

24 March 2021

Industry tactics in a changing tobacco control policy environment

Event Report

Launch of New Study and Online Discussion



About the European Public Health Alliance

The European Public Health Alliance (EPHA) is a change agent – Europe’s leading NGO alliance advocating for better health. We are a dynamic member-led organisation, made up of public health civil society, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe.



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Introduction

On Wednesday 24th March 2021, the European Public Health Alliance (EPHA) hosted an online event presenting a new report by EPHA, Corporate Europe Observatory and STOP, entitled

“Targeting the European Commission: The 7 Lobbying Techniques of Big Tobacco ”

Big Tobacco has been influencing policy to its advantage for decades – postponing, protesting, promoting untruths, playing the victim and pushing new technologies – in order to disrupt tobacco control policies.

Despite the World Health Organization’s (WHO) Framework Convention on Tobacco Control (FCTC) Article 5.3, which requires that governments protect public health policies from tobacco industry influence, the EU struggles to implement a systematic, proactive transparency policy regarding meetings with tobacco lobbyists, labelled by the European Ombudsman as “maladministration.” This makes the EC particularly vulnerable to the influence of skilled industry representatives.



Opening the discussion, Zeljana Zovko MEP, EPP Croatia said



Health is becoming steadily more important at EU level and the current European Commission has called for a stronger European Health Union, which has been reinforced in the current COVID pandemic. This has led to the promotion and creation of the health programme, an initiative we support.

“Europe’s Beating Cancer plan is a key piece of the EU health puzzle ...and it illustrates the added value that the EU can bring to Europeans when it commits to a strong health agenda.”

As part of Europe's new health programme, cancer treatment and prevention is an important issue. Tobacco consumption continues to be the lead preventable cause of cancer, and its elimination can decrease lung cancer cases by 90%.

The Commission is aiming for a tobacco-free generation by 2040. We welcome this initiative and we must ensure the plan delivers results for health. Transparency is key to ensure this goal can be attained and tobacco consumption can be effectively reduced. The European Parliament will watch carefully as relevant legislation is updated and adopted.

About the report



Olivier Hoedeman from the Corporate Europe Observatory, one of the report editors stated: The tobacco industry has been actively influencing policy making for a very long time. The aim of the report is to examine what the contact between the tobacco industry and the Commission looks like, specifically in 2019 and 2020. With important tobacco-related legislation coming up for review and the proposed EU Beating Cancer Plan, it is even more important than normal that decision makers are protected from the influence of the tobacco industry.

“It became very clear from those many documents that the tobacco industry is very active in lobbying, and in some cases successful.”

The latest study identified seven tactics used by the tobacco industry to delay, derail, distract from and cast doubt on tobacco control policies. These are:

1. Promoting untruths
2. Postponing regulation
3. Playing the victim
4. Protesting against regulators
5. Preying on third countries
6. Pushing new technologies
7. Playing the EC off against member states

Documents released revealed very clearly that tobacco companies were trying to create doubt and thereby delay tobacco control measures, for instance by commissioning studies with findings tailor-made to fit industry goals. Freedom of Information requests showed that the lobbying focused on three main issues:

- the EU's new track and trace scheme for cigarettes
- trade negotiations with third countries
- tobacco taxation and review of the tobacco tax directive

"These tactics are not new as they've been part of the tobacco industry for decades. The big question is what is the Commission doing to protect itself against this type of influencing tactics?"

It became clear from the Freedom of Information request that there is a lack of coherence in how the Commission handles interactions with the tobacco industry.

With the exception of DG SANTE, most Commission departments fail to limit contact with the tobacco industry, a violation of article 5.3. The current approach relies on reactive rather than proactive transparency.

The tobacco industry is taking advantage of this incoherence to access those parts of the Commission open to be influenced. The Commission needs to address this issue by adopting the following measures:

- Proactively listing all meetings and correspondence with the tobacco industry;
- Create a clearly defined policy for all DGs regarding how officials should handle contacts with the industry;
- Adjust its current implementation of the FoI regulation, recognise transparency around lobbying and the protection of public health as clear aspects of the public interest.



Highlights from the discussion

“The WHO FCTC is part based on the principle that there is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy.”



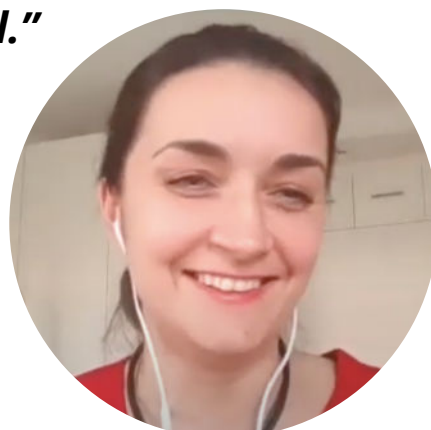
European Ombudsman Emily O'Reilly outlined her investigations into European Commission interactions with the tobacco industry, and emphasised the importance of FCTC Article 5.3 in the EU context arguing that more accountability and transparency is needed. The European Commission should adopt DG SANTE’s proactive transparency policy and make publicly available any information concerning meetings between the tobacco industry and EC officials at any level.

“If there is no timely information available on all of the meetings, whether at Commissioner or desk officer level, with the tobacco industry, then how can the public take a view as to whether tobacco control policies are adequately monitored and enforced?” The Ombudsman’s inquiry in 2016 concluded that the Commission’s refusal to apply a proactive transparency approach across the entire Commission amounted to maladministration. “And what was true then, is true now.”

This report is exceptionally timely given that key pieces of tobacco-related legislation are currently up for review - the previous review of the Tobacco products directive as the most lobbied dossier in the history of the EU to that point. In conclusion: “transparency of tobacco lobbying is not a question of policy, it is an obligation under WHO Framework Convention on Tobacco Control which the EU is part of. In other words, it's not optional.”

“It is not hard to single out the tobacco industry. It’s being done at the national level, it’s been done at global level, and now it needs to be done at European level.”

Anca Toma from the SmokeFree Partnership said in response to the study that previous reports, such as from 2009 and 2015, show strikingly similar results. The tobacco industry still exerts pressure on policymakers and the tactics have remained the same: “block, amend, delay”, while the trend of targeting departments other than DG SANTE is not new.



Industry arguments against the Tobacco Products Directive predicted economic doom and rampant crime, ignoring the health impacts of their products, and industry launched several (eventually failed) lawsuits against the TPD. Now here we are in 2021 - " This is a pattern [...] Isn't it time to actually learn from the past, to protect the future?"

Like with any other industry, the tobacco industry's aim is to sell a product for profit. But what makes it special is that it is incompatible with life. "The tobacco industry is not our friend! It has never been a friend of the public, of public health or public interest, and it is not there [...] to make friends or save lives."

The European Commission, in the Europe Beating Cancer Plan, has effectively committed to eradicate smoking, and as a result to drive the industry into economic irrelevance. In response to this "One would expect an all-out war on public health led by the tobacco industry."

While transparency is absolutely needed to help achieve tobacco control goals, it is not enough. "We need to implement the recommendations under article 5.3 about limiting the contact with the tobacco industry, making parties to meetings declare their interests" and protect these policies from commercial interest. "The transparency of a conflict of interest, does not remove the conflict." Something more has to be done.

"In Europe, the industry wants us to believe it has changed – it can be the solution to the problems it has created. Elsewhere, though it continues to run amok, smuggling, bribing, threatening, killing its consumers and pushing new addictive products."



Andy Rowell from the Tobacco Control Research Group at the University of Bath and research partner in STOP – the global tobacco industry watchdog, focused on the global context of tobacco lobbying. He mentioned that "many of the tactics outlined in the report are not unique to Europe and we see them happening worldwide."

As the British American Tobacco (BAT) case in South Africa regarding smuggling shows that although industry try to paint themselves as the victims of tobacco smuggling, it has been clear for decades that they are complicit in that smuggling.

A report by the Organised Crime and Corruption Reporting Project found that billions of cigarettes, mostly made by BAT, are being smuggled north through West Africa, driving conflict, terrorism and displacement of peoples. Most of those cigarettes originate in South Africa. BAT is complicit in smuggling and tax evasion.

The industry has threatened at least 8 separate African countries demanding they axe or dilute health laws. "This is an industry that is operating out of control in Africa and it's also [...] preying on new markets not just with cigarettes, but with new products as well." BAT is trying to promote nicotine patches among young people, targeting specifically Pakistan and Kenya, intent on creating a new generation of people addicted to nicotine.

"Countries in Africa and Asia look to the European Commission for leadership on issues such as transparency and tobacco. Yet, in Europe, the industry wants us to believe it has changed and can be the solution to the problems created on health and also tobacco smuggling." Elsewhere it runs amok, smuggling, bribing, threatening, killing its consumers, and pushing new products.

"If DG TAX sits down with tax evaders and DG TRADE sits down with tobacco smugglers, and DG SANTE sits down with an industry that's trying to hook a whole new generation to nicotine, then others will think that it's totally acceptable to do the same too."

"We should not make it impossible for interest representatives to interact with the institutions. Instead, we must ensure these interactions are subject to certain principles and guidelines."

Álvaro de Elera, Member of the Cabinet of Věra Jourová, Vice President for Values and Transparency, European Commission discussed the European Commission's efforts to increase transparency across all EU institutions and bodies.



He highlighted the new development of the transparency register, negotiations on which concluded in December 2020, after 4 years. Although there is a general idea that the EU and its institutions speak with the same voice, the reality is that all three institutions are very different in terms of political and administrative cultures. A mandatory transparency register for interest representatives has been agreed upon by all three institutions and is open to other EU institutions.

The main aim is to ensure that all interest representatives comply with the underlying principles laid out. For the tobacco industry, this includes the FCTC. The inter-institutional will be reviewed each year, and the EC recognises the importance of transparency and aims to increase compliance with the codes of conduct for representatives. "We will make sure that if interest representatives do not comply with the principles [...] they will be delisted from the [transparency] register and that means they will not be able anymore to interact with the institutions."

This instrument is not particularly focused on the tobacco industry, however. "We consider that every interaction with interest representatives should take place under the highest transparency and ethical requirements."

The inter-institutional transparency register has been the focus over recent years. It is also the intention to make the publication of meetings compulsory in the future. Within the Commission, this is already the case for cabinet members, commissioners, and Directors-General, but the aim is to extend this requirement to all EC staff members as well.

Internal Commission guidance specific to the interaction with the tobacco industry already exists and all DGs have been reminded of this recently. "There is a certain difference in the application of these guidelines by the different services, and this is something that we are not necessarily happy with." The mere fact of inconsistent application is a problem, and the Commission is looking at ways to ensure that it is applied coherently across the board.

Regarding the access to documents regulation, this is also applied differently by different services. The regulation is 20 years old, and "probably it's no longer fit for purpose." The Commission is at the early stages of considering how to reinforce and update the regulation.

The FCTC is already binding on the EU and member states, and the issue is applying them consistently in practice across EU institutions, rather than replicating them in EU legislation, or codes of conduct.

Professor Jonathan Grigg, Chair of the tobacco control committee of the European Respiratory Society (ERS), spoke about new technologies promoted by the tobacco industry and the need for better regulation of those products. There is a wide divergence of views about the role of such products in smoking cessation "and there is no doubt that that divergence will be exploited by the tobacco industry." Unbiased scientific research is needed to fill the knowledge gap.



Q&A

The tobacco industry is infiltrating civil society, so it can be hard to make the distinction. Given industry resources, the process can be compared to “whack-a-mole, where you hit one head, and it keeps popping up somewhere else.”

Regarding the EU better regulation agenda, it is clear that the tobacco industry makes use of this to argue for their view to be taken into account, and in order to secure access to the Commission. It’s been demonstrated that the tobacco industry, among others, had a hand in ensuring the economic focus of impact assessments and that a health assessment is not carried out.

Concluding remarks

“The health of people should be in first place!”

Manuel Pizarro MEP, S&D, Portugal gave the concluding remarks.



In the context of the EU's Beating Cancer Plan, a reason for hope, the fight against tobacco consumption has never been more relevant. The report shows that tobacco industry lobbying is more and more active and there seems to be a certain degree of vulnerability from the European Commission side. “There is nothing more important to do in the context of the EU Beating Cancer Plan than fighting against tobacco consumption.”

Once again, he reiterated the need to increase transparency and improve the current tools and their implementation across Commission services. He endorsed the recommendations of the report, "Targeting the European Commission : The 7 Lobbying Techniques of Big Tobacco." Article 5.3 of the FCTC remains the backbone of tobacco lobbying control and its provisions should be adopted accordingly.

Find out more

Download the report

[Targeting the European Commission: The 7 Lobbying Techniques of Big Tobacco](#)

Watch the discussion

[Industry tactics in a changing tobacco control policy environment](#)

Visit the event website



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AISBL · Rue de Trèves 49-51 · 1040 Brussels · BELGIUM
+32 (0) 2 230 30 56 | www.ephra.org | ephra@ephra.org | [twitter: @EPHA_EU](https://twitter.com/EPHA_EU)