

WHO Framework Convention on Tobacco Control

Conference of the Parties to the WHO Framework Convention on Tobacco Control

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Elaboration of guidelines for implementation of Article 5.3 of the Convention

- 1. At its second session, the Conference of the Parties decided to establish a working group to elaborate guidelines on the implementation of Article 5.3 (decision FCTC/COP2(14)). The working group was mandated to present a progress report, if possible draft guidelines, to the Conference of the Parties at its third session.
- 2. Pursuant to that decision, the first meeting of the working group on Article 5.3 was held in The Hague, from 12 to 14 December 2007, hosted by the Government of the Netherlands. The meeting was attended by representatives of the Key Facilitators¹ and Partners² of the working group. The participants also included representatives of civil society, the Convention Secretariat and WHO's Tobacco Free Initiative. Participants discussed the initial draft of guidelines proposed by the Key Facilitators. They recommended that draft guidelines, rather than a progress report only, should be presented for consideration of the Conference of the Parties. The working group mandated the Key Facilitators to further elaborate the draft guidelines, taking into consideration the proceedings of the meeting.
- 3. The new draft was sent out for comments from members of the working group and other participants of the meeting at the end of January 2008.
- 4. At a meeting of Key Facilitators (Brasila, 3–5 March 2008), hosted by the Government of Brazil, representatives of Partners of the working group, attending the parallel meetings on Articles 9 and 10 and Article 11, and representatives of WHO's Tobacco Free Initiative joined drafting sessions during the following two days. The group reviewed and incorporated the comments received from Partners and elaborated a second draft of the guidelines which was sent for an additional round of comments by all Partners of the working group.

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¹ Brazil, Ecuador, Netherlands, Palau, Thailand.

² Benin, Djibouti, European Community, Fiji, France, Iran (Islamic Republic of), Jamaica, Kenya, Malaysia, Namibia, Nigeria, Philippines, Republic of Korea, Turkey, Uruguay, Viet Nam.

- 5. The third draft of the guidelines was made accessible, on a protected web site, to all Parties to the Convention for comments in May 2008, in accordance with decision FCTC/COP2(14) of the Conference of the Parties. Twelve Parties submitted comments on the draft, but two of these Parties submitted their comments after the deadline. All comments were made available to members of the working group through its internal web site.
- 6. Following extended review of the comments and internal consultations, the Key Facilitators agreed to amend the draft of the guidelines before their submission to the Conference of the Parties, according to the timeline and procedure outlined in decision FCTC/COP2(14) and the subsequent decision of the Bureau of the Conference of the Parties. The resulting final draft guidelines for consideration by the Conference of the Parties are contained in the Annex.
- 7. The Conference is invited to review and, as appropriate, adopt the guidelines.

ANNEX

DRAFT GUIDELINES FOR IMPLEMENTATION OF ARTICLE 5.3 OF THE CONVENTION ON THE PROTECTION OF PUBLIC HEALTH POLICIES WITH RESPECT TO TOBACCO CONTROL FROM COMMERCIAL AND OTHER VESTED INTERESTS OF THE TOBACCO INDUSTRY

INTRODUCTION

- 1. World Health Assembly resolution WHA54.18 on transparency in tobacco control process, citing the findings of the Committee of Experts on Tobacco Industry Documents, states that "the tobacco industry has operated for years with the expressed intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic."
- 2. The Preamble of the WHO Framework Convention on Tobacco Control indicates that Parties¹ "need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts". Further, Article 5.3 of the Convention requires that "in setting and implementing their public health policies with respect to tobacco control, Parties should act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with the national law." The Conference of the Parties in decision FCTC/COP2(14) established a working group to elaborate guidelines for implementation of Article 5.3.

Purpose, scope and applicability

- 3. Use of the guidelines for Article 5.3 will have an overarching impact on countries' tobacco control policies and on implementation of the Convention, because the guidelines recognize that tobacco industry interference, including that from the state-owned tobacco industry, cuts across a number of tobacco control policy areas, as stated in the Preamble of the Convention, articles referring to specific tobacco control policies and the Rules of Procedure of the WHO Framework Convention on Tobacco Control.
- 4. The purpose of these guidelines is to ensure that efforts to protect tobacco control from commercial and other vested interests of the tobacco industry are comprehensive and effective. Parties should implement measures in all branches of government that may have an interest in, or the capacity to, affect public health policies with respect to tobacco control.

¹ "[T]he term 'Parties' refers to States and other entities with treaty-making capacity which have expressed their consent to be bound by a treaty and where the treaty is in force for such States and entities." (Source: United Nations Treaty Collections: http://untreaty.un.org/English/guide.asp#signatories)

5. The aim of these guidelines is to assist Parties¹ in meeting their legal obligations under Article 5.3 of the Framework Convention. The guidelines draw on the best available scientific evidence and the experience of Parties in addressing tobacco industry interference.

- 6. The guidelines apply to setting and implementing Parties' public health policies with respect to tobacco control. They also apply to persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of those policies.
- 7. The guidelines are applicable to government officials, representatives and employees of any national, state, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party and to any person acting on their behalf. Any government branch (executive, legislative and judiciary) responsible for setting and implementing tobacco control policies and for protecting those policies against tobacco industry interests should be accountable.
- 8. The broad array of strategies and tactics used by the tobacco industry to interfere with the setting and implementing of tobacco control measures, such as those that Parties to the Convention are recommended to implement, is documented by a vast body of evidence. The measures recommended in these guidelines aim at protecting against unlawful or unethical interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.
- 9. While the measures recommended in these guidelines should be applied by Parties as broadly as necessary, in order best to achieve the objectives of Article 5.3, Parties are strongly encouraged to implement measures beyond those recommended in these guidelines when adapting them to their specific circumstances.

GUIDING PRINCIPLES

Principle 1: Tobacco products are legal but lethal.

10. In this sense, the tobacco industry is specific and unique. It produces and promotes a product that has been proven scientifically to be addictive, to cause disease and death and to give rise to a variety of social ills, including increased poverty. Consequently, there is a fundamental conflict between the tobacco industry's interests and public health policy. As this conflict of interest is irreconcilable, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.

Principle 2: Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.

11. Parties should ensure that any engagement with the tobacco industry on matters related to tobacco control or public health is accountable and transparent.

¹ Where appropriate, these guidelines also refer to regional economic integration organizations.

Principle 3: Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.

12. The tobacco industry should be required to provide Parties with information for effective implementation of these guidelines.

Principle 4: Because their products are lethal, tobacco companies should not be granted incentives to establish or run their businesses.

13. Any privileged treatment of these companies would be in conflict with tobacco control policy.

RECOMMENDATIONS

- 14. The following important activities are essential for addressing tobacco industry interference in public health policies:
 - (1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.
 - (2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.
 - (3) Reject partnerships and non-binding or non-enforceable agreements and partnerships with the tobacco industry.
 - (4) Avoid conflicts of interest for government officials and employees.
 - (5) Require that information collected from the tobacco industry be transparent and accurate.
 - (6) Denormalize and regulate activities described as "corporate social responsibility" by the tobacco industry.
 - (7) Do not give privileged treatment to tobacco companies.
 - (8) Treat State-owned tobacco companies in the same way as any other tobacco industry.

Agreed measures for protecting public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry are listed below. Parties are encouraged to implement measures beyond those provided for by these guidelines, and nothing in these guidelines shall prevent a Party from imposing stricter requirements that are consistent with these recommendations.

- (1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.
- 15. All branches of government and the public need knowledge and awareness about past and present interference by the tobacco industry in setting and implementing public health policies with

respect to tobacco control. Such interference requires specific action for successful implementation of the whole Framework Convention.

Recommendations

- 1.1 Parties should, in consideration of Article 12 of the Framework Convention, inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.
- 1.2 Parties should in addition raise awareness about the tobacco industry's practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.

(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.

- 16. To prevent interference with public health policies with respect to tobacco control, governments should interact with the tobacco industry only when necessary, in line with the principle of good governance or as mandated by legal and administrative means within the jurisdiction, provided that these are consistent with Article 5.3 of the Convention.
- 17. Any interaction with the tobacco industry should serve as a means for exchange of information, but should occur in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from, or on account of, such interaction.

- 2.1 All branches of government should ensure that clear rules for transparency are applied in their interactions with the tobacco industry. The interactions should be made accessible to the public in accordance with established transparency rules or, if there are no such rules, on request.
- 2.2 The involvement of the tobacco industry in setting and implementing public health policies with respect to tobacco control should be limited and should strictly comply with existing good governance rules or, in their absence, should only occur by means of public consultation, thus ensuring complete transparency.
- 2.3 Parties should apply existing, strict governance rules systematically or, in their absence, establish specific rules for meetings with the tobacco industry, including third party-mediated meetings, to be implemented by all branches of government.
- 2.4 Parties should not participate in meetings or functions initiated or funded by the tobacco industry.

¹ The complementary background document prepared by WHO's Tobacco Free Initiative provides a number of examples of tobacco industry interference with public health policies with respect to tobacco control.

(3) Reject partnerships and non-binding or non-enforceable agreements and partnerships with the tobacco industry.

18. The tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies, given that its interests are in direct conflict with the goals of public health.

Recommendations

- 3.1 Parties should establish policies that prohibit partnerships or non-enforceable or non-binding agreements and partnerships as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.
- 3.2 Parties should prohibit the tobacco industry from participating in or performing youth, public education or any initiatives that are directly or indirectly related to tobacco control.
- 3.3 Parties should prohibit the acceptance of any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.
- 3.4 Parties should prohibit acceptance of any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.

(4) Avoid conflicts of interest for government officials and employees.

- 19. The involvement of organizations or individuals with commercial or vested interests in the tobacco industry in public health policies with respect to tobacco control is most likely to have a negative effect. Clear rules regarding conflicts of interest for government officials and employees working in tobacco control are important means for protecting such policies from interference by the tobacco industry.
- 20. Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the United Nations General Assembly Code of Conduct for Public Officials and by several governmental and regional economic integration organizations.

- 4.1 Parties should mandate a policy on the disclosure and management of conflicts of interest that applies to all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors.
- 4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.

4.3 Parties should not award contracts for setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.

- 4.4 Parties should require public office holders who have or have had a role in setting and implementing public health policies with respect to tobacco control to inform their institutions about any intention to engage in an occupational activity with any tobacco business entity, whether gainful or not, within a specified period of time after leaving service. The institution should retain the right to either forbid acceptance of an occupational activity with any tobacco business entity or give its approval subject to any conditions it might deem necessary. This recommendation should also operate in the opposite direction.
- 4.5 Parties should require governments and their officials to declare and divest themselves of interests in tobacco business holdings.
- 4.6 Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.
- 4.7 Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.
- 4.8 Parties should not allow any official or employee of government or of any semi/quasi-governmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.
- 4.9 Parties should ban, when constitutionally permissible, contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns. When this is not constitutionally permissible, full disclosure of such contributions should be required.

(5) Require that information collected from the tobacco industry be transparent and accurate.

- 21. To take effective measures preventing interference of the tobacco industry with public health policies, Parties need information about its activities and practices, thus ensuring that the industry operates in a transparent manner. Article 12 of the Convention requires Parties to promote public access to such information in accordance with national law.
- 22. Article 20.4 of the Convention requires, inter alia, Parties to promote and facilitate exchanges of information about tobacco industry practices and the cultivation of tobacco. In accordance with Article 20.4(c), each Party should endeavour to cooperate with competent international organizations to establish progressively and maintain a global system to regularly collect and disseminate information on tobacco production and manufacture and activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.

Recommendations

5.1 Parties should introduce and supply measures to ensure that all operations and activities of the tobacco industry are transparent.

- 5.2 Parties should require the tobacco industry and those working to further its interests 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 not prohibited or not yet prohibited under Article 13.
- 5.3 Parties should require rules for the disclosure or registration of tobacco business entities, affiliated organizations and individuals acting on their behalf, including lobbyists.
- 5.4 Parties should impose mandatory penalties on the tobacco industry in case of the provision of false or misleading information in accordance with national law.
- 5.5 Parties should adopt and implement effective legislative, executive, administrative and other measures to ensure public access, in accordance with Article 12(c) of the Framework Convention, to a wide range of information on tobacco industry activities as relevant to the objectives of the Convention, such as in a public repository.

(6) Denormalize and regulate activities described as "corporate social responsibility" by the tobacco industry.

- 23. The tobacco industry conducts corporate social responsibility activities to distance its image from the lethal nature of the product it produces and sells or to interfere with the setting and implementation of public health policies. Corporate social responsibility by the tobacco industry, aiming at the promotion of tobacco consumption, is a marketing as well as public relations strategy that falls within the Convention's definition of advertising, promotion and sponsorship.
- 24. The corporate social responsibility of the tobacco industry is, according to WHO, an inherent contradiction, as industry's core functions are in conflict with the goals of public health policies with respect to tobacco control.

Recommendations

- 6.1 Parties should ensure that all branches of government and the public are informed and made aware of the true purpose and scope of corporate social responsibility activities performed by the tobacco industry.
- 6.2 Parties should not endorse, support, form partnerships with or participate in corporate social responsibility activities of the tobacco industry.
- 6.3 Parties should not allow public disclosure of corporate social responsibility activities or of the expenditures made for these activities by the tobacco industry or by any other person

¹ WHO. *Tobacco industry and corporate social responsibility – an inherent contradiction*. Geneva, World Health Organization, 2004.

acting on its behalf, except when legally required to report on such expenditures, such as in an annual report.

6.4 Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements.

(7) Do not give privileged treatment to tobacco companies.

- 25. Some governments encourage investments by tobacco companies, even to the extent of subsidizing them with financial incentives, such as providing partial or complete exemption from taxes otherwise mandated by law.
- 26. Without prejudice to their sovereign right to determine and establish their economic, financial and taxation policies, Parties should respect their commitments for tobacco control.

Recommendations

- 7.1 Parties should not grant incentives, privileges or benefits to tobacco companies to establish or run their businesses.
- 7.2 Parties should adopt policies to prevent governments from investing in the tobacco industry and related ventures or from providing any special tax exemption to tobacco companies.

(8) Treat State-owned tobacco companies in the same way as any other tobacco industry.

27. Tobacco businesses can be government-owned, non-government-owned or a combination thereof. These guidelines apply to all tobacco businesses, regardless of their ownership.

- 8.1 Parties should ensure that State-owned tobacco companies are treated in the same way as any other member of the tobacco industry in respect of setting and implementing tobacco control policy.
- 8.2 Parties should ensure that the setting and implementing of tobacco control policy are separated from overseeing or managing a tobacco business.
- 8.3 Parties should not allow transfer of personnel within a period of three years between employment in a State-owned tobacco company and any department of the government responsible for setting and implementing public health policies with respect to tobacco control.
- 8.4 Parties should ensure that representatives of State-owned tobacco companies do not form part of delegations to any meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.

ENFORCEMENT AND MONITORING

Enforcement

28. Parties should put in place enforcement mechanisms or, to the extent possible, use existing enforcement mechanisms, to meet their obligations under Article 5.3 of the Convention and these guidelines.

Monitoring implementation of Article 5.3 of the Framework Convention and of these guidelines

- 29. Monitoring implementation of Article 5.3 of the Convention and of these guidelines is essential for ensuring the introduction and implementation of efficient tobacco control policies. This should also involve monitoring the tobacco industry, for which existing models and resources should be used, such as the database on tobacco industry monitoring of the WHO Tobacco Free Initiative.
- 30. Nongovernmental organizations and other members of civil society not affiliated with the tobacco industry could play an essential role in monitoring the activities of the tobacco industry.
- 31. Codes of conduct or staff regulations for all branches of governments should include a "whistleblower function", with adequate protection of whistleblowers. In addition, Parties should be encouraged to use and enforce mechanisms to ensure compliance with these guidelines, such as the possibility of bringing an action to court and to use complaint procedures, such as an ombudsman system.

International collaboration and updating and revision of the guidelines

- 32. International cooperation is essential for making progress in preventing interference by the tobacco industry with the formulation of public health policies on tobacco control. Article 20.4 of the Convention provides the basis for collecting and exchanging knowledge and experience with respect to tobacco industry practices, taking into account and addressing the special needs of developing country Parties and Parties with economies in transition.
- 33. Efforts have already been made to coordinate the collection and dissemination of national and international experience with regard to the strategies and tactics used by the tobacco industry and to monitoring tobacco industry activities. Parties would benefit from sharing legal and strategic expertise for countering tobacco industry strategies. Article 21.4 of the Convention provides that information exchange should be subject to national laws regarding confidentiality and privacy.

- 1. As the strategies and tactics used by the tobacco industry evolve constantly, these guidelines should be reviewed and revised periodically to ensure that they continue to provide effective guidance to Parties on protecting their public health policies on tobacco control from tobacco industry interference.
- 2. Parties reporting via the existing reporting instrument of the Framework Convention should provide information on tobacco production and manufacture and the activities of the tobacco industry that affect the Convention or national tobacco control activities. To facilitate

this exchange, the Convention Secretariat should ensure that the principal provisions of these guidelines are reflected in the next phases of the reporting instrument, which the Conference of the Parties will gradually adopt for use by Parties.

3. In view of the paramount importance of preventing tobacco industry interference in any public health policy with respect to tobacco control, the Conference of the Parties may consider, if necessary, elaborating a protocol to Article 5.3 of the Convention.

APPENDIX

USEFUL SOURCES OF INFORMATION

Relevant literature

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Hammond R, Rowell A. *Trust us. We're the tobacco industry*. Baltimore, Johns Hopkins University Press, 2001.

World Health Organization. Tobacco company strategies to undermine tobacco control activities at the World Health Organization. Geneva, World Health Organization, 2000.

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Yach D, Bialous S. Junking science to promote tobacco. *American Journal of Public Health*, 2001, 91:1745–1748.

Web resources

WHO sites:

Tobacco Free Initiative: http://www.who.int/tobacco/en/

WHO publications on tobacco: http://www.who.int/tobacco/resources/publications/en/

WHO European Regional Office:

 $\frac{http://www.euro.who.int/InformationSources/Publications/HTRes?HTCode=tobacco\&language=English\&HTSubmit=$

Sites with general, regional or national information and topics related to tobacco control:

Action on Smoking and Health, UK (and special page for the tobacco industry): http://www.newash.org.uk/ash_r3iitasl.htm

Corporate Accountability International and the Network for Accountability of Tobacco Transnationals: www.stopcorporateabuse.org

Economics of tobacco control: http://www1.worldbank.org/tobacco/

European Commission control:

http://ec.europa.eu/health/ph_determinants/life_style/Tobacco/tobacco_en.htm

European Network for Smoking Prevention: http://www.ensp.org/

Framework Convention Alliance for Tobacco Control: http://www.fctc.org/

Documents in French: http://www.fctc.org/index.php?item=docs-fr
Documents in Spanish: http://www.fctc.org/index.php?item=docs-es

International Union for Health Promotion and Education: http://www.iuhpe.org/?page=18&lang=en

with the model legislation for tobacco control: http://www.iuhpe.org/?lang=en&page=publications_report2

French summary: http://www.iuhpe.org/?page=publications_report2&lang=fr

Spanish summary: http://www.iuhpe.org/?page=publications_report2&lang=sp

Tobacco industry: http://tobacco.health.usyd.edu.au/site/supersite/links/docs/tobacco_ind.htm

Smokefree Partnership: http://www.smokefreepartnership.eu/

Thailand Health Promotion Institute: http://www.thpinhf.org/

Tobaccopedia: the online tobacco encyclopedia: http://www.tobaccopedia.org/

More links to tobacco sites:

Various international and national tobacco control websites: http://www.tobacco.org/resources/general/tobsites.html

National tobacco control websites:

http://www.smokefreepartnership.eu/National-Tobacco-Control-websites

Web sites in French:

Centre de ressources anti-tabac: http://www.tabac-info.net/

Comité National Contre le Tabagisme (France): http://www.cnct.org

Office Français de Prévention du Tabagisme: http://www.oft-asso.fr/

Latest news on smoking and tobacco control: http://www.globalink.org/news/fr

Ministère de la santé, de la jeunesse et des sports: http://www.sante.gouv.fr/

Web sites in Spanish:

Tobacco control in the Americas (in English and Spanish): http://www.paho.org/english/ad/sde/ra/Tobabout.htm

Latest news on smoking and tobacco control: http://www.globalink.org/news/es

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