

# Smoke Free Rooms Reviewing the recommendations of the FCTC's COP10

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## PRIMARY RECOMMENDATIONS OF THE FCTC COP10 SUMMIT

The following proposed policy items will be discussed in this paper:<sup>1</sup>

- "to ensure that regulations of tobacco products are extended and applied to all forms of nicotine and tobacco products and not restricted to conventional cigarettes;"
- "to ban the addition of menthol and other ingredients that facilitate inhalation in nontherapeutic nicotine products and all tobacco products. The ban should include synthetic coolant chemicals with a chemical structure or physiological and sensory effects similar to those of menthol;"
- "to amend national tobacco control laws if a regulatory gap for synthetic nicotine products exists, to ensure that synthetic nicotine products fall within their scope. Regulations should cover the full range of synthetic nicotine products and pharmacologically similar analogues that are currently marketed as well as products that may emerge in the future;"
- "to regulate non-therapeutic nicotine products in the same manner as products to which they are similar in appearance, content and use;"
- "to ensure that nicotine pouches are not classified as pharmaceutical products unless they are proven to be nicotine replacement therapies by following the stringent pharmaceutical pathways for licensing as nicotine replacement therapies, as prescribed by the appropriate national regulatory authority."

### **EXECUTIVE SUMMARY**

The World Health Organisation's (WHO) Conference of Parties 10 (COP10) will occur from 20 to 25 November 2023 in Panama. Despite the fact that the role of the WHO and Framework for Tobacco Control is to uphold an effective health policy, the recommendations put forward for the Conference will undermine the health policy of the United Kingdom.

#### We recommend that:

- The UK's delegates vote against the primary recommended policies, and instead seek to uphold the current, evidence-based health policy of the British government;
- The Department for Health and Social Care undertake a rigorous economic and public health assessment of the COP10 proposals, and promote the findings publicly;
- Delegates seek to outline and implement a Swedish-Style solution to tobacco harms globally;
- The UK government opens a wider consultation on the future of disposable vapes and its outlook on legalising snus, including the implementation of a Deposit Return Scheme for disposable vapes. It should also mandate local government to install disposable vape units on public bins where cigarette butt containers are available. Likewise, the government should implement legislation to proscribe the sale of nicotine pouches to under-18s;
- The Department for Health and Social Care roll-out nicotine pouches, snus (if legalised), and heated tobacco as part of its Stop to Swap Scheme, and include any smoker, regardless of intensity of consumption, on it;
- The government insist on greater transparency and accountability from the WHO and FCTC body as a condition of its participation and legal obligations.

#### Introduction

In November, the World Health Organisation's Framework Convention on Tobacco Control (FCTC) will meet in Panama, at its tenth Conference of Parties. Dedicated to the eradication of tobacco usage worldwide, the organisation is unique in holding many of its meetings in private, despite making policies on public health and being funded by public money. It has significant influence in public policy, and deserves equal scrutiny for their proposals.

This year's Conference has 10 primary recommendations, centring on the equalisation of tax and regulatory treatment of tobacco harm reduction technologies to that of cigarettes, as well as increased disclosure of biomarkers and emissions criteria for all nicotine products. Such proposals are backed by science which is at odds with the marjority of public health bodies; however, they do require greater scrutiny from a fiscal perspective.

The scientific consensus is clear that tobacco harm reduction technologies, which include snus (a tobacco filled pouch inserted below the upper lip)<sup>1</sup>, nicotine pouches (a similar pouch with synthetic nicotine instead of tobacco)<sup>2</sup>, vapes (disposable, pod, and tank-based systems)<sup>3</sup>, and nicotine gum (a chewing gum containing nicotine)<sup>4</sup>, are effective in combatting tobacco addiction. For newer products such as heated tobacco (nicotine sticks which are heated to release nicotine and steam, but not tar or smoke), studies are increasingly demonstrating that it has a higher 'switch' rate than going cold turkey, which only works ~5% of the time,<sup>5</sup> with longer term safety studies currently in process.<sup>6</sup>

Nicotine is a highly addictive substance, which has been shown to inhibit the cognitive development of adolescents.<sup>7</sup> However, when it comes to public health measures that seek to negate the consumption of cigarettes, the World Health Organisations and public health officials have incorrectly associated, and therefore targeted, nicotine uptake with cigarette consumption. As is often recounted by advocates of tobacco harm reduction: "People smoke for the nicotine but they die from the tar." By increasing regulatory hurdles to nicotine replacement therapies,

<sup>1</sup> Clarke et al., "Snus: A Compelling Harm Reduction Alternative to Cigarettes," November 27, 2019.

<sup>2</sup> P, Fry, and Ljung, "Estimating the Public Health Impact Had Tobacco-Free Nicotine Pouches Been Introduced into the US in 2000."

<sup>3</sup> King's College London, "Vaping Substantially Less Harmful than Smoking, Largest Review of Its Kind Finds."

<sup>4</sup> Centres for Disease Control and Prevention, "Quit Smoking Medicines Are Much Safer than Smoking," Centres for Disease Control and Prevention, n.d.,

<sup>5</sup> Truth Initiative, "Why the 'Cold Turkey' Method of Quitting Vaping or Smoking Doesn't Work – and What Does," Truth Initiative, 2022, https://truthinitiative.org/research-resources/quitting-smoking-vaping/why-cold-turkey-method-quitting-vaping-or-smoking-doesnt#:~:text=Taylor%20Hays%20of%20the%20Mayo,%25%20of%20people%20can't.

<sup>6</sup> Pasquale Caponnetto et al., "Comparing the Effectiveness, Tolerability, and Acceptability of Heated Tobacco Products and Refillable Electronic Cigarettes for Cigarette Substitution (CEASEFIRE): Randomized Controlled Trial," JMIR Public Health and Surveillance 9 (April 4, 2023): e42628, https://doi.org/10.2196/42628.

<sup>7</sup> Natalia A. Goriounova and Huibert D. Mansvelder, "Short- and Long-Term Consequences of Nicotine Exposure during Adolescence for Prefrontal Cortex Neuronal Network Function," Cold Spring Harbor Perspectives in Medicine 2, no. 12 (September 13, 2012): a012120, https://doi.org/10.1101/cshperspect.a012120

 $<sup>\</sup>textbf{8} \ \ \text{Michael C. Fiore and Timothy B. Baker, "Reduced-Nicotine Cigarettes} - \text{A Promising Regulatory Pathway," The New England Journal Programme Control of the Con$ 

public health officials are blocking the take-up of safer alternatives, and increasing the demand for black market goods and smuggling.

According to HMRC up to £2.2 billion was lost in government revenue in 2021-2022 due to the trade and supply of illegal factory cigarettes, with £206.7 billion lost since 2005-2006. Whilst it is inherently difficult to track illegal trade, it would be unsurprising if actual figures be larger than recorded owing to their illicit nature. Thus, any increase in the price of nicotine products outside of those in line with inflationary pressures also affecting combustible tobacco products, are likely to see an increase in illicit trade.

# FISCAL CONCERNS SURROUNDING PROPOSED TAX EQUALISATIONS

As proposed by the COP10 recommendations, which aim to "to ensure that regulations of tobacco products are extended and applied to all forms of nicotine and tobacco products and not restricted to conventional cigarettes", significant costs could be created in the country by reducing consumer choice and essentially forcing consumers back onto combustible cigarettes. There are wider tangible economic and fiscal concerns brought about by the recommendations.

The equalisation of tobacco products with non-tobacco nicotine products has been proposed without consideration towards price elasticities of demand. Whilst individual figures vary, there is a high likelihood of creating unaffordable non-tobacco nicotine products, which are too expensive relative to their perceived value, thus creating a consymer pathway back to the more harmful product. The move to equalise prices without concern for price elasticities will create significant market distortions for consumers. Likewise, equalising regulations with combustible cigarettes, which is regulated in order to reduce uptake of the product, will create a further disincentive to move to tobacco harm reduction products.

The lack of publicly available data on cross-price elasticities has presented limitations to estimating the overall cost to the government in duties and to the wider market. This raises questions about the lack of modelling, consultation, accountability, and decision-making process of the WHO and British government with regards to these recommendations. With no call to evidence ahead of the Conference, we must ask wider questions about the fiscal and public health concerns of the government who will be deciding on these measures.

of Medicine 373, no. 14 (October 1, 2015): 1289-91, https://doi.org/10.1056/nejmp1509510.

**<sup>9</sup>** HMRC, '3. Tax gaps: Excise (including alcohol, tobacco and oils)', 22 June 2023. https://www.gov.uk/government/statistics/measuring-tax-gaps/3-tax-gaps-excise-including-alcohol-tobacco-and-oils#tobacco

Currently, high tobacco duties on hand rolled tobacco and combustible factory made cigarettes means that 18.1% is consumed from the black market. As academics have previously highlighted, an increase in tobacco taxes results in a statistically significant increase in demand for e-cigarettes, when the price of e-cigarettes is not as dramatically affected. 12

If the proposed COP10 policies were enacted, an increase in the volume of illicit vapes, which are unsafe and evade tax, is likely to increase substantially. This will likewise be the case for heated tobacco and nicotine pouches, creating a dangerous and subversive second class of nicotine products which leave a hole in the government's coffers and will cause an uptick in potential hospitalisations. As academics have highlighted, novel nicotine products free up considerable hospital space,<sup>13</sup> reducing the burden on healthcare systems (and taxpayers) whilst also unlocking wider economic opportunities for nicotine users who are not burdened by cigarette-induced healthcare challenges.<sup>14</sup>

As highlighted by Professor Moscone in 2023, current nicotine alternative and harm reduction policies in the UK saves the National Health Service upwards of £518m a year. <sup>15</sup> Likewise, a study by Dr Sarah Jackson et al at University College London found that those who switch from smoking to vaping save £780 a year, on average, by purchasing nicotine replacement therapeutics - this does not include the wider medium-to-long run healthcare and productivity benefits of switching. <sup>16</sup>

Broader economic benefits are also presented by the prevalence of accessible vaping; productivity growth corresponds directly with vaping uptake, with estimates placing its growth at £1.3bn in 2019.<sup>17</sup> Wider economic value can also be seen from the development of the vaping market, reflecting the geographical distribution of smokers - in the North East, for example, a gross value add of 156% from the vaping industry was seen, <sup>18</sup> reflecting its position as the region with the highest smoking rate in the country.

#### Socio-economic changes also result from wider access for adults to access nicotine

<sup>11</sup> KPMG, "Illicit cigarette consumption in the EU, UK, Norway and Switzerland", 23 June 2022, https://www.pmi.com/resources/docs/default-source/itp/kpmg-eu-illicit-cigarette-consumption-report-2021-results.pdf?sfvrsn=5fe773b6 6, p172.

<sup>12</sup> Michael F. Pesko, Charles J. Courtemanche, and Johanna Catherine Maclean, "The Effects of Traditional Cigarette and E-Cigarette Tax Rates on Adult Tobacco Product Use," Journal of Risk and Uncertainty 60, no. 3 (2020): 229–58, https://doi.org/10.1007/s11166-020-09330-9.

**<sup>13</sup>** Francesco Moscone, "Does Switching from Tobacco to Reduced-Risk Products Free up Hospital Resources?," British Journal of Healthcare Management 29, no. 8 (August 2, 2023): 1–5, https://doi.org/10.12968/bjhc.2023.0046.

**<sup>14</sup>** Daniel Pryor, "2 Million Years of Life: How Safer Smoking Alternatives Can Level Up Health and Tackle the Cost of Living Crisis — Adam Smith Institute," Adam Smith Institute, March 31, 2022, https://www.adamsmith.org/research/2-million-years-of-life-how-safer-smoking-alternatives-can-level-up-health-and-tackle-the-cost-of-living-crisis.

<sup>15</sup> Moscone, "Does Switching from Tobacco to Reduced-Risk Products Free up Hospital Resources?," August 7, 2023.

**<sup>16</sup>** UCL, "Smokers Who Switch to E-Cigarettes Could Save £780 a Year.", https://www.ucl.ac.uk/news/2019/jun/smokers-who-switch-e-cigarettes-could-save-ps780-year,

 $<sup>\</sup>textbf{17} \ \ \, \mathsf{CEBR} \ \, \mathsf{and} \ \, \mathsf{UKVIA}, \text{``Economic impact assessment of the vaping industry''}, \mathsf{September} \ \, \mathsf{2022}. \ \, \mathsf{https://www.ukvia.co.uk/wp-content/uploads/2022/11/Cebr\_Report\_06092022\text{-clean.pdf}$ 

alternatives. A number of papers, including from Green et al,<sup>19</sup> Thirlway,<sup>20</sup> Gagné and Brown,<sup>21</sup> Pryor and Oates,<sup>22</sup> and Hardie and Green,<sup>23</sup> demonstrate that e-cigarette usage is effective in reaching lower-income socioeconomic groups, reducing health inequalities.

COP10 recommendation "to ensure that regulations of tobacco products are extended and applied to all forms of nicotine and tobacco products and not restricted to conventional cigarettes", significant costs could be created in the country by limiting consumer choice and essentially forcing consumers back onto combustible cigarettes.

### THE SWEDISH SOLUTION

Sweden is the only country worldwide to achieve Smoke Free Status, under which fewer than 5% of the population smokes cigarettes daily. The EU's average holds at 19.7% daily smokers,<sup>24</sup> whilst the UK continues its long-run decline in smoking rates at 12.9% daily smokers.<sup>25</sup> The health outcomes have been clear - Sweden can boast the lowest level of male lung cancer in the EU27,<sup>26</sup> and there has been a very significant decrease in Chronic obstructive pulmonary disease (COPD) cases in line with a decrease in smoking.<sup>27</sup>

Sweden retains strict laws on tobacco and non-tobacco nicotine products. The May 2019 Decree on Tobacco and Similar Products outlines strict rules on advertising for electronic cigarettes and combustible cigarettes alike, as well as differential tax rates on all combustible

**<sup>19</sup>** Michael J. Green et al., "Socioeconomic Patterning of Vaping by Smoking Status among UK Adults and Youth," BMC Public Health 20, no. 1 (February 10, 2020), https://doi.org/10.1186/s12889-020-8270-3.

**<sup>20</sup>** Frances Thirlway, "Nicotine Addiction as a Moral Problem: Barriers to e-Cigarette Use for Smoking Cessation in Two Working-Class Areas in Northern England," Social Science & Medicine 238 (October 1, 2019): 112498, https://doi.org/10.1016/j. socscimed.2019.112498.- Note: the report concludes "that ensuring that vaping is significantly cheaper than smoking may be key to addressing health inequalities linked to tobacco use."

<sup>21</sup> Thierry Gagné and Jamie Brown, "SocioDeconomic Distribution of EDcigarette Use among Recent Former Regular Smokers and Current Smokers at Ages 25–26 in England," Addiction 116, no. 6 (January 4, 2021): 1548–57, https://doi.org/10.1111/add.15345.

<sup>22</sup> Daviel Pryor and Mark Oates, Adam Smith Institute, Daniel Pryor, and Mark Oates. n.d. "2 Million Years of Life."

<sup>23</sup> Iain Hardie and Michael J. Green, "Vaping and Socioeconomic Inequalities in Smoking Cessation and Relapse: A Longitudinal Analysis of the UK Household Longitudinal Study," Tobacco Control, April 11, 2023, tc-057728, https://doi.org/10.1136/tc-2022-057728.

**<sup>24</sup>** "Smoking of Tobacco Products by Sex, Age and Country of Citizenship." 2022. Eurostat Data Browser. November 11, 2022. https://ec.europa.eu/eurostat/databrowser/view/hlth ehis sk1c/default/table?l ang=en.

<sup>25</sup> Lauren Revie Byron Davies and David Mais, "Adult Smoking Habits in the UK - Office for National Statistics," September 5, 2022, https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsing reatbritain/2022#:~:text=Based%20on%20APS%20data%2C%20the, 20.2%25%20of%20the%20population).

**<sup>26</sup>** "European Cancer Information System," n.d., https://ecis.jrc.ec.europa.eu/explorer.php?\$0-0\$1-All\$2-All\$4-1,2\$3-22\$6-0,85\$5-2020,2020\$7-7\$CEstByCountry\$X0\_8-3\$X0\_19-AE27\$X0\_20-No\$CEstBySexByCountry\$X1\_8-3\$X1\_19-AE27\$X1\_-1-1\$CEst-ByIndiByCountry\$X2\_8-3\$X2\_19-AE27\$X2\_20-No\$CEstRelative\$X3\_8-3\$X3\_9-AE27\$X3\_19-AE27\$CEstByCountryTable\$X4\_19-AE27.

<sup>27</sup> Helena Bäckman et al., "Decreased COPD Prevalence in Sweden after Decades of Decrease in Smoking," Respiratory Research 21, no. 1 (October 28, 2020), https://doi.org/10.1186/s12931-020-01536-4.

products.<sup>28</sup> Likewise, flavoured combustible tobacco products are heavily regulated.<sup>29</sup> Smoking in entrance points to smoke-free areas, athletic areas, playgrounds, and around schools is prohibited.

What makes Sweden unique in the EU with its reduction of smoking is the prevalence of snus - a wet tobacco which is placed in a pouch and held under the lip, depositing nicotine in similar levels to that of a combustible cigarette without the associated tar, smoke, or other carcinogenic substances. Snus has been illegal in the EU since 1992 with the 1992 Tobacco for Oral Use (Safety) Regulations, which implemented EU Directive 92/41. However, Sweden was granted a special carve-out owing to a still ongoing disagreement over the cultural significance and public health benefit of snus usage.

Public health remains the EU's reason for snus' ban. Snus is a harmful substance, containing nicotine and alkalizing agents. However, it remains a clearly superior nicotine product in safety compared to cigarettes, so it is puzzling as to why the British government maintains the ban on the product.<sup>30</sup> Nonetheless, when we take into consideration that nicotine users will seek to ingest nicotine through a variety of methods, snus provides a much preferable choice for nicotine intake over combustible methods.

The prevalence of snus is around 20% of the Swedish population.<sup>31</sup> The associated decrease in combustible cigarette consumption means that the significant conversion rates from smoking to snus-usage have significant implications for tobacco harm reduction worldwide.<sup>32</sup> Swedes have recently cut the tax on snus by 20%, whilst increasing the tax on cigarettes by 9%, incentivising a incentivised path for smokers to quit.<sup>33</sup>

Despite anti-smoking lobby groups such as Action on Smoking and Health (ASH) calling the UK ban "illogical",<sup>34</sup> the ongoing existence of snuff, and the prevalence of black market South Asian smokeless tobacco products (naswar, gutka, and zarda), snus remains illegal in the UK.<sup>35</sup> Nicotine pouches, on the other hand, are available to be sold to under-18s, as

<sup>28 &</sup>quot;Decree on Tobacco and Similar Products." 2019. May 8, 2019. https://assets.tobaccocontrollaws.org/uploads/legislation/Sweden/Sweden-SFS-2019223.pdf.

<sup>29 &</sup>quot;Sweden Regulated Contents," Tobacco Control Laws, accessed October 29, 2023, https://www.tobaccocontrollaws.org/legislation/sweden/cigarette-contents.

**<sup>30</sup>** Shuai Yuan et al., "Swedish Snuff (Snus) Dipping, Cigarette Smoking, and Risk of Peripheral Artery Disease: A Prospective Cohort Study," Scientific Reports 12, no. 1 (July 15, 2022), https://doi.org/10.1038/s41598-022-16467-x.

**<sup>31</sup>** Charlene Pele and Karl Ritter, "Sweden Close to Becoming First 'smoke Free' Country in Europe as Daily Use of Cigarettes Dwindles | AP News," AP News, June 1, 2023, https://apnews.com/article/smoking-cigarettes-snus-sweden-7e3744800a4714bdee4b cb1736983586.

**<sup>32</sup>** Brad Rodu et al., "Impact of Smokeless Tobacco Use on Smoking in Northern Sweden," Journal of Internal Medicine 252, no. 5 (October 22, 2002): 398–404, https://doi.org/10.1046/j.1365-2796.2002.01057.x.

**<sup>33</sup>** The Nordic Times. 2023. "Tax on Swedish Snus to Be Reduced." September 8, 2023. https://nordictimes.com/economy/tax-on-snus-to-be-reduced/.

**<sup>34</sup>** Bunn, James. 2022. "DHSC Announces That the UK Will Not Legalise Snus." Drugscience.Org.Uk. February 10, 2022. https://www.drugscience.org.uk/dhsc-decides-to-not-legalise-snus/.

<sup>35 &</sup>quot;Evidence into Practice: Smokeless Tobacco Products." 2020. March 2020. https://ash.org.uk/uploads/smokelesstobaccoeip.pdf.

there is no legislation in place that concerns their sale as they are a non-tobacco product. A sensible approach to public health and smoking harm reduction would be the legalisation and regulation of snus, as well as other smokeless tobacco products, providing smokers with more choice with their method of quitting smoking.

#### **REACHING SMOKE FREE 2030**

Nicotine alternatives offer the best hope for any nation in reaching Smoke Free status, under which less than 5% of the population regularly smoke cigarettes and combustible tobacco products. The government should receive praise for its world-leading strategy, through liberalised regulation on the selling (and even prescribing) of e-cigarettes, nicotine pouches, and heated tobacco products. However, new roadblocks are emerging which spell disaster for the Smoke Free strategy.

The future prescription of e-cigarettes and the use of strong, science backed public health messaging on why nicotine alternatives are superior to combustible cigarettes has been commendable. However, both the public and physicians should be educated on the benefits of switching from combustible cigarettes to nicotine alternatives;<sup>36</sup> there is concerning evidence that 44% of British doctors believe that going 'cold-turkey' is a better treatment to quitting smoking than the use of e-cigarettes, despite evidence to the contrary.<sup>37</sup> A more prominent educational campaign for general practitioners and pharmacists from the Department of Health and Social Care would go some way to putting patient health first.

Prescriptions for e-cigarettes should also be extended to heated tobacco, snus, and nicotine pouches. These alternatives all offer more safety for users in comparison to combustible cigarettes.<sup>38</sup>

With patient health being first and foremost in the minds of policy makers, the proliferation of single-use vapes likewise causes consternation amongst policymakers. Whilst it is already illegal to sell nicotine products to under-18s, due to lax enforcement measures by local authorities' Trading Standards departments, the government is proposing a ban on single-use vapes. This would be devastating for the Smoke Free strategy. As Action on Smoking and Health polling has shown, 56% of vapers are former smokers, with a further 31% of these former smokers using disposable vapes as their primary method of quitting.<sup>39</sup> Higher fines,

**<sup>36</sup>** Newton, Storm. 2023. "'More than 40% of Smokers Think Vaping Is More Harmful than Cigarettes." The Independent, August 2, 2023.

**<sup>37</sup>** Cross, Dave. 2023. "What Do Doctors Know about Vaping?" Blog. September 14, 2023. https://vapekit.co.uk/blog/what-do-doctors-know-about-vaping/.

**<sup>38</sup>** Neily Zakiyah et al., "Effectiveness and Safety Profile of Alternative Tobacco and Nicotine Products for Smoking Reduction and Cessation: A Systematic Review," Journal of Multidisciplinary Healthcare Volume 14 (2021): 1955–75, https://doi.org/10.2147/jmdh. s319727.

**<sup>39</sup>** Action on Smoking and Health. 2023. "Use of E-Cigarettes (Vapes) among Adults in Great Britain." August 2023. https://ash.org. uk/uploads/Use-of-e-cigarettes-among-adults-in-Great-Britain-2023.pdf?v=1691058248#:~:text=Of%20the%204.7%20million%20

licensure removal, and more rigorous enforcement standards violations for retailers who break the law is the obvious, pro-health solution to concerns over youth vaping.

Likewise, concerns have been raised over the environmental damage caused by the improper disposal of vapes. Rightly, environmental campaigners have raised issues with the heavy metals found in lithium-ion batteries which can leak into the ground, eroding soil health and polluting water tables, as well as creating choking risks for animals.<sup>40</sup> However, instead of moving towards a ban, there are more effictive and simple solutions such as councils retrofitting existing bins with small vape disposal sections, similar to cigarette butt disposal sites that are already common. Similarly, the start of a commercial vape disposal scheme, similar to those active for plastic bottles in Germany and Finland, could be introduced. This offers disposers increased financial incentives for every item recycled and could provide a higher incentive for members of the public to dispose of discarded e-cigarettes.

Packaging reforms have been shown to be inadequate in convincing smokers to keep away from cigarettes - a YouGov poll shows that only 24% of people believe that the graphic images, uniform colours and mandatory text have had any impact at all.<sup>41</sup> A new proposal to add paper inserts into cigarette packages, however, may offer a better nudge away from smoking, if producers are allowed to advertise their harm reduction products (heated tobacco products, e-cigarettes, and pouches).