

Report from the High-level Conference

Combating Tobacco Industry Tactics: State of Play and a Way Forward



Brussels, 2 March 2016

Organised by



**Smoke Free
Partnership**
a world without tobacco



**Foundation
against Cancer**

The Smoke Free Partnership is a coalition of NGOs working exclusively on EU policy analysis linked to the implementation of the Framework Convention on Tobacco Control. Since its creation in 2006, SFP has helped lead campaigns on a number of important EU tobacco control policy areas, including smoke-free policies, the EU Tobacco Tax Directive, FCTC Article 5.3 Guidelines, FCTC Article 6 Guidelines, and the revised Tobacco Products Directive. The World Health Organisation recognised the SFP for its tobacco control work by awarding it a World No Tobacco Day Award in 2011. SFP was also awarded the 2015 Luther L. Terry Award for outstanding global achievement and exemplary leadership in Tobacco Control.

The Belgian Foundation pools societal forces in the fight against cancer. It finances scientific research, disseminates scientifically validated information, supports patients and their loved ones, raises awareness on how to prevent cancer and encourages people to adopt a healthy lifestyle. Tobacco control, in particular through advocacy and smoking cessation, is a key objective of the Belgian Foundation against Cancer.

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Introduction

Background

In 2015, following a complaint lodged by the Corporate Europe Observatory, the European Ombudsman issued a recommendation to the European Commission to implement disclosure of meetings with tobacco industry representatives at all levels of its hierarchy, as already practiced by the Directorate General for Health and Food Safety (DG SANTE). This recommendation provides a blueprint for actions promoting greater transparency within the tobacco industry that should be implemented across all the European Institutions.

Across this backdrop, the panel discussed possible actions to guide governments across the EU and globally on how to manage and regulate interactions with the tobacco industry.

The High Level Conference “Combating Tobacco Industry Tactics: State of Play and a Way Forward” was held on the 2nd March 2016 at the European Parliament in Brussels. The event was organised by the Smoke Free Partnership and the Belgian Foundation Against Cancer and **hosted by MEPs Gilles Pargneaux, Karl-Heinz Florenz and Benedek Jávor.**

The conference brought together an audience made up of EU, international, and national policy makers, civil society organisations, and the media, in order to address the challenges posed by tobacco industry interference to health policy-making. The high-level speakers at the conference, which was moderated by Tamsin Rose, included:

- **Dr. Vytenis Andriukaitis**, European Commissioner for Health
- **Ms. Emily O'Reilly**, European Ombudsman

- **Mr. Tonio Borg**, Former European Commissioner for Health
- **Dr. Katharina Kummer Peiry**, Senior Legal Advisor, FCTC Secretariat; providing a message from Dr. Vera Da Costa e Silva, Head of the FCTC Secretariat and
- **Ms. Alison Cox**, Director Cancer Prevention, Cancer Research UK and SFP Board Member

The Conference aimed to highlight the challenges in the implementation of the Framework Convention on Tobacco Control (FCTC) and specifically Article 5.3, which requires governments to take steps to protect public health from the vested interests of the tobacco industry. The event aimed to demonstrate the continued tobacco industry interference in tobacco control policy by drawing on the experience of high-level participants.



Setting the stage

How the tobacco industry influences staff in the EU institutions: Survey Results

Alison Cox, Director of Prevention at Cancer Research UK, presented the conclusions drawn from a Cancer Research UK commissioned poll. The poll surveyed 249 EU influencers (86 EU Institutions staff, 86 Brussels opinion formers and 77 MEPs) regarding the tobacco industry and how it influences the EU policy process.

The results of the poll showed overall low awareness of the FCTC and of its provisions related to tobacco industry interaction. This proves that much remains to be done to increase policy-makers' awareness and compliance. However, the results also showed that policy-makers have a reluctance towards engaging with the tobacco industry and furthermore, hold little trust in its evidence.

Disappointingly, results revealed that:

- Awareness of the FCTC is low, with just 26% of all respondents to the poll having previously heard of it by name. In EU institutions, just 17% of respondents had any awareness, while awareness was higher among MEPs (41%).
- 30% of respondents in EU institutions and 41% of MEPs agree that the tobacco industry is a legitimate stakeholder in the health-related policy process.
- Just 3% of EU institutions staff, and 20% of MEPs engage less with the tobacco industry as a result of the FCTC.

Yet on the positive side, results stated:

- 65% of EU Institution staff and 76% of MEPs believe it is important to have guidelines on how policy makers and the tobacco industry interact.
- 71% of EU Institution staff and 76% of MEPs think third party organisations should be obliged to declare tobacco industry funding.
- 57% of MEP's would like more information on the Framework Convention on Tobacco Control (FCTC)
- Just 8% of EU Institution staff and 20% of MEPs say they trusted academic research funded by the tobacco industry to be fair and objective.

The complete poll results are available at <http://goo.gl/wAFeyH>



Alison Cox

Director for Cancer Prevention at Cancer Research UK and SFP Board Member



Key Messages and Policy Recommendations of the High Level Conference

Addressing the scourge of tobacco requires addressing its cause

Background

Tobacco is the single largest cause of disease and death in Europe and indeed worldwide, killing at least half of its long-term users. Tobacco use is a cause of four major chronic diseases – cancer, cardiovascular diseases, respiratory diseases and diabetes. Currently, over 6 million people worldwide, out of which approximately 700,000 in the EU alone, die as a consequence of tobacco use. One in ten of these deaths are caused by second-hand exposure to tobacco smoke.

Tobacco use has caused a global-scale epidemic, enabled and encouraged by a global industry, to which governments responded by enacting the Framework Convention on Tobacco Control. In 2008, over 150 governments worldwide adopted a statement that there is a fundamental and irreconcilable conflict between the interests of the tobacco industry and those of public health. This statement was reiterated by heads of state and government at the 2011 UN Summit on non-communicable diseases.



Ms. Emily O'Reilly, European Ombudsman, recalled in her opening remarks that tobacco is unlike any other product from both a public health but also a legal perspective, with an international treaty designed to curb its use.

She stated that her recently concluded investigation and recommendations fully took into account the uniqueness of the product.

Dr. Vytenis Andriukaitis, European Commissioner for Health, emphasised the seriousness of tobacco's impact on health. He emphasised that this calls for the systematic implementation of the Framework Convention. He called on the European Parliament to take a strong stand against the tobacco industry and



to demonstrate its commitment towards policies to support the health of the public. He also stated that despite the many instruments available to combat tobacco use, implementation at national level could be improved.



Commissioner Andriukaitis called on Member States to follow the FCTC and to fully implement the Tobacco Products Directive. He further stressed the importance of ratifying the WHO illicit trade instruments that oblige the industry to track their products.



Mr. Tonio Borg, former European Commissioner for Health, shared his past experiences in tobacco control through the adoption process of the Tobacco Products Directive. He welcomed the creation of an MEP

group on tobacco industry interference in order to ensure further transparency and expose the continued tobacco industry interference in public health policy.

Mr. Gilles Pargneaux MEP, who chairs the MEP group on tobacco industry interference, echoed the comments of both the former and the current Commissioners, indicating that the European Union needs to establish and enact an ambitious policy against tobacco, to be transparent in all its actions, and to be very clear to say “no” to the industry.



Ms. Alison Cox warned that even though there are 6 million tobacco deaths annually, the tobacco industry still runs a profitable business, i.e. a profit of 5,000 Euro for each tobacco related death. She stressed that public health policy must be based on evidence, which is amply provided by the FCTC. Given these facts, she added: *“It’s unthinkable that tobacco lobbyists continue to enjoy a privileged seat at the table of public health policymaking. Policy makers cannot meet in the middle with the tobacco industry – they need to shut the door to health policy firmly in their faces.”*



An additional perspective on tobacco industry interference was brought forward by **Mr. Karl-Heinz Florenz** MEP. He emphasized that, during the negotiations on the Tobacco Products Directive which regulate

the manufacturing and packaging of tobacco, he met with many stakeholders, including the tobacco industry. He stated that in his opinion as an MEP, it is important to listen to all stakeholders and to be aware of all the arguments so to be able to formulate good political decisions and implementation processes. However, he warned that policy-makers must be careful when dealing with the tobacco industry, as the interests of the industry are against the interests of health. Mr. Florenz further added that in his long political career, he has a commitment to transparency as required by the FCTC, but also as part of his duty as an elected official.



Identifying and exposing tobacco industry interference

Background

Throughout the years, the tobacco industry has developed a wide array of tactics in order to influence policy for their commercial advantage. To date, its interference remains the greatest obstacle to the enactment of effective tobacco control policies.

There is a large body of evidence proving that the tobacco industry has a long record of influencing the policy process in order to prevent, weaken or delay the implementation of tobacco control policies, in order to keep selling its products and replace lost users. The tobacco industry has also a long history of denying or minimizing the health impact of tobacco use despite a growing mass of scientific proof documenting its damage. This proof often comes from the industries own documents, released either as a result of litigation, or through leaks.



Despite the health toll of tobacco, **Dr. Katharina Kummer Peiry**, delivering a message from **Dr. Vera Da Costa e Silva**, Head of FCTC Secretariat, warned policy-makers that tobacco companies are desperate for

respectability, doing their utmost to conceal what they are: multibillion-euro businesses enthusiastically peddling a product that kills its consumers. The industry has developed a box of “dark tricks” in recent decades and some have proved extremely effective for industry purposes. She recalled that the FCTC secretariat was warning policy makers of attempts by the tobacco industry to derail, block, or slow down the implementation of tobacco-control measures.

One recent case of such interference was during the legislative process that led to the adoption of the Tobacco Products Directive, one that **Ms. O’Reilly** referred to as “*the most lobbied dossier in the history of the EU institutions.*” Ms O’Reilly expressed her dismay at seeing the outcomes of tobacco industry interference in the Tobacco Products Directive. For example, in their actions against the implementation of plain packaging in Member States that have adopted this measure, such as in France, Ireland and the UK. After the publication of tobacco industry documents and evidence from MEP’s and officials, the Ombudsman pointed out that these testify to a massively well-funded and highly sophisticated campaign to undermine the Tobacco Products Directive as well as its subsequent implementation in EU Member States.

Mr. Borg also shared his experience from steering the Tobacco Products Directive through the legislative process. Mr. Borg emphasised the immense pressure put on the process by the tobacco industry through all avenues of influence.

In an intervention from the floor, **Florence Berteletti**, SFP Director, emphasised that legal obligations to prevent tobacco industry interference in health policy should ensure that the tobacco industry do not

manipulate the democratic process. Since the tobacco industry is a vector of disease and death, it cannot be expected to contribute solutions towards reducing its own toll. She re-iterated the tobacco control community’s call on policy makers to champion public interests and ensure the transparency and full accountability of tobacco industry contacts.



Measuring and countering the tobacco industry's influence

Background

Research carried out by SFP with support from Corporate Europe Observatory in early 2016 revealed that in 2014 the tobacco industry alone (excluding consultancies) spent between 7 and 8.5 million Euro and employed around 50 full-time people to influence EU policy. By contrast, Brussels-based health advocacy organisations did not account for more than 5 full-time positions during the same period. The great discrepancy in resources places a great amount of pressure on policy-makers, who must discern between many and often conflicting arguments when making decisions. When tobacco industry interference results in delays or policies being blocked, this translates into real lives being put at higher risk of disease and death.

The Framework Convention on Tobacco Control Article 5.3 creates a legal obligation for governments to take measures that protect public health policies from the vested interests of the tobacco industry. In 2008, the Conference of the Parties to the FCTC unanimously adopted Guidelines for Article 5.3., which clarify the purpose and scope of such measures to counter tobacco industry interference. The Article 5.3 and its guidelines apply to all parties to the FCTC, including the European Union.

The FCTC Article 5.3 guidelines recommend a number of measures to governments, including education about the addictive and harmful effects of tobacco use, limiting interactions with the tobacco industry and ensuring the transparency of all interactions that occur, rejecting non-binding partnerships with or preferential treatment for the tobacco industry, avoiding conflicts of interests and requiring transparency and accuracy from the industry.

The implementation of the FCTC Article 5.3 guidelines in Europe is inconsistent. **Ms. O'Reilly** explained that alongside non-binding guidelines, the FCTC itself clearly instructs all Member States who signed up to the FCTC, and all EU institutions, to limit their interactions with the tobacco industry and to make any such interactions as transparent and as accountable as possible. She further said: *"The European Commission has a particular responsibility in its role as initiator of EU legislation, to ensure that policy-making in public health is as transparent as possible. This is all the more true when it comes*



to tobacco control, for which there is a dedicated UN framework. The UN framework applies to all EU institutions, who should implement these safeguards against undue tobacco lobbying."

Throughout the meeting, three important strands of action were identified as priorities in order to address tobacco industry interference in health policy making. **Firstly, participants agreed that it is key to bring forward evidence of tobacco industry interference,** both from a historical perspective and a current one.

There is a vast body of research and information on tobacco industry behavior that is not immediately known to policy makers or the general public, allowing the tobacco industry to act unimpeded and unquestioned to undermine public policy.

From the FCTC Secretariat's point of view, **Dr. Kummer Peiry** stressed that the tobacco industry fights public health efforts at every turn. The tobacco industry is not restrained by ethical considerations and is therefore willing to employ a range of tactics, which are immoral if not illegal. These tactics can be grouped into five main areas. Firstly, the tobacco industry seeks to hijack the political and legislative process. By working with officials, ministers and legislators, tobacco executives marshal those who are already sympathetic or seek to persuade the undecided that its arguments make sense.



A second favored tactic is to exaggerate the industry's economic importance. While the tobacco industry presents itself as a major tax payer, it is far less willing to discuss the health costs of its victims, and the loss to national productivity when workers become sick, or die prematurely. Thirdly, there are so-called corporate social responsibility activities which are the industry's efforts to achieve respectability, an element of tobacco industry work that seems to be on the increase. The fourth element is the use of front groups, like the International Tax and Investment Center (ITIC). This may sound like a foundation or think-tank, but it is part-funded by major tobacco companies, has company representatives on its board and work to promote the industry's interests. Lastly, the industry attempts to discredit proven science or to commission studies to support its arguments. The tobacco industry provides funds to consultants and academics to produce reports or to research centers to support doctoral students' projects and reports that work in its favor.

Secondly, implementation of policies to prevent tobacco industry interference is a cross-cutting issue. Identifying the appropriate policy mechanisms at EU or national level is therefore required in a manner that applies to all levels of government. Such mechanisms may include lobbying registries, transparency policies, ethical guidelines, or codes of conduct or staff regulations.



In this respect, **Mr. Borg** stressed that transparency of contacts with the tobacco industry is not only a responsibility of health officials, but also of all public officials and in all EU policies in order to protect public health. He added that this approach is not only the right thing to do, but is also a legal obligation for the EU.

Further, **Ms. O'Reilly** emphasized that the more transparency there is around lobbying, the more an engaged civil society can work with dedicated public servants in the EU to ensure that clever, well-resourced industry agents do not upset the balance between the safeguarding of public interest and the right of an industry to safeguard its profits.



Dr Kummer Peiry reiterated that the tobacco industry cannot be co-opted to do the right thing as its very essence is to keep alive an industry whose products kill six million people every year. She called on policy-makers to put an end to meetings with tobacco industry executives and their attendance to industry-funded conferences, and shun advice from the industry.

Hans Van Scharen, advisor in the Greens/ EFA Group in the European Parliament called on Parliament itself to implement the FCTC and increase the transparency of contacts with the tobacco industry.



A third priority is working with policy makers who champion the issue of preventing tobacco industry interference to help keep this issue on the political agenda, as well as identify appropriate measures to tackle the problem. Policy-makers present at the meeting asserted their commitment to pursuing the implementation of the FCTC, and of its provisions to effectively reduce the interference of the tobacco industry in public health.



MEP **Benedek Jávor** framed the obligations of the FCTC as a general problem of transparency and accountability in policy-making, and called for all lobby meetings to be made public, including in the European

Parliament. He emphasized that transparency and accountability need to be maintained during legislative negotiations and decision-making, as well as in private meetings with officials, in order to maintain the credibility of policy-making at all levels.

Tobacco industry agreements: What next?

Background

An important theme covered during the conference was the issue of agreements with the tobacco industry to combat illicit tobacco trade, in light of the imminent expiration of the EU-Philip Morris International agreement in July 2016. In this respect, there was strong and vocal consensus amongst all participants that the EU should put an end to legal agreements with the tobacco industry in the field of combating illicit trade in tobacco products. These agreements are now outdated tools as the EU has legal instruments to fight illicit trade. Instead, the EU and its Member States should focus on ratifying and implementing the Illicit Trade Protocol and implementing the relevant provisions of the Tobacco Products Directive as soon and as effectively as possible.

In his remarks, **Gilles Pargneaux** MEP expressed deep concern that as the conference was taking place, the tobacco industry was lobbying the European Commission to keep illicit trade agreements in place. He decried such agreements as an example of the tobacco industry's duplicity. He called on the European Commission not to renew the agreement with PMI and to support the ratification of the International Protocol to fight illicit trade.

In response, **Commissioner Andriukaitis** expressed his strong concerns on the possible extension of the EU – Philip Morris International agreement on combating illicit trade in tobacco products, as he could not identify any reasons to extend it. He also stressed that there should be no gap in regulations and it is in essence, obligatory for industry to track and trace their products. He reminded the audience that both the Tobacco Products Directive which came into force in May 2016, and the FCTC Protocol to eliminate illicit trade in tobacco products require the EU and Member States to enforce a strong tracking and tracing mechanism. The Commissioner called on the tobacco control community to send a clear and strong message to all Member States that they

should work together and advocate for the European Parliament to support for a resolution against the tobacco industry agreements.

MEP **Jávor** encouraged EU decision-makers to support the ratification of the Illicit Trade Protocol and to not let separate industry agreements stand, as that type of interference would weaken public health policies.



Taking the floor, MEP **Linda McAvan**, former Rapporteur on the Tobacco Products Directive and current Chair of the European Parliament's Development Committee, stated that she found

working against the tobacco industry lobby among her most difficult challenges. She decried the attempts to describe the EU-PMI agreement as a technical arrangement and thanked the Public health community and the Health Commissioner for acknowledging this issue as a public health threat and putting it on the Parliament's agenda.

In another intervention from the audience, MEP **Karin Kadenbach** called on all participants to communicate to their MEPs and to all levels of government about the high stakes of extending tobacco industry agreements. Given the high societal costs of tobacco use, the tobacco industry should not be seen as a partner in policy-making nor in controlling the illicit tobacco market.





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Smoke Free Partnership

Rue de l'Industrie 24, 1040-Brussels, Belgium

www.smokefreepartnership.eu · info@smokefreepartnership.eu

+32 (0) 2 430 73 59

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