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Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control

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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

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 express 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 recognized the 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”.

3. Further, Article 5.3 of the Convention requires that “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”.

4. The Conference of the Parties, in decision FCTC/COP2(14), established a working group to elaborate guidelines for implementation of Article 5.3 of the Convention.

5. Without prejudice to the sovereign right of the Parties to determine and establish their tobacco control policies, Parties are encouraged to implement these guidelines to the extent possible in accordance with their national law.

Purpose, scope and applicability

6. Use of the guidelines for implementation of Article 5.3 of the Convention 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 Conference of the Parties to the WHO Framework Convention on Tobacco Control.

¹ “The 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>).

7. 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.

8. The aim of these guidelines is to assist Parties² in meeting their legal obligations under Article 5.3 of the Convention. The guidelines draw on the best available scientific evidence and the experience of Parties in addressing tobacco industry interference.

9. 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.

10. The guidelines are applicable to government officials, representatives and employees of any national, state, provincial, 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.

11. 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 required to implement, is documented by a vast body of evidence. The measures recommended in these guidelines aim at protecting against 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.

12. 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 of the Convention, Parties are strongly urged to implement measures beyond those recommended in these guidelines when adapting them to their specific circumstances.

GUIDING PRINCIPLES

Principle 1: There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.

13. The tobacco industry 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. Therefore, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.

² Where appropriate, these guidelines also refer to regional economic integration organizations.

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

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

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.

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

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

16. Any preferential treatment of the tobacco industry would be in conflict with tobacco control policy.

RECOMMENDATIONS

17. The following important activities are recommended 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 with the tobacco industry.
- (4) Avoid conflicts of interest for government officials and employees.
- (5) Require that information provided by the tobacco industry be transparent and accurate.
- (6) Denormalize and, to the extent possible, regulate activities described as "socially responsible" by the tobacco industry, including but not limited to activities described as "corporate social responsibility".
- (7) Do not give preferential treatment to the tobacco industry.
- (8) Treat State-owned tobacco industry in the same way as any other tobacco industry.

18. 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.*

19. 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 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.*

20. In setting and implementing public health policies with respect to tobacco control, any necessary interaction with the tobacco industry should be carried out by Parties 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. In the event the tobacco industry engages in any conduct that may create such a perception, Parties should act to prevent or correct this perception.

Recommendations

2.1 Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.

2.2 Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public.

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

21. 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 not accept, support or endorse partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.

3.2 Parties should not accept, support or endorse the tobacco industry organizing, promoting, participating in, or performing, youth, public education or any initiatives that are directly or indirectly related to tobacco control.

3.3 Parties should not accept, support or endorse 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 not accept, support or endorse 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.*

22. 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.

23. 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 International Code of Conduct for Public Officials adopted by the United Nations General Assembly and by several governmental and regional economic integration organizations.

Recommendations

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 carrying out any work related to 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 develop clear policies that 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 within the tobacco industry, whether gainful or not, within a specified period of time after leaving service.

4.5 Parties should develop clear policies that require applicants for public office positions which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with any tobacco industry whether gainful or not.

4.6 Parties should require government officials to declare and divest themselves of direct interests in the tobacco industry.

4.7 Government institutions and their bodies should not have any financial interest in the tobacco industry, unless they are responsible for managing a Party's ownership interest in a State-owned tobacco industry.

4.8 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.

4.9 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.

4.10 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.

4.11 Taking into account national law and constitutional principles, Parties should have effective measures to 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.

(5) ***Require that information provided by the tobacco industry be transparent and accurate.***

24. 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.

25. 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) of the Convention, 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 apply measures to ensure that all operations and activities of the tobacco industry are transparent.³

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 of the Convention.¹

5.3 Parties should require rules for the disclosure or registration of the tobacco industry 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 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, to the extent possible, regulate activities described as “socially responsible” by the tobacco industry, including but not limited to activities described as “corporate social responsibility”.*

26. The tobacco industry conducts activities described as socially responsible 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. Activities that are described as “socially responsible” by the tobacco industry, aiming at the promotion of tobacco consumption, is a marketing as well as a public relations strategy that falls within the Convention’s definition of advertising, promotion and sponsorship.

27. The corporate social responsibility of the tobacco industry is, according to WHO,⁴ 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 activities described as socially responsible performed by the tobacco industry.

6.2 Parties should not endorse, support, form partnerships with or participate in activities of the tobacco industry described as socially responsible.

³ Without prejudice to trade secrets or confidential information protected by law.

⁴ WHO. *Tobacco industry and corporate social responsibility – an inherent contradiction*. Geneva, World Health Organization, 2004.

6.3 Parties should not allow public disclosure by the tobacco industry or any other person acting on its behalf of activities described as socially responsible or of the expenditures made for these activities, except when legally required to report on such expenditures, such as in an annual report.⁵

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 preferential treatment to the tobacco industry.*

28. Some governments encourage investments by the tobacco industry, even to the extent of subsidizing them with financial incentives, such as providing partial or complete exemption from taxes otherwise mandated by law.

29. 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 the tobacco industry to establish or run their businesses.

7.2 Parties that do not have a State-owned tobacco industry should not invest in the tobacco industry and related ventures. Parties with a State-owned tobacco industry should ensure that any investment in the tobacco industry does not prevent them from fully implementing the WHO Framework Convention on Tobacco Control.

7.3 Parties should not provide any preferential tax exemption to the tobacco industry.

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

30. Tobacco industry can be government-owned, non-government-owned or a combination thereof. These guidelines apply to all tobacco industry, regardless of its ownership.

Recommendations

8.1 Parties should ensure that State-owned tobacco industry is 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 tobacco industry.

⁵ The guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control address this subject from the perspective of tobacco advertising, promotion and sponsorship.

8.3 Parties should ensure that representatives of State-owned tobacco industry does 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

31. 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 Convention and of these guidelines

32. 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.

33. 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.

34. 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

35. 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.

36. 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 the monitoring of 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.

Recommendations

37. 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.

38. 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.

39. 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, in the light of experience with implementing these guidelines, consider whether there is a need to elaborate a protocol in relation to Article 5.3 of the Convention.

USEFUL SOURCES OF INFORMATION

Relevant literature

Brandt AM. *The cigarette century. The rise, fall, and deadly persistence of the product that defined America*. New York, Basic Books, 2007.

Chapman S. *Making smoking history. Public health advocacy and tobacco control*. Oxford, Blackwell Publishing, 2007.

Callard C, Thompson D, Collishaw N. *Curing the addiction to profits: a supply-side approach to phasing out tobacco*. Ottawa, Canadian Centre for Policy Alternatives and Physicians for a Smoke-free Canada, 2005.

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Mahood G. *Tobacco industry denormalization. Telling the truth about the tobacco industry's role in the tobacco epidemic*. Toronto, Campaign for Tobacco Industry Denormalization, 2004.

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Simpson D. Germany: still sleeping with the enemy. *Tobacco Control*, 2003, 12:343–344.

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:

<http://www.euro.who.int/healthtopics/HT2ndLvlPage?HTCode=smoking>

Tobacco control in the Americas (in English and Spanish):

<http://www.paho.org/english/ad/sde/ra/Tobabout.htm>

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:

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/>

International Union for Health Promotion and Education:

<http://www.iuhpe.org/?page=18&lang=en>

Model Legislation for Tobacco Control manual:

http://www.iuhpe.org/?lang=en&page=publications_report2

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 encyclopaedia: <http://www.tobaccopedia.org/>

More links to tobacco sites:

Various international and national tobacco control web sites:

<http://www.tobacco.org/resources/general/tobsites.html>

National tobacco control web sites:

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

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.ofp-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/>

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

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