



**Joint response of STOP and its partners to the Consultation Note,  
“A renewed trade policy for a stronger Europe”**

The global tobacco industry watchdog STOP, whose partners include the University of Bath, the Global Center for Good Governance in Tobacco Control, The Union, and Vital Strategies, along with Corporate Europe Observatory and the European Public Health Alliance<sup>1</sup> welcome the European Commission’s review of the EU’s trade and investment policy.

We recognize this critical policy review is taking place against the backdrop of the COVID-19 pandemic and the many economic, social and systemic gaps the coronavirus has brought to light. Throughout the COVID-19 crisis, STOP has monitored how the tobacco industry has exploited the pandemic to push its corporate social responsibility agenda and marketing of products.<sup>i</sup>

In the context of making the best use of trade policy to help attain the Sustainable Development Goals (SDGs), the European Commission’s review presents a timely opportunity to close existing gaps pertaining in its implementation of the WHO FCTC, particularly Article 5.3 which obliges the EU to protect public health policy from the commercial and vested interests of the tobacco industry

Doing so would be consistent with the EU’s values toward a sustainable and responsible trade policy and its environmental, social and good governance standards. It would also ensure that progress toward the health-related SDGs is not compromised by tobacco industry interests. They present an immediate threat through the physical and digital trade of harmful tobacco products, including e-cigarettes and other products targeting young people and/or “ex-smokers”.

STOP recognizes that the EU Trade policy is intended to be “proactive in promoting international environmental, social and good governance standards in partner countries;” but is concerned that the EU has yet to demonstrate leadership in providing best practices on transparency and accountability in relation to tobacco control. In fact, the EU has no clear “rules, instructions, and guidance for EC officials on how to deal with tobacco lobbyists”.<sup>2</sup>

***NO TRANSPARENCY IN MEETINGS WITH TOBACCO INDUSTRY***

A recent analysis of hundreds of documents obtained via Freedom of Information requests indicates that only the Directorate-General (DG) responsible for Health and Food Safety (SANTE) has adopted a proactive transparency policy in line with FCTC Article 5.3 and its accompanying guidelines. None of the other DGs in contact with tobacco lobbyists, whether via physical meetings, by correspondence or through other communication channels, disclose these contacts.

Further certain Commission DGs, in particular DG TRADE and DG GROW, continue to have an open door policy for tobacco industry lobbyists and their allies, including front groups and consultancies. Such meetings violate Article 5.3 and provide an opportunity for lobbyists to subvert the legislative environment created by the Tobacco Products Directive.

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<sup>1</sup>See also EPHA’s separate response, reflecting the trade views of the wider network: <https://epha.org/the-role-of-public-health-in-a-renewed-trade-policy-for-a-stronger-europe/>

<sup>2</sup> <https://corporateeurope.org/en/2020/07/smoke-and-mirrors>

For example, it allows tobacco companies to be able to promote corporate social responsibility activities and disseminate industry-funded studies that downplay the harmful effects of smoking tobacco, and misrepresent harm caused by new electronic products.

In light of the upcoming review of the Tobacco Products Directive (TPD), further steps must be taken to ensure that tobacco industry lobbyists, as well as third parties working on the industry's behalf, do not encounter open door policies which allow them to discuss strategic trade priorities with EU policymakers and national government officials.

#### *ADVERSE IMPACT ON WHO FCTC IMPLEMENTATION & ATTAINMENT OF SDGs*

Allowing the tobacco industry to influence policy hampers the EU's ability to adopt robust life-saving tobacco control measures and thus, hinders it from attaining several sustainable development goals impacted by tobacco- such as human rights/ child labour, poverty, and environment.

The documents released by the Commission, in response to our FOI requests, reveal that tobacco companies are actively trying to delay and weaken EU tobacco control policies (e.g. the introduction of track and trace systems or excise duties for new products)..

Our investigation also reveals that, over the last four years, tobacco lobbyists and their partners have been able to present their views on a wide range of topics and sought to influence EU free trade agreements. All the major companies have been in dialogue or seeking to exchange views regarding major FTAs including CETA, TTIP, Mercosur, Australia, New Zealand, key Asian countries, (Japan, China, Philippines, Indonesia, Thailand, etc.) and other parts of the world. Based on the discussion topics such as market access, tariff liberalisation and rules of origin., the tobacco industry intends to make its deadly products more affordable, attractive, and accessible to trading partners. At the same time, the trade rules effectively provide benefits and privileges for the tobacco companies to run their businesses , which goes directly against Article 5.3 Guidelines

#### *WAYS FORWARD:*

As the European Commission reviews its trade policy, it must ensure that it implements WHO FCTC especially Article 5.3 in order to protect the public health of European citizens at this critical time. It must:

#### *AVOID INTERACTION WITH THE TOBACCO INDUSTRY AND THOSE FURTHERING ITS INTERESTS*

Tobacco industry lobbyists seek to undermine WHO FCTC implementation and consequently SDG progress. Because they threaten European and global public health objectives, it is crucial that they are not allowed to directly engage EU policymakers unless strictly necessary for regulation of the tobacco industry, in accordance with Art 5.3 Guidelines

#### *APPLY GOVERNANCE RULES ACROSS THE WHOLE EU*

A clear lesson from the massive lobbying battle around the previous TPD review is that the tobacco industry's strategy is simply to bypass DG SANTE and initiate dialogue with other EC departments that do not have proactive transparency rules to avoid tobacco industry influence. This can be avoided easily by extending DG SANTE's practice to all other Commission DGs. (mention OMB ruling)

#### *DO NOT GIVE TOBACCO INDUSTRY INCENTIVES TO RUN ITS BUSINESS AND STRENGTHEN DIGITAL TRADE POLICIES AND ENFORCEMENT*

Given the upsurge of digital trading practices throughout the COVID-19 pandemic, it will also be important to strongly regulate the online promotion and sale of tobacco products. The revision of

the EU eCommerce Directive (Digital Services Act) in combination with other initiatives aiming to create a secure and trusted Digital Single Market and European Health Data Space must not be undermined by international trade agreements potentially containing rules for digital trade that could lead to less stringent arrangements and facilitate online purchases of health-harmful tobacco products “through the backdoor”.

#### *DENORMALIZE SO-CALLED CSR OF THE TOBACCO INDUSTRY*

The so-called CSR of the tobacco industry is a marketing ploy and public relations strategy meant to access policy makers to water down life-saving tobacco control measures, including during a period of global health crisis. Art 5.3 of the WHO FCTC recommends that parties to the FCTC such as the EU, denormalize the donations and other socially responsible activities of the tobacco industry.

#### *ENSURE COMMITMENT TO SDGs AND EU’S HEALTH AND ENVIRONMENT POLICIES*

Finally, in addition to committing to SDGs, it is also crucial to safeguard that the EU’s international trade policy does not hamper the successful implementation of the new, ambitious EU4Health Programme<sup>3</sup> and other health-relevant priorities such as the upcoming Europe’s Beating Cancer Plan and the EU Green Deal.<sup>4</sup>

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<sup>3</sup> COM(2020) 405 final, [https://ec.europa.eu/info/sites/info/files/com\\_2020\\_405\\_en\\_act\\_v11.pdf](https://ec.europa.eu/info/sites/info/files/com_2020_405_en_act_v11.pdf)

<sup>4</sup> COM(2019) 640 final, [https://ec.europa.eu/info/sites/info/files/european-green-deal-communication\\_en.pdf](https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf)

## APPENDIX

### *PERTINENT PROVISIONS FROM ART 5.3 Guidelines<sup>5</sup>*

**(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.

**(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.

**(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<sup>6</sup> 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

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<sup>5</sup> See [https://www.who.int/fctc/guidelines/article\\_5\\_3.pdf?ua=1](https://www.who.int/fctc/guidelines/article_5_3.pdf?ua=1)

<sup>6</sup> WHO (2004). Tobacco industry and corporate social responsibility – an inherent contradiction. Geneva, World Health Organization

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.

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.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.

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For further information:

<https://exposetobacco.org/news/category/covid-19/>; <https://exposetobacco.org/resources/covid-ti-monitoring-briefs/>