The WHO does provide documents for the COP to consider, including feedback from expert groups, but this is only guidance and has no status until the COP decides on it one way or another.

The UK, as a full participant in the COP, has an important role to play here. Prior to BREXIT the UK's interests were represented by the EU delegation - while the UK could influence what the EU's positions would be, the UK did not have an independent voice. BREXIT means that the UK is no longer represented by the spokesperson for the EU states and can now present with an independent voice and position at the COP9.

The importance of an independent voice during the COP9 negotiations cannot be overstated. As a leader in tobacco harm reduction, there is now an opportunity for the UK to provide insights that can extend tobacco control strategies past an abstinence-only approach.

Because whereas the WHO institutions may continue to focus the majority of their efforts on abstinence-only strategies and appear to have a continuing interest in promoting efforts to ban or restrict the use of alternative products like e-cigarettes; the FCTC itself makes clear that harm reduction strategies that aim to reduce the risks of smoking are an important part of tobacco control (Article 1(d)).

FCTC Article 1(d)

“tobacco control” means 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.”

A 2016 WHO report prepared for the COP (FCTC/COP7/11) endorsed the role of potential reduced-risk products in improving public health thereby upholding the founding principle of the FCTC namely Article 1(d) and the role of harm reduction.

COP 7/11: POTENTIAL ROLE OF ENDS/ENNDS IN TOBACCO CONTROL

‘If the great majority of [tobacco smokers](#) who are unable or unwilling to quit would [switch](#) without delay to using an alternative source of nicotine with lower health risks, and eventually stop using it, [this would represent a significant contemporary public health achievement.](#)’

The UK, as a leader in harm reduction approaches to smoking and tobacco use, now has the ability to help put harm reduction firmly on the agenda for COP9 and on equal footing with cessation and prevention measures as the three pillars of tobacco control.

The FCTC, Harm Reduction and the Right to Health

The FCTC is the first international treaty negotiated under the auspices of WHO. It was developed in response to the increasing negative societal impacts resulting from tobacco use. It is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The FCTC recognises the need for cooperative action to tackle the public health impacts of tobacco use and provides a legal instrument for international health cooperation.

The intention of the FCTC is to protect the health and quality of life of the world's population. Indeed, the FCTC cites the determination ‘to give priority to their right to protect public health’ and notes the scientific evidence for the harm caused by smoking. Focusing its goal on the protection of health, the

FCTC urges governments to put in place such measures that would ‘protect all persons from exposure to tobacco smoke’ - the leading cause of preventable death and disease.

FCTC Preamble Recital 1:

*The Parties to this Convention,
Determined to give priority to [their right to protect public health, ...](#)*

FCTC Article 4(1):

Every person should be informed of the health consequences, addictive nature and mortal threat posed by tobacco consumption and exposure to tobacco smoke and effective legislative, executive, administrative or other measures should be contemplated at the appropriate governmental level to [protect all persons from exposure to tobacco smoke.](#)

FCTC Article 4(2):

Strong political commitment is necessary to develop and support, at the national, regional and international levels, comprehensive multi sectoral measures and coordinated responses, taking into consideration:

(a) [the need to take measures to protect all persons from exposure to tobacco smoke.](#)

(b) [the need to take measures to prevent the initiation, to promote and support cessation, and to decrease the consumption of tobacco products in any form.](#)

The FCTC contains a broad framework of obligations and its agreed text calls on global human rights treaties. It requires Parties to implement effective tobacco control strategies that include supply and demand strategies that reduce tobacco use and harm reduction measures that aim to reduce health risks by encouraging less risky behaviours or providing safer/reduced-risk products.

As such, FCTC Parties are obliged to not only allow products with the potential to reduce risk but to actively promote them as part of implementing their tobacco control policies based on the most current and relevant scientific, technical and economic considerations— so as to provide for the universal right to the highest attainable standards of health, politically, practically or otherwise.

FCTC Preamble Recital 21

The Parties to this Convention, (...) Determined to promote [measures of tobacco control based on current and relevant scientific, technical and economic considerations, ...](#)

FCTC Article 3

The objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke."

Governments have been proactive in implementing and transposing the supply and demand strategies of their FCTC obligations into national legislation and regulation, including excise taxes, product labelling and disclosure requirements, advertising bans, initiatives to prevent illicit trade and sales to minors, as well as other measures. Many governments are, however, ignoring the harm reduction obligations in the FCTC.

When drafting the original treaty (2000-2003), the advent and wide availability of alternative products, like e-cigarettes, may not have been envisioned. Nonetheless, they do now exist and are widely available. The UK has recognised the role these products can play in fulfilling its harm reduction obligations and has a regulatory environment that supports their use as alternatives to cigarettes - as a significant and successful "tobacco control" measure¹. The UK is an exception in this regard - its embracing of harm reduction - and the result is that it has the highest smoking quit rate in Europe². We hope to see principles of tobacco harm reduction included in the upcoming review of the UK TRPR (Tobacco and Related Products Regulations), as is the case in New Zealand for example. This is especially important if the UK is wanting to meet its stated aim of being smoke-free by 2030.

The UK Delegation now has the opportunity to bring its harm reduction experience to the COP and to encourage Parties to take a fresh look at the power of harm reduction to accelerate the end of smoking and to honour their FCTC harm reduction obligations.

In a world of one billion smokers, failing to embrace harm reduction means that hundreds of millions are denied their right to health because they are denied access to alternative products that have the potential to significantly reduce harm to their health.

The Case for Harm Reduction

There is ample evidence to suggest that e-cigarettes and other alternative products are significantly less harmful to health than combustible cigarettes. So much so, that it is often cited that e-cigarettes carry no more than 5 percent of the risks associated with combustible cigarettes¹.

The reason for this is simple. E-cigarettes deliver nicotine without combustion. The absence of combustion prevents exposure to over 7000 chemicals found in smoke, many of which are toxicants, and some of which are known carcinogens (they cause cancer).

The emergence of e-cigarettes and other non-combustible products like heated-tobacco-products provides an opportunity to elevate harm reduction as part of a comprehensive tobacco control strategy. This is important because, whereas prevention programmes have been successful in reducing the incidence of new smoking - particularly in developed countries - cessation programmes are less

successful in helping current smokers quit smoking altogether. In countries that have expanded access to quit assistance and extensive public health campaigns devoted to increasing awareness of quitting strategies, successful quit rates remain low - less than 10 percent of smokers are able to remain abstinent at one year. Harm reduction strategies may better reach people who aren't interested in or who are unable to quit smoking.

The UK is a leader in tobacco harm reduction and in encouraging smokers to switch away from cigarettes to alternative, potentially less-harmful products. As a result, quit rates are on the increase, with the proportion of people who successfully quit smoking in England at its highest in more than a decade^{3,4}. Quitting success rates have increased by two thirds, and smoking prevalence in England is at an all-time low of 13.9%^{3,4}.

By contrast, Europeans are not quitting. The 2020 EUREST-PLUS ITC Europe Survey² revealed that in the other countries studied (Germany, Greece, Hungary, Poland, Romania and Spain and The Netherlands), a majority of smokers said that they had not tried to quit; have never tried to quit and don't intend to try any time soon.

The success in the UK is clearly linked to the broad evidence-based consensus in favour of e-cigarettes being something that smokers can and do switch to completely^{5,6}. In addition, and by further comparison with the EU, regulators and the public health community in the UK are aligned in recognising that e-cigarettes are a safer alternative to smoking and that vaping can help smokers move away from combustible cigarettes^{1,5,6}.

The authors of the European Survey² concluded that approaches to quitting smoking in the EU need to be re-examined including increasing the use of quit support. They note the link between successful quitting, public health support and a receptive regulatory environment in the UK.

APPG COP9 Inquiry

Over the coming months, the UK and other national governments (The Parties) will be formulating their negotiating positions and principles in preparation for COP9. It would be expected that each Party's positions would be based largely on the national experience. In helping to formulate the position of the UK, the APPG has first sought to answer several important questions.

Q1) What problem are these policies and positions supposed to address?

The policies and positions brought to the COP should address the protection of the right to health and advocate for public health strategies that elevate harm reduction in addition to prevention and cessation measures for tobacco control.

It is our expectation that policies and positions brought to the COP9 negotiations by the UK delegation reflect the national position.

Endorsing the use of alternative products as part of a harm reduction strategy, as the UK does, is not at odds with the FCTC. Indeed, the harm reduction and human rights obligations written into the FCTC mean that Parties are obliged to not only allow these alternatives but to actively promote them as part

of implementing their tobacco control policies so as to provide for the universal right to the highest attainable standards of health, politically, practically or otherwise.

And previous COP reports (COP7/11) have recognised the role that these alternative products like e-cigarettes, also called electronic nicotine delivery devices or ENDS, can play in helping to attain the highest standards of health.

COP 7/11: POTENTIAL ROLE OF ENDS/ENNDS IN TOBACCO CONTROL

Based mostly on the levels and number of toxicants produced during the typical use of unadulterated ENDS/ENNDS made with pharmaceutical-grade ingredients, [it is very likely that ENDS/ENNDS are less toxic than cigarette smoke](#). However, ENDS/ENNDS are unlikely to be harmless, and long-term use is expected to increase the risk of chronic obstructive pulmonary disease, lung cancer, and possibly cardiovascular disease as well as some other diseases also associated with smoking. [The magnitude of these risks is likely to be smaller than from tobacco smoke](#), although there is not enough research to quantify the relative risk of ENDS/ENNDS over combustible products.

[https://www.who.int/fctc/cop/cop7/FCTC COP 7 11 EN.pdf?ua=1](https://www.who.int/fctc/cop/cop7/FCTC_COP_7_11_EN.pdf?ua=1) Paragraph 11)

The WHO's own study group on tobacco product regulation (TobReg) has also concluded that the scientific evidence indicates that products like e-cigarettes can have an overall positive impact on public health.

WHO TOB-REG - Report on the Scientific Basis of Tobacco Product Regulation - 7th Report, 2019

[The available evidence indicates a possible positive effect of ENDS on population health, particularly if appropriate ENDS regulation is enacted to maximize their benefits and minimize their risks.](#) (Page 60)

The UK has embraced tobacco harm reduction and its regulatory environment supports the use of reduced-risk products as alternatives to cigarettes. The result: Quit rates are at an all-time high; smoking is at an all-time low and vaping is the most popular quit aid^{2,3,4}. The UK is now perfectly placed to bring this experience to the negotiations.

Q2) TRANSPARENCY AND CONSULTATION What advice and evidence does the WHO receive and how this leads them to their policy positions?

The WHO does not make policy decisions. While the WHO hosts the COP, and it provides documents in advance of the COP to guide discussion, it has no official voice in the negotiations and cannot propose amendments in the negotiating text.

It is only the Parties, national governments that have ratified or acceded to the FCTC, that can fully participate in the COP. The Parties bring policy positions and principles and make the decisions. There are currently 182 Parties to the FCTC. A chief delegate, delegate or alternate nominated by the country

may negotiate on behalf of that country if that person has been granted the authority to participate in the negotiations.

The WHO creates reports to inform and influence the negotiation process. The Tobacco Free Initiative (TFI), the WHO tobacco control arm, provides policy and legal guidance throughout the negotiations by preparing draft provisions, brokering negotiating compromises, and advising country representatives.

The WHO can make interventions to aid the negotiation process and has been known to encourage governments to carry its views. The reason harm reduction has not been fully embraced is because governments are not raising it and many of the institutions of the WHO are discouraging it.

Q3) JUSTIFICATION OF PROPOSALS To what extent will COP9 justify any measures it proposes?

The agenda at COP9 will be largely determined by what has happened at previous COPs. The most recent decision on vaping was taken at COP7, when the FCTC Secretariat was asked to invite Parties to monitor and report on scientific, regulatory and market developments like initiation and cessation. A progress report was presented at COP8, but no decision was made. On this basis, we can expect that a new progress report will be forthcoming for COP9.

The substance of past reports suggest that we can expect recommendations including potentially banning e-cigarettes and other vaping products, banning flavours in these products, restricting the ability to communicate, plain packaging etc. It is important to note that many of these recommendations would be out of step with the UK's preferred approach to tobacco harm reduction and regulation of potentially reduced-risk products.

Given the concerted efforts by the WHO and the FCTC Secretariat to ban or restrict the use of vaping products⁷, we can expect that the Secretariat will provide progress reports to COP9 in support of this aim. In addition, we expect that delegates representing governments that have adopted onerous restrictions - or outright bans - to these alternatives will provide additional support to the Secretariat. These reports coupled with support from member Parties will inform the Parties' positions and provide the basis of negotiation and decision making by the Parties at COP9.

Preparations for COP9 - Formulating the UK Position

A COP is the domain of diplomats (backed by government advisors and subject matter experts) and the accepted practice is to diplomatically agree by consensus to proposals rather than to vote. It is, therefore, vital to ensure that the points of view of all relevant stakeholders are taken into account in the formulation of the government's official position well in advance of the actual COP, and certainly before the UK delegation departs or participates.

Public health and issue experts

Given the success of tobacco harm reduction in the UK, it is essential that the UK delegation bring this national experience to the forthcoming COP and resist any policy recommendations that would conflict with its risk-proportionate approach to regulation.

The UK boasts a world-leading stable of issue experts and public health officials whose knowledge and expertise could be invaluable resources in the crafting of the UK position. Moreover, the UK should also seek to exercise its right to bring one or more of these subject matter experts to support its negotiating team at the COP.

Industry Consultation and Article 5.3

FCTC Article 5.3

'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.'

A UK policy position that maximises efforts towards the goal of reducing smoking-related diseases will require consultation with a broad range of stakeholders, including business sectors invested in tobacco. It is after all normal practice for industry and other stakeholders to be consulted in the run-up to other Conferences of Parties. Take for example the (FCCC), the Framework Convention on Climate Change. Whereas this process (FCCC) clearly recognises the role of the industry and the need for private sector investment and research to transition away from combustion (diesel/petrol), the other (FCTC) excludes the industry entirely in its discussions on eliminating combustion in the delivery of nicotine.

Some governments and other agencies have misinterpreted Article 5.3 of the FCTC as disallowing consultation with the tobacco industry. While, in fact, Article 5.3 defines the specific rules for engagement with the tobacco industry. Ironically the guidance demands more from those the Article is vested to protect than the industry itself; providing an incentive to governmental agencies and those who receive public funding to either misinterpret Article 5.3 or rely on a strict interpretation that makes consultation with all stakeholders extremely difficult.

This will only serve to impede progress in innovation and enable tobacco industries to continue to rely on a profit-generating product that we know to be deadly - the combustible cigarette - rather than invest in products that have, thus far, been shown to have the potential to be reduced risk and to have wide consumer acceptance.

Recommendations

- Ensure that the UK position is based on national experience and public health priorities.
- Leverage the work and experience of Public Health England and other subject matter experts to craft the UK position and to support the UK delegation at COP9.
- Seek to determine whether a new progress report on vaping products is forthcoming.
- Insist that this report be based on scientific evidence and object to the tabling of any report that is not based on the latest scientific and technical information.
- Garner support from like-minded countries for the creation of a Working Group on Harm Reduction with a view to issuing a report for consideration at COP 10.
- Support guidance that improves how governments and other agencies or public health bodies view engagement with industry and those who receive funding from the industry. This guidance could cover:

- How to facilitate engagement with issue experts, including tobacco industry researchers and those that may receive support from the tobacco industry.
- Guidance on communication with the tobacco industry that does not impose onerous burdens on governmental and non-governmental agencies that Article 5.3 is vested to protect.
- Guidance recognizing that effective and direct communications to policymakers and regulators from industry may, under some circumstances, be beneficial for public health.

Conclusion

If tobacco harm reduction measures are not being advocated for at the COP, it is because they are not being brought to the table. Harm reduction is, however, clearly an integral part of the FCTC. Parties to the FCTC are obliged, therefore, to include harm reduction strategies and measures as part of FCTC implementation in their national tobacco control strategies.

For the first time, the UK has the opportunity to independently bring its wealth of knowledge and experience in harm reduction to COP negotiations. Having an independent voice means that delegates can advocate for tobacco control strategies that represent the core values of the UK when it comes to protecting the health of all citizens, including those who smoke.

Jeannie Cameron



Vice President, International Regulatory Engagement
30 January 2021

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WHO REGIONS

The WHO is comprised of 6 regional bodies which it operates through: European Region (EURO); Eastern Mediterranean Region (EMRO); South East Asian Region (SEARO); Western Pacific Region (WPRO); African Region (AFRO); and the Pan American Region (AMRO).

The WHO is headquartered in Geneva where the Tobacco Free Initiative (TFI) and FCTC & COP Secretariat are based to carry out the administration of the FCTC. THE WHO also has scientific entities: TOBREG – tobacco regulatory committee composed of scientists, and the TOBLABNET – a network of scientific laboratories that focus on tobacco.

Article 19 in the WHO's establishment constitution grants it the right to host multilateral treaty negotiations under its auspices. It exercised this right in the 1990s to begin the development of the first global health treaty after encouragement from public health and anti-tobacco groups. A second, separate but related treaty - the FCTC Protocol on the elimination of illicit trade - entered into force in 2018.