



## ISSUES CONCERNING A TOBACCO COMPANY AT AN OECD SESSION ON INTEGRITY AND LOBBYING

### I. Background

At the Organisation for Economic Co-operation and Development's (OECD) annual Integrity and Anti-Corruption Forum in Paris, France, a Philip Morris International (PMI) executive served as a panelist at a 21 March 2019 session entitled "Responsible Lobbying: Aligning Profit for Public Good." The session details were posted on 19 March 2019. Upon learning of PMI's participation in the session, one of the session's invited speakers from Transparency International pulled out of the session at the last minute.<sup>1</sup> About 100 people attended the session.

The OECD annual forum is one of the largest of its kind with over 1,800 participants from 120 countries; and is described as "leading the policy debate on integrity and anti-corruption worldwide," tackling "new insights related to trade, foreign bribery, competition, and development co-operation, and other issues."<sup>2</sup>

Civil society organizations (CSOs) raised concerns about the tobacco company's role as speaker and as a partner in the event. In letters sent to the OECD Secretary General on 20 March 2019, CSOs pointed out that PMI's products and actions fundamentally conflict with the concept of good governance, integrity, and anti-corruption, as well as undermine the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), United Nations Sustainable Development Goals (UN SDGs), United Nations Economic and Social Council (UN ECOSOC) resolution, and the practices of OECD member countries on how to deal with the tobacco industry.<sup>3</sup>

CSOs cautioned that the tobacco industry's attempt to align itself with OECD's work on integrity and elsewhere is not an isolated one as it has been known to "manipulate public opinion to gain the appearance of respectability"<sup>4</sup> and "to advance its corporate affairs agenda to the detriment of governments trying to save lives from tobacco use and reaching the UN SDGs."

## II. Bases for CSOs' Claims

### A. WHO FCTC

Cigarette is the only consumer product that, if used as intended, kills half of its consumers.<sup>5</sup> Tobacco-related deaths have risen to an alarmingly high rate of 7 million annually, a rate that may kill more than one billion people in the 21<sup>st</sup> century, if current trends persist.<sup>6</sup> Tobacco also results in 890,000 non-smokers dying each year from involuntary exposure to secondhand smoke, 28% (249,200) of which are children.<sup>7</sup> Overall, far more people are killed by tobacco than by weapons,<sup>8</sup> natural disasters,<sup>9</sup> and road accidents<sup>10</sup> combined.

Tobacco products are the only consumer products that have become subject of a global treaty, the WHO FCTC, with over 180 Parties including all but one OECD member country.<sup>11</sup> <sup>12</sup> Moreover, the tobacco industry is the only industry which a treaty law requires to be strictly monitored, regulated, and in many instances, excluded, with clear recommendations on how this can be done.<sup>13</sup> "The WHO FCTC is an important tool to ensure that public health is prioritized over industry profits by governments and the UN system, and to ensure the enjoyment of the highest attainable standard of health as one of the fundamental rights of every human being."<sup>14</sup>

#### 1. *Article 5.3 (Tobacco Industry Interference)*

Article 5.3 of the treaty requires Parties to protect their tobacco control measures from the commercial and vested interests of the tobacco industry. The Guidelines for the Implementation of Article 5.3 further recommend that Parties should reject partnerships with the tobacco industry and prevent it from interfering in policymaking or from being part of a body involved in developing or implementing tobacco control measures, such as smoke-free environments, advertising bans, packaging, tobacco taxation, illicit trade of tobacco, and tobacco industry liability.

In light of its so-called "transformation," the tobacco industry's selling of new devices that it markets as "less harmful," such as e-cigarettes, nicotine delivery devices, and/or heated tobacco products, does not change how it is treated under the WHO FCTC. For as long as the tobacco industry continues to sell its lethal products, it remains a carrier of the largest global health epidemic.<sup>15</sup>

#### 2. *Article 13 (Tobacco Advertising, Sponsorship, and Promotion)*

Article 13 of the WHO FCTC obliges Parties to ban tobacco sponsorship, including so-called corporate social responsibility (CSR) of the tobacco industry, as part of a comprehensive advertising ban. Article 13 Guidelines further describe so-called tobacco CSR as a form of advertising: "Tobacco companies may also seek to engage in 'socially responsible' business practices which do not involve contributions to other parties (e.g., good employee-employer relations, environmental stewardship, responsible business practices). Promotion to the public of such otherwise commendable activities should be prohibited, as their aim, effect or likely effect is to promote a tobacco product or tobacco use either directly or indirectly."<sup>16</sup> "Public dissemination of such information should be prohibited, except for the purposes of

required corporate reporting (such as annual reports) or necessary business administration (e.g., for recruitment purposes and communications with suppliers)."<sup>17</sup>

The so-called CSR of tobacco companies complements the aggressive marketing of their "less harmful" products to the detriment of public health. The "safer product sales pitch" is not new. For years, the public was led to believing that "light" and "mild" cigarettes are safer<sup>18</sup> which resulted in more deaths and suffering, for which multinational tobacco companies were charged and found guilty of violating the Racketeer Influenced and Corrupt Organizations Act in US courts.<sup>19</sup> Recently, Philip Morris' own scientists pointed out that the company's studies proved that its new heated tobacco products showed exposure to less toxins, but contrary to what the tobacco company claims, the health harm is not necessarily reduced.

## **B. UN SDGs**

The WHO FCTC is now embedded in the UN SDGs, enshrining the tenet that good governance in public health involves treating tobacco companies differently from the rest of the industry.<sup>20</sup> The United Nations General Assembly declared in 2011 that there is a fundamental conflict of interest between the tobacco industry and public health.<sup>21</sup>

Implementation of the WHO FCTC addresses many targets of the SDGs (Goals 3-5, 8, 10-11, 13-17).<sup>22</sup> An instrument adopted by the UN ECOSOC emphasized that "Implementation of Article 5.3 and its guidelines will also bring an important contribution to achieving the SDGs, in particular Goal 3 on ensuring healthy lives and promoting well-being, target 3.a on strengthening implementation of the WHO FCTC, and target 16.5 on substantially reducing corruption and bribery in all its forms" (emphasis supplied).

## **C. UN ECOSOC**

Because "engagement with the tobacco industry is contrary to the United Nations system's objectives, fundamental principles and values," the UN ECOSOC has adopted a resolution enjoining all UN agencies to adopt a model policy that, among others, requires the rejection of "partnerships, joint programs, non-binding or non-enforceable agreements and any other voluntary arrangements with the tobacco industry."<sup>23 24</sup>

This policy is consistent with UN Guidelines which provides that: "the UN will not engage with Business Sector entities that are complicit in human rights abuses, tolerate ...the use of child labour, ..., or that otherwise do not meet relevant obligations or responsibilities required by the United Nations."<sup>25</sup> It was adopted so that the UN system would ensure "a consistent and effective separation between its activities and those of the tobacco industry, to preserve its integrity and reputation and in promoting development" (emphasis supplied).<sup>26</sup>

Consistent with the model policy<sup>27</sup> and global trends to shun tobacco funding, the UN Global Compact's (UNGC) Integrity Policy Update, dated 12 September 2017, stated that: "the UN Global Compact<sup>28</sup> will increase scrutiny of companies upon entry into the initiative, review engagement with existing participants, and institute new exclusionary criteria for companies involved in certain high-risk sectors – including the production and manufacture of tobacco products, and nuclear, chemical, or biological weapons. Participating companies whose business involves manufacturing or producing tobacco products will be delisted effective 15 October 2017" (emphasis supplied).<sup>29 30</sup>

The UNGC previously announced that it “actively discourages tobacco companies from participation in the initiative and does not accept funding from tobacco companies.”<sup>31</sup>

### III. Links to Governance for Development

One of OECD’s core area of work is governance for development. In contrast, the tobacco industry has earned a reputation for its “documented nefarious practices of violating anti-corruption, agriculture, environmental, and labor laws.”<sup>32</sup>

- A. *Anti-Corruption/Transparency*: Tobacco companies have been accused of corruption and of unduly influencing high officials (e.g., Philippines, Indonesia, EU).<sup>33</sup> Furthermore, instead of being transparent, tobacco companies have been known to resist and undermine regulations, including requirements to submit information of various forms.<sup>34</sup> For instance, in its 2014 shareholders meeting, PMI voted against a proposal to declare its political contributions.<sup>35</sup>
- B. *Agriculture*: Tobacco companies claim to promote the welfare of farmers, while contributing to a cycle of debt for tobacco farmers mainly by keeping the price of tobacco leaves low.<sup>36</sup>
- C. *Environment*: A majority of tobacco is wood-cured causing serious damage to the environment. Instead of creating awareness, tobacco companies widely promote and fund unsustainable tree-planting activities that are severely disproportionate to the amount of damage caused by wood curing.<sup>37</sup>
- D. *Labor*: Child labor in the production and farming of tobacco is a well-documented, continuing problem. A study shows that most children working in US tobacco farms were found to have green leaf symptoms.<sup>38</sup> Yet, the tobacco industry uses its international program on child labor to create an impression that it is addressing child labor issues.<sup>39</sup> During its meeting in Geneva in March 2018, the proposed integrated strategy of the International Labour Organization (ILO) stated that child labor remains widespread and noted the need to transition from donor-industry funding to development-partner funding that aligns with integrated approaches and international developmental goals.<sup>40</sup>

Furthermore, “tobacco manufacturers have been involved in many controversies ranging from suppressing evidence about tobacco’s health effects to engaging in an extensive illicit trade while supporting crime, terrorism, and armed conflict with its profits.”<sup>41</sup>

- A. Tobacco companies in the United States were charged and found guilty of violating Racketeer Influenced and Corrupt Organizations laws, with the court explaining how the tobacco companies “sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted.”<sup>42</sup>
- B. Tobacco companies were found to be complicit in cigarette smuggling and were required to pay settlement fees in the EU and Canada.<sup>43</sup>
- C. Tobacco companies were held liable for their actions/products in jurisdictions with strong legal systems (e.g., Master Settlement Agreement in the US, Canadian lawsuits).<sup>44</sup>

Tobacco companies have been subject of various investigations relating to their undue influence of government officials to the detriment of public service.<sup>45</sup> PMI’s own internal documents show how it thrived in an environment that is non-transparent and corrupt,<sup>46</sup> and reports have shown its complicity in smuggling,<sup>47 48 49</sup> the latest evidence suggesting that this involvement is likely ongoing.<sup>50</sup>

#### IV. OECD Member Countries' WHO FCTC Implementation

Many countries, including OECD states, in accordance with implementing the WHO FCTC, have developed practices and policies to ban so-called tobacco CSR as well as to restrict lobbying of and reject partnerships and arrangements with the tobacco industry.<sup>51 52</sup>

Examples from Australia, Canada, Chile, Denmark, Finland, France, Hungary, Ireland, Japan, Latvia, Mexico, Netherlands, Norway, Poland, Portugal, Turkey, and United Kingdom can be found in the [Handbook on Implementation of WHO FCTC Article 5.3: Policies and Practices that Protect Against Tobacco Industry Interference \(www.ggtc.world\)](http://www.ggtc.world).

So-called tobacco CSR and lobbying are linked because CSR is recognized as a key to political influence across policy domains<sup>53</sup> and is being used as a strategy to access policymakers with an end to undermining tobacco control policies.<sup>54</sup> Tobacco industry lobbying is tantamount to "tobacco industry interference,"<sup>55 56</sup> a term that includes "maneuvering with lobbyists to influence law making..."<sup>57</sup> and "manipulating public opinion to gain the appearance of respectability" in order to look "socially responsible"—"an inherent contradiction since the tobacco industry's core functions are in conflict with the goals of public health."<sup>58</sup> This is because "the tobacco industry has used its economic power, lobbying and marketing machinery, and manipulation of the media to discredit scientific research and influence governments in order to propagate the sale and distribution of its deadly products."<sup>59</sup>

#### V. Conclusions and Recommendations

The tobacco industry's so-called CSR, like lobbying, is restricted or prohibited in many countries. PMI's participation in OECD's event could be foreseen to advance the tobacco company's corporate strategy, which could turn into a violation of FCTC-based laws in many countries.

Furthermore, OECD's work in governance covers respect for the rule of law, but allowing PMI to advance its corporate agenda may result in violations of national laws. OECD's commitment to promoting development requires it to ensure consistency with the SDGs and promote policy coherence.

In order to preserve its integrity and reputation in promoting development, policy coherence, and anti-corruption, OECD can be guided by the recommendations outlined in the Article 5.3 Guidelines, which are also reflected as standards set for the UN agencies in the model policy:

- A. **Co-branding:** Do not grant permission to the tobacco industry to use the name, logo, and emblem of OECD. Further, measures should be taken to actively prevent the tobacco industry from using the name, logo, and emblem of the organization.
- B. **Donations:** Reject partnerships, joint programs, non-binding or non-enforceable agreements, and any other voluntary arrangements with the tobacco industry. Rejecting donations requires a potential donor to provide all relevant information about itself and its activities, including annual income

and funding sources, and in particular its links (direct and indirect funding) to the tobacco industry.

- C. **Membership:** Exclude any person employed by or providing consultancy or other services to the tobacco industry from being appointed as member of any committee, advisory or expert group or governing board delegation.
- D. **Awards:** Do not award or give prizes to the tobacco industry to reward its activities described as “socially responsible.”
- E. **Code of Conduct:** Formulate, adopt, and implement [if not yet done so] a code of conduct for OECD staff, prescribing the standards with which they should comply in their dealings with the tobacco industry.<sup>1</sup>

And in the rare instance where a meeting with the tobacco industry is mandated: (a) clearly indicate in writing to the tobacco industry that it must not mischaracterize the nature of the meeting in such a way that implies there is any relationship, collaboration or partnership or engagement; (b) publicize any such meetings to ensure transparency; and, (c) ensure that such meetings do not result in a partnership or joint work.<sup>2</sup>

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<sup>1</sup> To limit interactions and avoid any real or perceived partnership with the tobacco industry, [Name of the Agency] should: Inform and educate all entities and leadership in [Name of the Agency] about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from the tobacco industry's interests, and the strategies and tactics used by the tobacco industry to interfere with the development of relevant policies through, inter alia, individuals, front groups, and affiliated organizations that act, openly or covertly, on their behalf.

<sup>2</sup> If strictly necessary to promote the goals of [Name of the Agency], meetings with the tobacco industry: (1) must take place at a neutral venue for a mediated exchange and for the purpose of information exchange, i.e., to receive certain tobacco industry information relevant to public health or the goals of the United Nations system; and, (2) present to the tobacco industry [Name of the Agency's] policy on engagement with it and [Name of the Agency's] views on tobacco-related health, social, environmental, and economic issues. Before the meeting, [Name of the Agency] shall clearly indicate in writing to the tobacco industry that it must not mischaracterize the nature of the meeting in such a way that implies there is any relationship, collaboration or partnership or engagement between [Name of the Agency] and the latter. After the meeting, the minutes shall be made public to ensure transparency. No meetings should result in a partnership or joint work.



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- Tobacco industry interference takes many forms. These include:*
- (a) Maneuvering with lobbyists to influence law-making;*
  - (b) Exaggerating the economic importance of the industry while ignoring the social, environmental and health costs caused by tobacco and tobacco products;*
  - (c) Manipulating public opinion to gain the appearance of respectability, e.g., by investing funds in youth programs or nature conservation groups or disaster relief; this is part of efforts to look “socially responsible.” The corporate social responsibility of the tobacco industry is an inherent contradiction since the tobacco industry’s core functions are in conflict with the goals of public health.*
  - (d) Fabricating support through front groups which are phony “grassroots” groups that support its interests.*
  - (e) Attempting to discredit proven science; and,*
  - (f) Intimidating governments with litigation or the threat of litigation.*
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