



European Tobacco Industry Interference Index 2021

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SFP is the leading European NGO working exclusively on the policy analysis and advocacy for the implementation of the WHO FCTC in the EU and the European Region more widely. More information about SFP can be found at www.smokefreepartnership.eu

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List of abbreviations

BAT	British American Tobacco
BECA	European Parliament Committee on the EU Beating Cancer Plan
CSR	Corporate Social Responsibility
COP	Session of the Conference of the Parties to the WHO FCTC
Covid-19	Coronavirus disease 2019
DG	Directorate-General (of the EU)
DG SANTE	Directorate-General for Health and Food Safety (of the EU Commission)
DG TAXUD	Directorate-General for Tax and Customs Union (of the EU Commission)
FCTC	Framework Convention on Tobacco Control
EP	European Parliament
EU	European Union
JTI	Japan Tobacco International
MEP	Member of the European Parliament
PMI	Philip Morris International
WHO	World Health Organization
WHO FCTC	(FCTC) World Health Organization Framework Convention on Tobacco Control

Introduction and background

The European Union is the only regional economic organisation to become a full signatory member and party to the FCTC, along with all its member states.¹ When negotiations for WHO FCTC started in 1999, the European Union already had strong policy on tobacco control. Issues such as labelling of tobacco products, cross-border advertising and marketing, and smuggling formed part of the EU's agenda. The European Commission was a major agenda-setter in these discussions since the very beginning.²

The EU leads the way in the implementation of the FCTC provisions on the global scene, and sets the norm for the national legislations and public authorities of EU member states and often beyond its borders. Currently, most of the member states' tobacco control legislations are implementing Directives, Regulations or Recommendations adopted by the EU Institutions. The process for adoption of legislation at EU level, in general, gives equal power to the member states in the EU Council on the one hand, and the directly elected European Parliament on the other. The European Commission designs and proposes legislation and watches over its appropriate implementation once it EU acts are adopted by Member states and Parliament. It is crucial that the EU policy-making process and its public health policies are protected against the vested interests of the tobacco industry.

This report aims to measure the intensity, frequency, or severity of given incidents of tobacco industry interference that have taken place at the EU institutions level between 1 January 2019 and March 2021. The EU Institutions' action to protect its policies from tobacco industry interference in accordance with WHO FCTC Article 5.3 and its Guidelines would determine their capacity to deal with such interference. This assessment could provide an indication of

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.

WHO Framework Convention on Tobacco Control, 2005

the institutions' capacity to resist tobacco industry interference.

Unfortunately, there is no uniform set of rules implementing Article 5.3 of the FCTC applicable to all EU institutions, but there are internal rules or recommendations for dealing with the tobacco industry in some cases (for example, for DG SANTE, the health department of the European Commission). There is only a general framework at EU level on transparency of the decision-making process, including dialogue with stakeholders (public consultations, meetings etc.).

Recent years' experience has shown that the tobacco industry lobbying at EU level has not lost traction. The current Tobacco Products Directive was described as 'the most lobbied dossier in the history of the EU institutions' to that date. Tobacco industry lobbying was deployed on a massive scale with an aim to delay the process and water down the new provisions. Industry tactics to block, amend and delay the legislation are well documented in a revision process that lasted over five years.³

As of 2021, the EU has set itself an objective to achieve a tobacco free generation by 2040. To achieve this objective it will undergo revisions of crucial legislation, notably relating to tobacco taxation (the Tobacco Tax Directive) and to product regulation (the Tobacco Products Directive), marketing and advertising (the Tobacco Advertising Directive) and smoke

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free recommendations. In light of the upcoming developments, particular attention must be paid to the tobacco industry's interference efforts in the policy-making process at EU level. There is an urgent need for defining a rigorous policy implementing Article 5.3 and its Guidelines applicable to all EU Institutions and their departments.

Methodology

This report is based on SEATCA's Asian Tobacco Industry Interference Index and scoring guidelines. In the original Global report of 2019⁴, there are 20 questions based on the Article 5.3 Guidelines⁵ and categorized into seven indicators. The scoring range for most questions is from 1 to 5. **The lower the score, the better the compliance with the World Health Organization (WHO) Framework**

Convention on Tobacco Control (FCTC)

Article 5.3. The indicators/ questions used in the report are drawn directly from Article 5.3 Guidelines.

The methodology of the present report was adapted in order to reflect the specificities of the European Union and its Institutions, meaning that not all sections and questions of the original global report questionnaire were applicable in the case of the EU. For this reason, the EU is not included in the overall ranking of the countries included in the Global Index.

All responses are based on publicly available information or on demonstrable direct experience by SFP or its partner organisations. As this is the first time when an EU Tobacco Industry Index is being published, this report includes instances that took place in the five years prior to this period.

In line with Article 5.3 Guidelines (Article 10) and adapted to the EU's specific institutional framework, this document applies the term 'government' widely to cover public officials and representatives in the main EU institutions (the European Commission, the European Parliament, the Council and the EU Agencies).

Summary Findings

Total points: 46/90 (approx. 51%)

Level of industry participation in policy-development : 9/20

There is little public evidence of direct instances of industry participation in the policy-making process at EU level. There are however many records of instances where EU officials can be seen as indirectly accepting, endorsing or supporting offers of assistance from industry-backed entities. These involved EU officials participating in events organized by industry front groups or by entities with tobacco companies ties. Due to the lack of a proper implementation of Article 5.3 at EU level, especially as regards disclosure obligations, it is not always clear that the officials in question were aware of the tobacco industry tie.

Most of these events/webinars were organized by the tobacco industry or their front groups around Europe's Beating Cancer Plan and were aimed at popularizing the notions of "harm-reduction" or "lifestyle choices" for novel tobacco and nicotine products in and proposing more lenient regulations.

Tobacco related CSR activities: N/A

There is no evidence of EU institutions or officials directly endorsing, supporting, forming partnerships with or participating in activities of the tobacco industry described as socially responsible at EU level. This might however be linked to the specific framework of competencies between Member States and EU level rather than to the existence of specific safeguards implementing Article 5.3.

Benefits to the tobacco industry: 4/10

There are usually no cases where the EU Institutions directly offer privileges, incentives, tax exemptions or benefits to the tobacco industry, but lenient policies indirectly created incentives in some areas. This is the case of the high threshold permitted for cross-border shopping of tobacco for personal use, as well as the favourable context for the industry to shift their profits across borders to avoid paying corporate tax. Also, the Tobacco Products

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Directive provided a 6-year transitional period for the menthol ban from May 2014, which resulted in accommodations for the tobacco industry, as a result of pressure by some member states (the menthol ban was enacted in May 2020)

Unnecessary interaction: 12/15

Several instances have been identified where EU officials met with tobacco companies' representatives or attended tobacco industry sponsored events.

Transparency: 6/10

The European Ombudsman provides a good model for other institutions, applying and recommending a strict implementation of Article 5.3 FCTC and its Guidelines.

There is a general framework for meetings with the EU Institutions in the policy-making process. High ranking officials in the Commission (Directors-General, Cabinet members, and Commissioners) are under the obligation to publish all their meetings with interest representatives across all policy files. Only DG SANTE - since 2012 - and DG TAXUD - since 2021 - publish summaries of meetings with the tobacco industry representatives. Since 2019, DG SANTE has invited civil society observers in stakeholder consultation meetings with the tobacco industry.

There are voluntary procedures for disclosing meetings with the tobacco industry in the European Parliament and to our knowledge there is a policy against unnecessary interaction with the tobacco

¹ United Nations Treaty Collection. (2021). Parties to the WHO Framework Convention on Tobacco Control.

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IX-4&chapter=9&clang_en

² Faid, M., Gleicher, D (2011) *Dancing the tango: The experience and roles of the European Union in relation to the Framework Convention on Tobacco Control* https://ec.europa.eu/health/sites/default/files/tobacco/docs/tobacco_tango_en.pdf

³ <https://tobaccocontrol.bmj.com/content/25/1/108>

⁴ <https://globaltobaccoindex.org/download/31>

industry in the Greens Group. In the Council, some Member States publish their meetings with the industry where Permanent Representatives or Council Representatives take part but there is not an even application of disclosure across Member States' Permanent Representations.

Conflict of interest: 4/10

There are no specific rules on conflict of interest and the tobacco industry. There is however a general framework regulating certain aspects. As regards the Council and some elements of the European Parliament, there are also national restrictions.

Preventive measures: 11/25

There is currently no set of specific rules regarding EU officials' interactions with the tobacco industry. High ranking officials in the Commission publish the topics of their meetings. Only DG SANTE has a specific policy applicable to the tobacco Industry. The refusal of the Commission to proactively publish the records of the meetings with the tobacco industry has been deemed to be maladministration by the European Ombudsman.⁶ The Commission rejected these claims and no further action was taken. There is also no set of rules for the Council or the European Parliament.

⁵ Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, 2008

https://www.who.int/fctc/guidelines/article_5_3.pdf

⁶ European Ombudsman, *Decision concerning the European Commission's compliance with the Tobacco Control Convention* (852/2014/LP) <https://www.ombudsman.europa.eu/en/decision/en/73774>

Recommendations

- The EU Institutions should adopt a uniform, mandatory set of specific rules regarding interactions with the tobacco industry, applicable to all EU Institutions and agencies
- These rules should be in line with Article 5.3 and its Guidelines and with the Ombudsman's Decisions and should impose mandatory publishing of the meeting with the tobacco industry and its front groups, as well as of the content of the meetings
- The cases where interactions with the tobacco industry are deemed necessary should be strictly regulated
- Entities working with the tobacco industry should be obliged to disclose any such ties ahead of any input into the policy-making process.
- EU Tobacco Control legislation should include references to Article 5.3 FCTC
- The general public consultation process should ensure compliance with Article 5.3 and its Guidelines. In particular, the EU institutions should:
 - Adopt a code of conduct based on Article 5.3 FCTC to set common standards for EU officials in interacting with the tobacco industry
 - Request declarations of interest from stakeholders they engage with in order to identify those with links to the tobacco industry
 - Only meet with stakeholders registered in the EU Transparency Register
 - Limit interactions with the tobacco industry and affiliated entities (i.e. those involved in the growing, processing, distribution, manufacturing or selling of tobacco products and entities funded directly or indirectly by the tobacco industry) to those that are strictly necessary, as defined in the Guidelines to Article 5.3 of the WHO FCTC
 - Ensure the transparency of all interactions with the tobacco industry and its affiliated entities in legislative processes by publishing lists and minutes of these interactions.
 - Remove the standard offer of anonymity for replies to public consultations related to tobacco control policies.
- The EU should support and work with civil society organisations who are independent of the tobacco industry in their watchdog role

Results and findings

Indicator 1: Participation in policy development

1. The government⁷ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry or any entity or person working to further its interests.⁸ (Rec 3.1)

Score: 3

Due to the lack of a harmonized and transparent mechanism implementing Article 5.3 and its Guidelines at EU level, there is little public evidence of such direct instances. However, there have been numerous instances where EU officials can be seen as indirectly (and possibly unwittingly) accepting, endorsing or supporting offers of assistance from industry-backed entities. The participation of EU officials, including MEPs in charge with public health policies in events organized by industry's front groups or by entities with tobacco companies ties is deeply problematic as regards Article 5.3 and its Guidelines.

Many events/webinars organized by the tobacco industry around Europe's Beating Cancer Plan ("the Cancer Plan") contributed to the diffusion of the notions of "harm-reduction" or "lifestyle choices" for highly addictive products. They involved MEPs and other EU officials as speakers and tobacco industry-backed entities.

Such tactics can be illustrated by several events organized or co-organized by the Institute for Competitiveness (I-Com) - a think-tank based in Rome and Brussels, promoting harm reduction among policy-makers in the context of the EU Cancer Plan, and which listed British American Tobacco (BAT) EU Office as a partner on its website as of 14 October 2020, according to Tobacco Tactics. Following inquiries by public health NGOs, BAT stopped being listed as an I-Com partner as of 3 November 2020⁹.

On 29 September 2020, I-Com organized an event hosted by MEP Dolors Montserrat (EPP, ES) and focused on " how the European Parliament can contribute to

shaping the Europe's Beating Cancer Plan"¹⁰. On this occasion, I-Com presented their study '*Best practice tools to prevent cancer across Europe: Could harm reduction policies play a pivotal role?*'¹¹. In I-Com's words, '*During the open discussion, stakeholders expressed their widespread interest in and support for the harm reduction policies and best practice examples in I-Com's study.*' Among the speakers were MEPs Dolors Montserrat, Peter Liese (EPP, DE), EPP Coordinator in the ENVI Committee, Pietro Fiocchi (ECR, IT), Member of the EP Special Committee on Beating Cancer, and Aldo Patriciello (EPP, IT), Co-Chair of the European Parliament's Challenge Cancer Intergroup, MEPs Tomislav Sokol (EPP, CZ), Member of the EP Special Committee on Beating Cancer; and Alessandra Moretti (S&D, IT), also Co-Chair of the European Parliament's Challenge Cancer Intergroup. A written speech by Commission Vice-President Margaritis Schinas was read out during the event. The study and roundtable discussion were followed-up by a manifesto released on 30 November 2020, which mentioned supporters including Dolors Montserrat (EPP, ES), Maria Spyraki, MEP (EPP, GR), Member of the Special Committee on Beating Cancer; as well as Cyrus Engerer (S&D, MT).¹² **None of the studies, documents or press material published by I-Com in relation to the event acknowledged that a tobacco company was amongst its funding members**, although this was disclosed if specifically asked by invited speakers.¹³

A similar event organized by the British Chamber of Commerce EU& Belgium took place on 18 November 2020, where the president of I-Com spoke about the importance of harm reduction in the context of the Cancer Plan with attendees including at least one tobacco company representative. Speakers at this event included MEPs Pietro Fiocchi and Tomislav Sokol; a DG Research and Innovation

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representative, Catherine Berens, and European Chemicals Agency Director Christel Musset.¹⁴ At least one health NGO was present and intervened in the event.

Industry-backed lobbying was also present through Kangaroo Group events.¹⁵ The Kangaroo Group is an association of representatives of the European Parliament, Commission and Council, academia, media and the business community and an entity with well-known tobacco industry ties¹⁶. As of March 2021, the Group comprised members from British American Tobacco, Tobacco Europe, JTI and Philip Morris International¹⁷ along 14 MEPs and 30 former officials, academics and experts.

On 21 October 2020, an online debate called "*Lifestyle choices and beating Cancer*" was organized by Kangaroo Group and chaired by MEP Michael Gahler MEP. Speakers included MEPs Deirdre Clune and Tomislav Sokol. During the webinar Swedish snus, a tobacco product banned in the rest of the EU, along with e-cigarettes were promoted as cancer prevention tools.¹⁸

Another virtual event took place on 3 March 2021 titled "*Can lifestyle changes deliver a silver bullet to cancer?*". The event was chaired by MEP Michael Gahler. EU official speakers included MEPs Deidre Clune (EPP, IE), Member of the Committee on the Internal Market and Consumer Protection, and Tomislav Sokol; Despina Spanou, Head of Cabinet of Commission Vice President Margaritis Schinas, and Nuno Sousa, representing the Portuguese Presidency of the EU Council. Despite the framing around "*lifestyle choices*", **EU officials in the meeting stated their support to proven measures to reduce prevalence of tobacco use** such as taxation, marketing and labelling regulations. For instance, MEP Clune supported the idea of taxes on the likes of alcohol, while Ms Spanou underlined that tobacco policies must be "*the most uncompromising part of the EU Cancer Plan*" and MEP Sokol supported higher tobacco taxes along with of harm reduction. Mr Sousa also added that

tobacco regulation is an example to emulate for other risk factors, including marketing, labelling and tax measures.¹⁹

The narrative around "*lifestyle choice*" was the title of the first hearing with experts of the BECA committee.²⁰ However, it is worth noting that harm reduction or the trivialization of tobacco use as a "*lifestyle choice*" were not included in the draft EP report on "*Strengthening Europe in the fight against cancer - towards a comprehensive and coordinated strategy*", published in July 2021.²¹ However, the **position of the EP's largest parliamentary group, the EPP group, on the Cancer Plan include a strong support to tobacco harm reduction.**²²

As of October 2021, dozens of amendments to the draft BECA report included proposals for harm reduction to be integrated in the EU's cancer prevention strategy; many of these amendments have content, wording and authors found in events such as the ones described above.²³

On the 17th and 18th November 2021, the European Business Summit 2021²⁴ took place, listing Japan Tobacco International (JTI) as a partner and a speaker in a session called "*The corporate responsibility to foster trust in the public debate*". As per the website description, the purpose of the event is to offer its partners the opportunity to influence the EU decision-making process by bringing their expertise, priorities and expectations to the attention of a diverse and influential audience including EU representatives. The event featured at least six EU commissioners and dozens of EU top officials, including Directors from the Commission and MEPs.²⁵ Following the civil society organisations outcry urging EU commissioners to withdraw their participation from this event, EBS removed JTI's logo from its list of partners on the event's website, while keeping the JTI panel discussion, but it remains unclear whether the company was still sponsoring the event. EU Observer reported²⁶ that an EU official explained that there is no direct meeting planned

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between EU commissioners participating in this event and JTI, while arguing that the European Business Summit will not touch on health or tobacco policies.

2. The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry. (Rec 3.4)

Score: 2

In general, the EU Institutions do not directly accept policies or legislation drafted by the tobacco industry. However, as a core pillar of transparency, citizens are invited to participate in consultations and to provide feedback at different stages throughout the law-making process.²⁷ Through public consultations anyone can express their views, anonymously or publicly, on the scope, priorities and added value of EU action for new initiatives, or evaluations of existing policies and laws.²⁸ In order to provide input to a public consultation, prior registration to the Transparency Register is necessary. There are no specific rules applicable to the tobacco industry, thus they can provide input the same way as the rest of the organizations, including anonymously, thereby possibly evading public scrutiny. Their input will be taken into account, with the rest of the input provided in the Commission's follow-up report.²⁹

According to a recent report by STOP, Corporate Europe Observatory, and the European Public Health Alliance³⁰, the European Commission's DG for Trade has had at least seven meetings with tobacco industry lobbyists since 2017. The report shows that DG Trade is open to influence but also actively seeks to promote the interests of the tobacco industry in these negotiations. The industry engaged in aggressive lobbying for weakened rules of origin³¹ in the EU-Mexico and EU-Mercosur Free Trade Agreements which would mean that less of the tobacco used in exported tobacco products has to originate from the EU, enabling tobacco manufacturers to

boost profits through lower unit costs of production and offshoring possibilities.

In 2018 a study by the Tobacco Investigations Desk³² concluded that the "open door policy" of DG TAXUD, the Commission's tax and customs department, towards the tobacco industry contributed to delaying the EU's decision to revise the 2011 Tobacco Tax Directive. The Directive has been under revision since early 2020 and a public commitment to disclose tobacco meetings was made³³ in response to the above-mentioned 2021 report by STOP, EPHA, and CEO.³⁴ **In November 2021 DG TAXUD committed to publishing the meetings held with the tobacco industry, along with the minutes of the meetings on its website**, and it published minutes of such meetings dating back to early 2020.³⁵

3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8)

Score: 3

The EU Institutions do not allow/invite the tobacco industry to sit in any such entities involved in setting public health policies, but industry representative are able to provide input at different stages of the policy, including at Commissioners' level. For example, on 4 May 2020, the EU Commissioner for Agriculture Janusz Wojciechowski met with representatives of UNITAB,³⁶ the European Association of Tobacco Growers to discuss the situation of farmers engaged in tobacco production.³⁷

In September 2020 SFP participated to a stakeholder consultation on the environmental markings under the Single-Use Plastics Directive³⁸ where representatives of the tobacco industry were also invited and present, having provided prior written input, along with mock-ups of their proposals for the markings.³⁹

4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (e.g., COP, MOP, WGs) (Rec 4.9 & 8.3)

Score: 1

⁷ The term "government" refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority

⁸ The term, "tobacco industry" includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

⁹ <https://tobaccotactics.org/wiki/institute-for-competitiveness-i-com/>

¹⁰

<https://web.archive.org/web/20201014152558/https://www.i-com.it/en/2020/09/29/europes-beating-cancer-plan-the-roundtable-with-montserrat-and-other-top-meps/>

¹¹

<https://web.archive.org/web/20201014152014if/https://www.i-com.it/2020/05/20/i-com-beating-cancer-plan/>

¹² 'I-Com published its Manifesto on Cancer Prevention Strategies and the role of Harm Reduction', I-Com website, <https://www.i-com.it/en/2021/03/03/i-com-published-its-manifesto-on-cancer-prevention-strategies-and-the-role-of-harm-reduction/>

¹³ Correspondence with i-COM, available on request

¹⁴ <https://www.britcham.eu/wp-content/uploads/2020/12/europes-beating-cancer-plan-britcham-workshop-report-final.pdf>

¹⁵ <https://www.kangaroogroup.de/events/>

¹⁶ <https://tobaccotactics.org/wiki/kangaroo-group/>

¹⁷ <https://www.kangaroogroup.de/who-we-are/kangaroo-members/>

¹⁸

<https://www.eureporter.co/health/2020/10/22/lifestyle-choices-and-beating-cancer/>

¹⁹

https://www.kangaroogroup.de/app/download/32256639/20210303_Event_Summary.pdf

²⁰ 'Facilitating a healthy lifestyle: how to reduce cancer related lifestyle risk factors', European Parliament BECA Committee, Public Hearing, <https://www.europarl.europa.eu/committees/en/facili>

No such instances were identified as regards the EU presence at COP since as far back as COP5 or at MOP since MOP1. At COP8 and MOP2, the EU delegation supported the adoption of mandatory declarations of interests from delegates.

<https://tobaccotactics.org/wiki/facilitating-a-healthy-lifestyle-how-to-/product-details/20201125CHE07903>

²¹ Draft Report on Strengthening Europe in the fight against cancer – towards a comprehensive and coordinated strategy, European Parliament, BECA Committee, https://www.europarl.europa.eu/doceo/document/BECA-PR-693752_EN.pdf

²² <https://www.eppgroup.eu/newsroom/news/the-next-10-steps-in-beating-cancer>

²³

https://www.europarl.europa.eu/doceo/document/BECA-AM-697536_EN.pdf

²⁴ European Business Summit 2021 "Building a more sustainable, digital and resilient Union"

²⁵ List of speakers here: <https://ebsummit.eu/>

²⁶ <https://euobserver.com/democracy/153530>

²⁷ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency_en

²⁸ <https://ec.europa.eu/info/consultations>

²⁹ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en#you-contribution-makes-a-difference

³⁰ <https://corporateeurope.org/en/2020/07/smoke-and-mirrors>

³¹ <https://epha.org/tobacco-as-an-offensive-interest-in-trade-talks-the-role-of-rules-of-origin/>

³² <https://corporateeurope.org/en/power-lobbies/2018/02/eu-tax-officials-open-door-tobacco-lobbyists>

³³ Politico Morning healthcare, 15 March 2021

³⁴ <https://epha.org/new-report-reveals-tobacco-lobbying-of-european-commission/>

³⁵ https://ec.europa.eu/taxation_customs/meetings-tobacco-industry_nl

³⁶ <https://tobaccotactics.org/wiki/unitab/>

³⁷

<https://twitter.com/jwojc/status/1235224514654543>

³⁸ accessed in May 2021

³⁹ <https://eur-lex.europa.eu/eli/dir/2019/904/oj>

Indicator 2: Corporate social responsibility (CSR)

5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in activities of the tobacco industry described as socially responsible. (Rec 6.2)

B. The government (its agencies and officials) receives CSR contributions⁴⁰ (monetary or otherwise, including CSR contributions) from the tobacco industry or those working to further its interests. (Rec 6.4)

Score: 0 (N/A)

Not applicable in the case of the EU because most industry CSR actions take place at national level. The absence of such partnerships is a reflection of the limited opportunities as well as of existing practice.

Indicator 3: Benefits to the tobacco industry

6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (Rec 7.1)

Score: 2

In 2014, the TPD provided 6 years transition for the menthol ban which is explained in the TPD text as serving the purpose of giving time to tobacco users to switch to

⁴⁰ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

⁴¹ TPD, recital (16)

https://ec.europa.eu/health/sites/default/files/tobacco/docs/dir_201440_en.pdf

other products.⁴¹ While this was the result of Member States pressure reflected in EU policy decision-making, the long transition period for the menthol ban adopted in the EU Tobacco Products Directive constitutes such an accommodation for the tobacco industry.

7. The government gives privileges, incentives, tax exemptions or benefits to the tobacco industry (Rec 7.3)

Score: 2

While no specific tax exemptions are afforded to the tobacco industry specifically, lenient policy can create such incentives for tobacco. Firstly, the EU allows a high threshold for cross-border shopping of tobacco for personal use (800 cigarette sticks / 1 kg of fine cut tobacco) between EU member states. Along with the weak rules for burden of proof this measure has contributed to high cross border-flows for tax avoidance purposes, eroding tobacco excise revenues in several high-tax Member States, as well as public health policies' objectives.

Secondly, evidence from across several EU countries suggests that the tobacco industry is able to shift dividends across borders in order to avoid paying corporate tax.⁴² In 2019, BAT was amongst 39 companies being investigated by the Commission for tax avoidance by multinationals.⁴³

⁴² https://www.bath.ac.uk/publications/big-tobacco-big-avoidance/attachments/Big_Tobacco_Big_Avoidance.pdf

⁴³ https://ec.europa.eu/commission/presscorner/detail/en/ip_19_5578

Indicator 4: Unnecessary interaction

8. Top level government officials (such as President/ Prime Minister or Minister) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)

Score: 5

In 2020, representatives of Philip Morris International (PMI) were present to a concert organised under the auspices of the Slovak Permanent Representation to the EU and under the patronage of the Commission's Vice-President Maroš Šefčovič. A report from Corporate Europe Observatory highlighted that the Head of Commissioner Cabinet Juraj Nociar met with representatives of PMI as a "courtesy meeting" to discuss the *"Working priorities of the new European Commission"* on 23 January 2020.⁴⁴

The Head of Cabinet, answering to questions on the meeting from a journalist, argued that the meeting was a "courtesy" from the tobacco giant (PMI), who was sponsoring the event⁴⁵ and that the meeting *"did not touch upon topics related to tobacco control"*. According to Corporate Europe Observatory, the meeting unfolded as a 30-minute conversation⁴⁶ where the representatives from PMI *"presented their activities, confirmed there is a need to innovate products towards [a] more clean and low-carbon society, adaptation to digital technologies and to focus on research and innovation"*. Moreover, documents obtained by Corporate Europe Observatory suggest that Mr. Šefčovič had been meeting with this company for the past 15 years.^{47 48}

Also in early 2020, PMI organized events on the margins of the World Economic Forum in Davos⁴⁹ despite not being allowed as a member of the WEF. An event on *"Confronting Global Challenges, Solidarity in an era of retreat"*,⁵⁰ was hosted by The

Economist Events and included then Vice President of the European Investment Bank Alex Stubb, alongside André Calantzopoulos, then CEO of PMI, and photos tweeted of the event indicate attendance by former British Prime Minister Tony Blair.⁵¹

Another side event at Davos, organized by Euronews⁵² included the PMI CEO along with, *inter alia*, then President of the European Research Council Prof. Mauro Ferrari, as a speaker.⁵³

In the case of both events, informal contacts with some of the speakers suggested that **PMI sponsorship may not have been disclosed ahead of the events.**⁵⁴

9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)

Score: 3

The EU and 15 Member States ratified the FCTC's Illicit Trade Protocol which establishes in Articles 8.12 and 8.13 an obligation of independence of tracking and tracing systems from the tobacco industry. The EU tracking and tracing system and security features, set up by Articles 15 and 16 TPD, entered into force for cigarettes and roll-your-own tobacco in May 2019 and was fully operational in May 2020. Despite civil society recommendations for a fully independent tracking and tracing system, Article 15 of the Directive delegates to the tobacco industry the selection and payment of certain operators within the system, and Article 16 allows it to provide some elements in the security feature. Despite independence criteria defined in the secondary legislation, the provisions of the TPD allowed data storage providers with proven historical relationships with the tobacco industry to be contracted.⁵⁵

Under the Single Use Plastic Directive, producers of tobacco products with plastic would have to cover at least the costs of the awareness raising measures, as well as the cost of waste clean-up, collection, transport and treatment⁵⁶. There are concerns – validated in some EU Member States – that, without additional safeguards and implementation guidance from the Commission, the tobacco industry will use this as an opportunity to promote and place itself in the CSR actions context, despite only fulfilling a legal obligation.

10. The government accepts, supports, endorses, or enters into partnerships or non-binding agreements with the tobacco industry or any entity working to further its interests. (Rec 3.1)

Score: 4

Following a lawsuit launched by the EU in the early 2000s, PMI signed an agreement with the EU and its Member States to settle the court case in 2004. In the agreement, PMI undertook a series of obligations with a view to establish an extensive system of cooperation with the EU meant to address the illicit trade of its products. The agreement expired in 2016 following an intense political debate where the European Parliament expressed its opposition to a prolongation.⁵⁷

⁴⁴ <http://ec.europa.eu/transparencyinitiative/meetings/meeting.do?host=f16b401c-c084-4b1a-826d-6f96c5258892&d=6679426&p=3>

⁴⁵ <https://www.politico.eu/newsletter/politico-eu-influence/politico-eu-influence-new-normal-new-practice-sefcovics-cig-gig-recovery-plan-reak/>
<https://corporateeurope.org/sites/default/files/2020-07/PM%20Sefcovic%20email%202.pdf>

⁴⁶ https://corporateeurope.org/sites/default/files/2020-07/PM%20Sefcovic_email%201.pdf

⁴⁸ https://www.asktheeu.org/en/request/7938/response/26251/attach/4/Ares%202017%20523633.pdf?co_okie_passthrough=1

⁴⁹ <https://healthpolicy-watch.news/former-british-prime-minister-tony-blair-appears-at-tobacco-supported-davos-panel/>

⁵⁰ <https://events.economist.com/events-conferences/emea/confronting-global-challenges/#overview>

Similar agreements were signed with JTI (2007-2022), BAT (2010-2030) and Imperial Tobacco (2010-2030). Through the agreements, the signatory companies undertook legal obligations to make certain payments to the EU and Member States and to prevent future smuggling of their own products.

The EU already has tools within an operational comprehensive system tackling the illegal tobacco trade which calls into question the necessity of these agreements. The current agreements raise serious issues as regards transparency and Article 5.3.

Although parts of the agreements are publicly available, numerous transparency concerns have been raised over time. This is largely due to a lack of public information during the negotiation stage, as well as regarding the meetings and correspondence between OLAF and the four companies (envisioned in the agreements). It resulted in an abundance of documents mostly restricted to the public eye due to the companies' confidentiality requests.⁵⁸ Additional concerns are that tobacco companies misconstrue their legal obligations and payments due under the agreements as partnerships with law enforcement activities.⁵⁹

⁵¹ <https://twitter.com/alexstubb/status/1220234029192097792>

⁵² <https://www.euronews.com/2020/01/24/euronews-debates-is-there-a-crisis-in-global-governance>

⁵³ <https://twitter.com/amonck/status/1220572209980354561>

⁵⁴ Source: in-person conversations, SFP emails

⁵⁵ <https://www.smokefreepartnership.eu/news/sfp-statement-one-year-report-on-eu-tracking-and-tracing-system-for-tobacco-products-confirms-civil-society-concerns-about-the-risk-of-tobacco-industry-interference>

⁵⁶ <https://eur-lex.europa.eu/eli/dir/2019/904/oj>

⁵⁷ https://www.europarl.europa.eu/doceo/document/TA-8-2016-0082_EN.html

⁵⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4853556/>

⁵⁹ <https://www.cepol.europa.eu/education-training/what-we-teach/webinars/webinar-2020-illicit-trade-tobacco-products>

Indicator 5: Transparency

11. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)

Score: 3

There is no specific set of rules implementing Article 5.3 at EU institutions level. There are however general rules meant to ensure the transparency of policy-making.

The general rule, applicable to all Commission's departments is that Commissioners, their cabinet members, and Directors-General must publish information on meetings held with organisations or self-employed individuals. Meetings relating to policy-making and implementation in the EU can only take place if the interest representatives are registered in the EU transparency register.⁶⁰ However, meetings take place with lower ranking officials, which are under no obligation to disclose their meetings.

As mentioned above DG SANTE and DG TAXUD are the only departments with specific rules aimed at interactions with the tobacco industry. These consist of publishing the meetings with the tobacco industry and of extensive minutes of the meetings. In general, these meetings are broader, and the civil society also invited as observer.

A very good model is the EU Ombudsman which established measures to limit interactions with the tobacco industry and to ensure the transparency of those interactions that do occur in line with Recommendation 2 of the Article 5.3 Guidelines⁶¹.

The Ombudsman has decided to proactively publish online:

(i) any planned meetings of herself, members of her Cabinet, and her staff with representatives of the tobacco industry (including lawyers, advisors, consultants and lobbyists acting on behalf of tobacco companies)

(ii) the list of participants of such meetings, and

(iii) the minutes drawn up after a meeting has taken place

"In line with the Ombudsman's commitment to strengthen further transparency and maintain an open dialogue with stakeholders, the Ombudsman and her staff will only interact with organisations and self-employed individuals acting on behalf of the tobacco industry who already feature in the Transparency Register jointly set up by the Commission and the European Parliament. Moreover, before any meeting request can be agreed, the Ombudsman and her staff will remind representatives of the tobacco industry of the above rules".⁶²

As regards the Council, there are no similar rules in the Secretariat of the Council or in the Permanent Representations of the Member States. However, some Permanent Representations have put in place more stringent national rules on transparency, publishing all of their meetings, albeit no specific requirements for Article 5.3 FCTC and the tobacco industry interactions.

There is also no specific set of rules as regards the European Parliament. At the time when the TPD was negotiated the Rapporteur, Linda McAvan, attached a legislative footprint to her report⁶³, listing the stakeholders she met (including a meeting with the tobacco⁶⁴ and the vaping⁶⁵ lobby, which were open to the public at the time). As another example of transparency, the Greens in the EP published on their groups' website in 2013 a list of emails/meeting requests sent by the Tobacco Industry, explicitly referring to Article 5.3.⁶⁶

In the current legislature (2019-2024), MEPs can make a reference to the organisations they are meeting, with a mention of the discussed file. Rule 11(3) of Parliament's Rules of Procedure provides that *"Members should publish online all scheduled meetings with interest representatives falling under the scope of the Transparency register".⁶⁷ Without prejudice to Article 4(6)*

of Annex I, rapporteurs, shadow rapporteurs and committee chairs shall, for each report, publish online all scheduled meetings with interest representatives falling under the scope of the Transparency register".

A mechanism for MEPs to disclose their lobby meetings is available, however it is largely a voluntary mechanism, with inconsistent reporting from members across groups and member states. Only a few MEPs disclosed meetings with the tobacco industry.⁶⁸ This is a good practice example in transparency.

12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)

Score: 3

As explained above, the recommendation across the EU institutions is that meetings related to policy-making or implementation with EU institutions' officials should only be organised with interest representatives that are registered in the Transparency Register. This is a tool to allow European citizens to see what interests are being represented at Union level and on whose behalf, as well as the financial and human resources dedicated to these activities⁶⁹. This recommendation is applicable for meetings with the European Commission, the European Parliament and the Council. There is no specific set of rules for the Transparency Register disclosure or

registration of the tobacco industry entities or front groups or for restricting those meetings to the 'strictly necessary' as per Article 5.3 Guidelines. This means that in reality, meetings may take place with unregistered entities or with entities that do not disclose their tobacco industry ties. In addition, the Transparency Register disclosure rules have an exemption for law firms, in view of client confidentiality. The latter caveat is a significant blind spot in identifying tobacco industry interest representation.

This shortcoming was evident when DG TAXUD held a meeting in 2020 with tobacco representatives from BAT at the request of Pappas & Associates, a law firm, to discuss the classification treatment of novel nicotine products and representatives from both companies for present at the meeting.⁷⁰ However, Pappas did not list BAT as a client in their 2020 Transparency Register entry,⁷¹ and had not listed BAT as a client since 2016.⁷²

In the European Commission, in October 2021 DG SANTE requires declarations of absence of tobacco industry conflict of interests as a condition for membership of the Cancer Stakeholder Contact Group, an important development in ensuring the EU cancer plan is free from covert interference of the tobacco industry. This followed several instances where tobacco industry sponsored entities infiltrated health stakeholder meetings without disclosing interest and were only exposed when SFP and its partners alerted organisers.

⁶⁰ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/transparency-register_en

⁶¹ <https://www.who.int/fctc/publications/fctc-article-5-3-best-practices.pdf>

⁶² <https://www.ombudsman.europa.eu/export-pdf/en/63286>

⁶³ https://www.europarl.europa.eu/doceo/document/ENVI-PR-508085_EN.pdf

⁶⁴ <https://www.europarl.europa.eu/document/activities/cont/201303/20130320ATT63555/20130320ATT6355EN.pdf>

⁶⁵ <https://www.europarl.europa.eu/document/activities/cont/201303/20130320ATT63557/20130320ATT63557EN.pdf>

⁶⁶ <https://www.greens-efa.eu/en/article/news/revision-of-the-tobacco-directive>

⁶⁷ The meeting declarations are available on the MEP's profile, under the button "Meetings" > "Past meetings" in the horizontal menu bar on the right.

⁶⁸ <https://www.integritywatch.eu>

⁶⁹ <https://ec.europa.eu/transparencyregister/public/homePage.do>

⁷⁰ https://ec.europa.eu/taxation_customs/system/files/2021-05/2021.02.21_meeting_with_bat.pdf

⁷¹ <https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=838570138527-27>

⁷² SFP Transparency register monitoring

Indicator 6: Conflict of interest

13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)

Score: 0 (N/A)

Not applicable. This falls under national competence.

14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)

Score: 3

According to the European Commission's Code of Conduct,⁷³ former European Commissioners are obliged to notify the European Commission of the new roles or jobs in the private sector they take in a period of two years after leaving their public office. This is a called a "cooldown" period and it's meant to ensure that EU public officials do not use their positions for lobby relationships and meetings (to secure their activity at the end of the mandate) and, thus, to prevent undue interference from business associations into policy making. The European Commission can approve certain new positions with the private sector and impose certain conditions (such as a prohibition to share confidential information) but, according to media outlets and civil society watchdogs,⁷⁴ these rules are not adequately followed.

At the end of its mandate as Commissioner for Budget and Human Resources in 2019, Mr. Gunther Oettinger was approved to occupy a new position as "*member of the Global Advisory Board of Kekst CNC*",⁷⁵ a consultancy firm whose clients included Phillip Morris International.⁷⁶ The group reported between €200,000 and €299,999 in revenue from tobacco giant Philip Morris in 2019, according to the EU Transparency Register.⁷⁷ Media coverage of the possible conflict of interest included a statement from Mr. Oettinger that he would not provide advice to the firm's tobacco client.⁷⁸

On 11 February 2021, Ombudsman Emily O'Reilly sent a letter to Commission President Ursula von der Leyen reminding her that as a party to the FCTC, "the EU has committed to protect public health policies from the tobacco industry", which is even more important in the context of the Commission's current plans to revise several pieces of tobacco control legislation.⁷⁹ She also drew attention to the need for a careful monitoring of the compliance to the conditions placed on the former Commissioner by the Commission.

15. Current government officials and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)

Score: 1

No evidence of such instances was found.

⁷³ See Article 11 of Commission Decision of 31 January 2018 on a Code of Conduct for Members of the European Commission, C/2018/0700, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0221\(02\)#d1e621-7-1](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0221(02)#d1e621-7-1)

⁷⁴<https://corporateeurope.org/en/revolvingdoorwatch>

⁷⁵ European Commission Decision on Former European Commissioner Gunther Oettinger's Post-Term of Office Professional Activity as Member of the Global Advisory Board of Kekst CNC, Brussels

11.11.2020, C(2020) 9044 final, available at: https://ec.europa.eu/info/sites/default/files/c20209044_final_en.pdf

⁷⁶<https://www.politico.eu/article/gunther-oettinger-europe-mr-revolving-door-lobbying-transparency/>

⁷⁷<https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=486438336738-84>

⁷⁸<https://www.politico.eu/article/ombudsman-flags-günther-oettinger-tobacco-lobbying-role/>

⁷⁹https://www.ombudsman.europa.eu/en/case/en/58713?utm_source=some_EO&utm_medium=tw_organic&utm_campaign=tobacco_industry

Indicator 7: Preventive measures

16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)

Score: 2

There is a legal obligation for disclosing the records of lobby meetings only for Commissioners, their cabinet members and Directors-General. This is a general rule applicable to all stakeholders, not specific to the tobacco industry.

DG SANTE and DG TAXUD are the only department proactively publishing the minutes of the meetings with the tobacco industry. Individuals can request information about meetings⁸⁰ under the Freedom of Information (FOI).

The Commission's refusal to establish specific and stricter rules for the disclosure of all meetings which its services and its staff have with the tobacco industry has been deemed as maladministration in 2016 following an inquiry by the European Ombudsman.⁸¹

The Ombudsman called for a "proactive transparency policy regarding meetings with tobacco lobbyists", across all Commission services and staff in order to comply with transparency obligations in the FCTC.

The Commission, however, considers that the Transparency Register rules, publishing of the meetings in some cases, and the possibility to request access to documents via freedom-of-information (FOI) law is sufficient.⁸²

17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)

Score: 2

The European Commission adopted a Code of Conduct for Members of the European Commission since 1999, with the latest (and most comprehensive) version coming into force at the beginning of 2018. The Code of Conduct is general and does not have any specific guidelines or provisions related to interacting with the tobacco industry.⁸³

18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (Rec 5.2)

Score: 3

The EU TPD requires manufacturers to declare certain ingredients (on the list of priority additives) to national authorities. Spending on interest representation must also be declared annually into the EU transparency registry.

While the regulatory declarations are mandatory and enforceable, the lobby spending declarations are honour based and do not include philanthropy, so it is doubtful that they illustrate tobacco industry political activity completely.

19. The government has a program / system/ plan to consistently⁸⁴ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)

Score: 2

There is evidence that DG SANTE has been raising awareness among the rest of the Commission's departments in order to increase the transparency of tobacco industry meetings for at least the past 10 years.⁸⁵ However, progress in the implementation of safeguards has been slow outside the health department.

20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives.

(Rec 3.4)

Score: 2

⁸⁰ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32001R1049>

⁸¹ <https://www.ombudsman.europa.eu/en/opening-summary/en/54563>

⁸² <https://www.smokefreepartnership.eu/news/sfp-news/sfp-press-release-european-commission-embraces-its-failure-to-rein-in-tobacco-industry-influence>

⁸³ See Article 11 of Commission Decision of 31 January 2018 on a Code of Conduct for Members of the European Commission, C/2018/0700, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0221\(02\)#d1e621-7-1](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0221(02)#d1e621-7-1)

⁸⁴ For purposes of this question, “consistently” means:
a. Each time the FCTC is discussed, 5.3 is explained.

There are no specific rules for contributions from the tobacco industry. There are rules concerning accepting and declaring gifts above a certain monetary value, regardless of their source. The European Commission publishes a *list of gifts* received by EU Commissioners through the Protocol Service on its website.⁸⁶

AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

⁸⁵ https://www.asktheeu.org/en/request/7922/response/26900/attach/2/DG%20SANTE%20note%20to%20management%20team%20final.pdf?cookie_passthrough=1

⁸⁶ See latest available version (accessed 5 July 2021) at
https://ec.europa.eu/info/sites/default/files/inventaire_public_mandat_von_der_leyen_2.pdf



Smoke Free Partnership

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