



September 27, 2022

Mr. Martijn Beekman

Minister of Health, Welfare and Sport
Government of the Netherlands

Dear Minister Beekman,

We write to share our position on the proposed amendment to the Tobacco and Smoking Products Order by the Dutch Government. We were informed of this development through the call for submissions shared by the European Tobacco Harm Reduction Advocates (<https://twitter.com/europethra/status/1573298333954805761?s=46&t=oeYOYQVRjKsY4hO-CtFLhyg>).

The Vapers Philippines is an organization of Filipino e-cigarette users founded in 2016 to advocate for reasonable government regulations of the products that we use. We are former smokers who have successfully stopped smoking with the help of vapor products. We are one of the biggest consumer groups in the Philippines and have consistently advanced our right to access less harmful nicotine products. The undersigned has appeared before the Philippine House of Representatives and the Philippine Senate as a resource person in their public consultations on the Vaporized Nicotine and Non-Nicotine Products Law in the Philippines. You can read more about our organization and our advocacy here: <https://www.facebook.com/thevapersph> .

We understand based on the ETHRA article (<https://ethra.co/news/115-the-end-of-vaping-in-the-netherlands>) on the subject that the Dutch Government is on the final stage of its flavor ban proposal. This will be done though a list of 16 approved substances which can be used to make tobacco flavored e-liquids. The consequence of this measure is a de facto

ban on vaping in the Netherlands. The article explained that the reasons advanced by the Government is to protect public health by reducing the attractiveness of electronic cigarettes to the general population, particularly to young people and that children should grow up in a smoke and tobacco free environment.

At the onset, it is clear that we share the same objectives. We agree with the Government's end goal of ensuring that children do not get addicted to nicotine products and that they should grow up in a smoke and tobacco free environment. Our submission will deal with the how, where there are several alternative approaches. We will draw from the Philippine experience where our Government recently decided on a similar question, how should these new nicotine products be regulated?

This submission will focus on the approach as regards flavors given that it is the subject of the proposal of your Ministry. A few years ago, the Philippine Congress passed a law which limited vapor product flavors to tobacco or menthol. We, as vapers, felt that such a measure will be a disincentive for adult smokers to move to these products. In my case and in the case of our members, the availability of flavors in the Philippines helped us to quit smoking so we want these options to be available to as many adult smokers as possible. Right before the said flavor ban was implemented, Congress passed a dedicated law to regulate these products. It no longer has a flavor ban for vapor products but instead provides the following rule to deal with the attractiveness of flavors to minors:

The sale of Vaporized Nicotine and Non-Nicotine Products and Novel Tobacco Products that are packaged, labeled, presented, or marketed with flavor descriptors that are proven to unduly appeal particularly to minors shall be prohibited. A flavor descriptor is presumed to unduly appeal to minors if it includes a reference to a fruit, a candy brand, dessert, or to a cartoon character [Republic Act No. 11900, Section 12, Paragraph (j)].

The Philippine Congress considered the same issues. First, there are new nicotine products in the market which have the potential to attract minors. Second, these products and their flavors help adult smokers to move away from smoking cigarettes. The question was raised: how can we keep access to flavored e-cigarettes to adult smokers and at the same time ensure that minors are not attracted to them? The quoted provision from our new law is the compromise that our Congress adopted. Our Congress looked at the available evidence and found that what attracted minors are the described fruit and candy flavors. However, the

evidence is also clear that these same flavors help a good proportion of adult smokers to stop using cigarettes.

The first step is to introduce a ban on the underage sale of these products and imposing heavy penalties for any violation. Our law requires a government issued identification card showing the photograph and date of birth before anyone can purchase a vapor product. The second step is to ensure that minors are not enticed into purchasing or procuring these products. Instead of adopting the nuclear approach which is to have a blanket ban on flavors, our Congress looked into the area of product communications. Minors will be enticed if images and labels showing fruits or candy brands are on websites or display shelves of vapor products. If you take out these images or labels, the product will only be referenced by a code or another name, then minors will not be attracted, but the flavors that adult smokers/ vapers use will still be available. So instead of a flavor ban, the PH law instead opted for a more targeted approach: a flavor descriptor ban. A flavor descriptor can be defined as any text or image describing the taste of a vapor product consumable. The PH law also provides a ready standard to determine whether or not a flavor descriptor is presumed to unduly appeal to minors, it will be covered by the ban if it includes a reference to any of the following:

1. Fruit
2. Candy brand
3. Dessert, or
4. Cartoon character

This hits the objective of making the packaging and product communications for these products unattractive to minors, and at the same time ensuring their availability for adult vapers and smokers who might want to try these products. Imagine minors walking past a vape store, their attention will be caught if they see images of a bubble gum or a colorful fruit on the display stand. If no such images appear on the product packaging or advertisements, then there will be no reason for minors to be attracted to these random products that they encounter in public.

It appears that the current proposal in the Netherlands is a simple restriction but the effect is a total ban on vapor products. We hope that you can consider the Philippine approach on having a flavor descriptor ban instead of a flavor ban. This, we submit, is an evidence-based way and not a stealth ban approach to product regulation. We explained to our Congress that bans will just force vapers to go to the black market to secure these products where there will

be no product standards and no age-gated selling. If the legitimate vapor product industry continues to be aboveboard and compliant with reasonable regulations, then most, if not all adult vapers will opt for the legal and registered products and not go underground. This will starve the illicit traders of their market and make their operations less viable. Assuming for the sake of argument that the enforcement is 100% perfect and all the illicit traders are caught and eliminated in the Netherlands, the effect in such a scenario is that adult vapers will be forced to go back to smoking. This has been shown in various real world experiences [[Ban on flavored vaping may have led teens to cigarettes, study suggests | YaleNews](#)]; and [Study finds evidence that vaping ban leads to higher cigarette sales – Manila Bulletin \(mb.com.ph\)](#)].

Thank you very much for this opportunity to share our recommendations on record. We remain at your disposal should you have any further questions on the Philippine approach.

Respectfully yours,

A handwritten signature in black ink that reads "Peter Paul Dator". The signature is written in a cursive, somewhat stylized font and is crossed out with several diagonal lines.

PETER PAUL DATOR

President, The Vapers Philippines