

## RECOMMENDATION 5

### *REQUIRE THAT INFORMATION COLLECTED FROM THE TOBACCO INDUSTRY BE TRANSPARENT AND ACCURATE*

#### INFORMATION THAT TOBACCO COMPANIES SHOULD BE REQUIRED TO DISCLOSE

1. Manufacture
2. Market share
3. Marketing expense
4. Revenues
5. Lobbying activities
6. Political contributions and activities
7. Philanthropic activities
8. Affiliated entities
9. Agents or individuals acting on their behalf, including lobbyists
10. Marketing and promotional activities, including product design features, retailer incentives, any financial or other support to events, groups or individuals (Art. 13 Guidelines)
11. Product information such as type of tobacco leaves used, ingredients, change in ingredients, purpose of ingredients, contact details of the ingredient's supplier, product characteristics or design features, results of tests, contact information of all manufacturing and importing facilities (Art. 9/10 Guidelines)
12. Information pursuant to licensing and tracking/ tracing such as location of manufacturing units, warehouse, production equipment including model and capacity, bank accounts, documentation regarding criminal records, intended market for the products, customer information, shipment information (Art. 15, Protocol on the Elimination of Illicit Trade)

This recommendation presumes that an interaction with the tobacco industry is strictly necessary or required by law. Its operation relies on government bodies or offices that have a specific task of regulating the tobacco industry directly or indirectly. Hence, the first step is to identify the government agencies in charge of regulating the industry, and then to:

- a. **Raise awareness among government agencies regulating the tobacco industry**
- b. **Take stock** of information collected from the tobacco industry and **identify** other tobacco industry information that needs to be gathered to help in setting and implementing tobacco control measures effectively.
- c. **Identify obstacles** to collecting and disseminating information such as confidentiality clauses and address these.
- d. **Adopt a policy or law to require additional** information as needed to implement tobacco control measures effectively. If possible, incorporate this policy into laws pertaining to freedom of information or commercial/business/corporate laws.
- e. **Establish a process and a database system** to make the information easily accessible to the public.
- f. **Ensure that proper sanctions are imposed** for failure to submit information or for providing false information, and that such incidents are properly publicized to serve as a deterrent.

### **POLICY TO REQUIRE INFORMATION FROM THE TOBACCO INDUSTRY**

Various government agencies require different types of information from the tobacco industry as part of their operations. For instance, production, income, and assets are reported to the national revenue authorities as well as the local authorities for taxation purposes and for the granting of permits, respectively. Some governments such as Canada and those in the European Union require information on constituents and emissions, while others such as Fiji and Uganda require periodic reports on the manufacture, sale and import. The various Guidelines adopted by the Parties for the implementation of the FCTC refer to additional types of information that would enable governments to further regulate tobacco industry's operation especially in marketing, advertising, and sponsorship. There is insufficient data on the kinds of information that the tobacco industry is required to submit in different jurisdictions.

Many governments, including local ones, are wary about demanding new types of information from the tobacco industry under the assumption that these are confidential or trade secrets. However, the guidelines, being based on evidence and best practice, suggest that the information listed in them are actually required in some jurisdictions and should be required from the tobacco industry in order to effectively implement provisions of the FCTC. Parties to the FCTC can benefit from updating each other on the various types of information governments require from the tobacco industry, the level of detail required, manner and frequency of submission, etc. To facilitate treaty implementation, this type of information exchange should be undertaken in accordance with the FCTC. Notable, the right to access to information is a human right under Article 19 of the UN Declaration of Human Rights, and Article 19 of the International Covenant on Civil and Political Rights.

For purposes of regulation and improving tobacco control policies, governments need to develop clear policies outlining what information is required from the tobacco industry, the form and frequency of submission, the agency reviewing the information submitted, and the sanctions for failure to comply. The tobacco industry is expected to resist the requirement to submit information under the guise that these are trade secrets. Trade secret rules do not prohibit disclosure to government; instead they prevent public disclosure. It is possible for governments to provide limited exceptions (in the form of a short and specific list) as to the information item that should not be disclosed to the public without justifiable cause or reason.

### FEATURES OF DRAFT POLICY

Below is a draft policy template that sums up the list of information to be demanded from the tobacco industry and provides for sanctions in case of submission of false information.

Integrating with other pertinent laws or policies is key in ensuring implementation of the law as well as ensure policy coherence:

- i. The infrastructure, plans and framework on Access to information that is set up in over 130-150 countries should be used to advance public access to information required from the tobacco industry. Robust ATI laws will advance public interest including Art 5.3 implementation.
- ii. At the same time, access to information laws and regulations must align with the objectives of this policy in ensuring, among others, that the tobacco industry will not be allowed to assert trade secret and confidentiality policies to undermine tobacco control objectives, and that sunset clauses will not apply to frustrate investigation of long term impact of tobacco industry products and behavior, and the tobacco industry will not be allowed to abuse the system to overwhelm or reduce governments capacity to undertake important / urgent public health measures.
- iii. Provisions in a policy requiring information from the tobacco industry should take into consideration the policies on denormalizing tobacco industry CSR and prohibitions on CSR of the tobacco industry. This suggests that the tobacco industry should not be allowed to present the information in a manner that (or to use such reports to) promote its products or its businesses as this would directly or indirectly violate marketing prohibitions that exist in many jurisdictions.
- iv. Accordingly, rules on Business or Sustainability Reporting of corporations, or other rules that set standards on what information should be disclosed by the business sector, should be aligned with the objectives of tobacco control. The tobacco industry should be prohibited from submitting information that contradict or detract from the submissions required or those that represent CSR or ESG activities. Instead, the tobacco industry should provide data on the harmful impact of its business.

## OBJECTIVE:

To ensure that tobacco industry information relevant to tobacco control is available to the public.

## COVERAGE:

This policy applies to agencies that regulate or have jurisdiction over any organisation comprising the tobacco industry.

## ELEMENTS:

1. Identifying and gathering pertinent information that will help the government comply with its obligations under the WHO FCTC.
2. Disclosure of or registration of entities, organizations, or individuals affiliated with or acting on their behalf.
3. Obliging agencies to share information with other agencies and with the public with the intention of promoting transparency and accountability in government. Civil society's access to information is essential in encouraging its participation in monitoring the tobacco industry, including integrating in the FOI process to ensure that the public has access to the information that is otherwise essential.
4. Requiring that documents submitted must be with the understanding that such contain true and accurate information in order to ensure reliability of documents from and accountability of the tobacco industry.
5. Strategically plan for data collection and records management to ensure uniformity of formats, comparability of data, ease of retrieval/ analysis etc.

## MODE:

This policy can be adopted through a law or an issuance by the pertinent ministry. The local government can also be required to gather pertinent business information. The Securities and Exchange Commission can require information relating to registration of tobacco industry affiliation.

## Requirement of Information from the Tobacco Industry

Article 5.3 of the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) obligates the State to protect its public health policies against the commercial and other vested interest of the tobacco industry. The guidelines for the implementation of Article 5.3 recommend that Parties develop policies requiring transparent and accurate information about the activities and practices of the tobacco industry to facilitate its regulation. The WHO FCTC further encourages that Parties implement measures beyond those recommended by the treaty and its guidelines.

In view of these objectives, the following rules are hereby promulgated:

The term "tobacco industry" shall refer to organizations, entities, associations, and individuals that

work for or on behalf of the tobacco industry, such as, but not limited to, tobacco manufacturers, whole- sale distributors, importers of tobacco products, tobacco retailers, lawyers, scientists, lobbyists, front groups, and any other individual, or organization that work to further the interests of the tobacco industry

1. The agency shall require transparent and accurate information from the tobacco industry.[1]

It shall require the tobacco manufacturers, importers, and its affiliates (including front groups) to submit periodically and regularly (state specific periods here) and as requested by this agency, the following information:

a. Reports for disclosure or registration of the tobacco industry entities, affiliated organizations, and individuals acting on their behalf, including lobbyists.[2]

b. Information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, such as lobbying, philanthropy, political contributions.[3]

c. Information about tobacco advertising, promotions, and sponsorship[4], such as, but not limited to:

- i. The kind of advertising, promotion, or sponsorship, including its content, form, and type of media
- ii. The placement and extent or frequency of the advertising, promotion, or sponsorship
- iii. The identity of all entities involved in the advertising, promotion, and sponsorship, including advertising and production companies
- iv. In case of cross-border advertising, promotion, or sponsorship originating from a Party's territory, the territory or territories in which it is intended to be or may be, received
- v. The amount of financial or other resources used for advertising, promotion, or sponsorship

d. Any information required to support the tobacco control measures.

2. The information shall be provided in accordance with forms provided (by the agency or attached in the annex) which may be updated and revised as needed. The agency shall make sure that the information submitted by the tobacco industry will be accessible to the public for scrutiny, copying, or reproduction. (OPTIONAL: except for (list information items) which may not be publicly disclosed without a written request and for public interest and other justifiable causes.)

3. The x agency shall incorporate information collected from the tobacco industry into the information, education, and communication campaigns in order to raise awareness of the harms of tobacco use and exposure to secondhand smoke as well as the tactics and strategies of tobacco companies.

4. All reports from the tobacco industry required to be submitted to the agency must be with the undertaking that such documents contain true and accurate information.

5. Any person who submits documents with false information will be subject to prosecution for perjury or other applicable penalties (cite existing law, if any). In case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, general manager, branch manager, treasurer, officer in charge and employee/s responsible for the violation.

6. The tobacco industry must provide data that is accurate including the extent of social, economic and health harms of its products.

7. Where appropriate, provisions herein shall be specifically incorporated into existing access to information (ATI) laws and regulations. On the basis of the need to protect relevant policies from the commercial and vested interests of the industry, pertinent access to information policies shall be interpreted in favour of public health. Among others, prescription periods or sunset clauses shall not apply to information submitted by or relating to the tobacco industry for trade, secrets or confidentiality, shall be interpreted narrowly and shall give way to the public interest specified.

8 Data submitted must fully comply with the requirements and guidelines provided and in no case shall the data or the presentation of the data submitted be used to promote the image of the tobacco industry, the company or its products.

9. Existing laws on sustainability reporting or ATI shall be updated or modified accordingly, and agencies responsible for the same shall oversee the implementation of pertinent provisions of this law.

## II. Enforcement Mechanism

1. The agency shall notify the tobacco industry of the pertinent documents needed to be submitted and the corresponding deadlines for submission. In the absence of a deadline, the reports shall be submitted at the end of each year.

2. There shall be no exemption from the submission of reports. If nothing is to be reported, the tobacco industry must file a statement alleging the same.

3. The agency shall impose appropriate sanctions for the failure of the tobacco industry to submit its reports. Significant fines shall be imposed for each day that the tobacco industry fails to submit the report. (if allowed by law, list specific fines or sanctions under the title “Penalty”)

4. Documents submitted to the agency shall be received and processed by the X Department. It shall be responsible for verifying the accuracy of the contents of the documents.

5. X Department shall make sure that the documents shall be available for public knowledge, scrutiny, copying, or reproduction.

## III. Information that should be required from the tobacco industry

According to the treaty and its Guidelines, more information is to be required from the tobacco industry other than the usual business and product registration requirements (ingredients, emissions, licenses), this includes:

1. Persons: Registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf, including lobbyists and entities where they hold memberships. (Article 5.3)

2. Manufacturing: General information on market volumes, trends, forecasts, and other relevant information; quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or transshipment or duty suspension as of the date of the request; revenue and pricing. (Article 6)

3. Supply chain: Information on manufacture, market share, and those listed in the Illicit Trade Protocol, including details on and from entities in the supply chain, e.g., those required for licensing, due diligence, and tracking and tracing purposes.

4. Marketing: Information on marketing expenditures and details about tobacco advertising, promotion, and sponsorship (TAPS), including, but not limited to:

- The kind of TAPS, including content, form, and type of media.
- The placement and extent or frequency of TAPS.
- The identity of all entities involved in TAPS, including advertising and production companies.
- In case of cross-border TAPS originating from a Party's territory, the territory or territories in which it is intended to be or may be received.
- The amount of financial or other resources used for TAPS (Article 13).

5. CSR/research: Tobacco industry's so-called CSR activities and entities engaged in the same (Article 5.3); marketing expenditures and any other activity, such as research (research grants), policy submissions, funding of third parties/nongovernmental organizations (FCTC/COP8 (18)).

6. Lobbying: Expenses or activities on lobbying, philanthropy, and political contributions; initiatives to engage government, directly or indirectly, such as meetings with public officials, proposed partnerships, draft or proposed legislation, policy papers or offers of assistance. Names of employees and consultants, including former government employees; gifts, services or contributions extended directly or indirectly to public officials or persons related thereto; any political contributions made.

7. Evidence: Information that would support filing cases against the tobacco industry to hold it liable, e.g., internal documents, revenue, scientific claims and studies, activities in foreign countries, scientific funding, public relations strategies, etc., in accordance with Article 19.

8. Production: Information on tobacco production, including tobacco industry practices and cultivation of tobacco.

9. Other: Activities of the tobacco industry that have an impact on the Convention or national tobacco control activities, or any information required to support tobacco control measures.

#### IV. Monitoring

On a quarterly basis, the X Department shall submit copies of the documentation to the agency and the list of documents submitted/not submitted by the tobacco industry.

To promote public disclosure and transparency, X Department is mandated to record or document all requests made before its office. The logbook shall contain the information about the requesting party, the document requested, and the corresponding action made.

V. Integration into the Program

The agency shall integrate the policy into its programs related to the promotion of public disclosure of transactions involving public interest and transparency in the government. (Specify all known programs here).

VI. Sustained Awareness-Raising Program

a. The agency shall inform and educate all government personnel about the industry practice of using individuals, front groups, and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interest of the tobacco industry.

b. It shall encourage government personnel to monitor, report, and exchange knowledge among pertinent agencies and civil society representatives with respect to tobacco industry practices.

VII. Funding

All costs incident to the implementation of this policy shall be sourced from the budget of X Department. (or subject of annual budget allocation)

VIII. Effectivity

(Note: It is suggested that the policy be made effective after it complies with the publication requirement to inform affected persons about the new rules of the agency, subject to national laws).

**Requirement of Information on Marketing Activities**

For other marketing activities such as published advertisements, signages and related marketing materials, specific details including image of the promoting as well as , among others,

(a) for each province, the amount of the expenses incurred, by brand or, if applicable, by brand family, for market research, development and design in relation to the advertisement; and

(b) the amount of consideration given by the manufacturer for the publication of the advertisement and, if a consideration other than money is given, a description of the consideration and its money value.

**Requirement of Information on Research and Development Activities**

The requirements are amended to additionally require that a manufacturer submit a report on research and development activities in respect of a consumer tobacco product, whether the tobacco product is for sale or not. This regulatory power to require information is also applicable on tobacco products that are not for sale.

Also, a full copy of all reports relating to research and development activities, regardless of the format used by the manufacturer (e.g. slides, email, meeting notes), is required. This requirement is also applicable to the full copy of progress reports, synopses or outlines made in respect of research and development activities that are not complete.

If no research and development activities have been conducted during the reporting period, the manufacturer is required to notify the Department by providing a statement to that effect. The reports on research and development activities are expected to provide valuable insight into tobacco products that are available in the market and new products that are in development.

## COUNTRY EXAMPLES: UGANDA

In Uganda, the specific types of information required from the tobacco industry are listed in the country's tobacco control law titled 'Tobacco Control Act 2015'. In 2019, Uganda issued a new law titled 'The Tobacco Control Regulations, 2019' which further elaborated requirements by tobacco company manufacturers and importers, as below.

### **43. Tobacco industry reporting to the Committee.**

- (1)** A manufacturer, importer, supplier or distributor of tobacco or a tobacco product shall periodically provide reports to the Committee or upon request, with the contents specified in the Sixth Schedule to this Act.
- (2)** A report made under subsection (1) or under any other provision of this Act shall contain the information required by the prescribed Regulations.
- (3)** The information required under this section shall be made available to the public, as may be prescribed by Regulations.
- (4)** The secretariat to the Committee shall maintain the reports in accordance with the relevant laws and shall make the information from the reports readily accessible to the public in a timely manner, while taking reasonable action necessary to prevent disclosure of any information that may be protected by law and any information that may be misleading or that may promote the tobacco business.

Source: Uganda Tobacco Control Act 2015, Tobacco Control Laws.



*Reports to the Committee*

**12. Reports to the Committee by tobacco product manufacturers and importers**

**(1)** A manufacturer, importer, supplier or distributor of tobacco or a tobacco product shall, by 30th January of every year, submit a report to the Committee, which shall have the content specified in the Sixth Schedule to the Act.

**(2)** A manufacturer, importer, supplier or distributor that intends to introduce a new tobacco product in Uganda or to make any changes or modifications to a tobacco product for which a report is submitted under subregulation (1) shall, at least 6 months before the introduction, change or modification, submit a report of the new or modified tobacco product to the Committee, using the format provided by the Committee.

**(3)** The report submitted under subregulation (2) shall indicate, as may be applicable-

- (a) the design of the tobacco product;
- (b) the chemical or chemical compounds in the tobacco smoke of the product;
- (c) the content, delivery and form of nicotine of the tobacco product; and
- (d) the additives and ingredients of the tobacco product.

**(4)** A manufacturer, importer, supplier or distributor of tobacco or a tobacco product, as the case may be, that submits information shall specify any information that person or entity considers to constitute a trade secret.

**13. Reports to the Committee upon request**

**(1)** Notwithstanding regulation 12, the Committee may request a manufacturer, importer, supplier or distributor of tobacco or a tobacco product to make a report, at any time, with respect to any matters in the Sixth Schedule of the Act.

**(2)** A report under subregulation (1) shall be submitted to the Committee, within 14 days of the date of the request to the manufacturer, importer, supplier or distributor of tobacco or a tobacco product, as the case may be.

**(3)** The Tobacco Control Committee shall prescribe the content and format of the report to be submitted under regulation 12 and this regulation.

*Source: The Tobacco Control Regulations, 2019, Uganda, Tobacco Control Laws.*

**COUNTRY EXAMPLES: THAILAND**

In Thailand, the specific types of information required from the tobacco industry are listed in the country's tobacco control law titled Tobacco Products Control Act, 2017. The frequency is specified as annual, with flexibility to require a more frequent submission.

**Article 40.** Manufacturers and importers of tobacco products for sale in the Kingdom are required to report the quantity of such products manufactured or imported into the Kingdom, amounts spent on marketing, revenue, and the activities described in Article 35 to the Board annually. Such reporting shall comply with rules, procedures, and conditions set out by the Minister, upon the advice of the Board.

**Article 66.** Any manufacturer or importer of tobacco products who fails to submit information or who submits incomplete information as required under Article 40 shall be subject to imprisonment for not more than six months or a fine of not less than one hundred thousand baht, or both. Any manufacturer or importer of tobacco products who submits falsified information in response to the requirements of Article 40 shall be subject to imprisonment for not more than one year or a fine of not less than two hundred thousand baht, or both.

*Source: The Tobacco Products Control Act of A.D. 2017, Thailand, Tobacco Control Laws.*

## SYSTEMATIC DATA COLLECTION

To ensure comparability and ease in collection /analysis of data, a systematic data collection process is crucial. It is ideal for as many countries to agree on the data to be collected from the tobacco industry and to be ready to exchange this information as necessary, in accordance with Article 22 of the WHO FCTC, which focuses on international cooperation.

### Practice in the European Union

The European Union (EU) has adopted an online digital platform to collect industry's business information for its member states. In accordance with the EU Tobacco Products Directive 2014/40/EU, specific data sets on product regulation (ingredients and emissions) are collected by Member States through a single website called the EU Common Entry Gate (EU-CEG). The site collects data on company information, product description, ingredients and emissions, and requires submission on a periodic basis or, in the case of novel products, 6 months prior to the introduction of the products.

**EU Common Entry Gate (EU CEG) online submission form:** The EU CEG allows tobacco companies to submit information to the EU Member States. The site focuses only on collecting information on ingredients, emissions and toxicology, and not marketing, among others. Additional tabs can added to cover other types of information, such as donees, lobbying expenses, among others in order to standardize data collection.

**Company registration form:** The EU policy requires all relevant data collected from the tobacco industry across the EU, including business registration information, along with the ingredients and emissions, to be hosted in one place, using a standardized format, as below.

## COUNTRY EXAMPLE : CANADA

### Expanding the Classification of Marketing Activities

In March 2020, at the height of the first wave of the COVID-19 pandemic Canada endorsed Medicago for the production of vaccines. Shortly thereafter, PMI praised Canada for its endorsement along with emphasizing its involvement in financially supporting the Medicago's tobacco-based Covid vaccine research. In March 2022, the WHO announced that it will not be able to approve the Medicago's *Covifenz* vaccine for distribution through COVAX due to the company's ties to tobacco companies, asserting that the UN has robust policies on non-engagement with the tobacco industry. It appears from some commentators that some government officials may not be aware of the tobacco-links or the consequences thereof. In this case, requiring the tobacco industry to disclose information on its other expenses including investment, expansion, diversification etc is crucial, particularly because these fall under the "public relations' strategies of the industry.

### Requiring Information of Banned Activities

Canada previously requests for details of sponsorship promotional activity undertaken but this has since been prohibited so in its stead, a declaration or undertaking that no such promotion is done during the reporting period.

### Pros and Cons of Employing "Short Cuts" in Requiring Information

As a matter of exception, Canada requires a "short report" from tobacco manufacturers:

Regulations Amending the Tobacco Reporting Regulations: SOR/2019-64

Canada's Tobacco Reporting policy, as revised in 2019, provides for a shorter version of the report for companies that have less than 1% of market share. This involves cutting down the requirement to report on ingredients to select ingredients such as nicotine, nitrosamines etc. For some countries where there is a limitation in capacity to process data, this may be a practical approach. However, reducing the reporting burden may also appear to benefit smaller tobacco companies, contrary to the "not giving preferential treatment or benefit" for the tobacco companies to run their business. This may also create a regulatory loophole that smaller companies or distributors might exploit.

Canada's Tobacco Reporting Regulations, SOR/2000-273 states:

#### Short report

**(8)** A manufacturer may, instead of submitting the report referred to in subsection (1), submit a short report every two years in respect of its designated tobacco products sold during that two-year period if

**(a)** in the case of cigarettes, the manufacturer's total sales of that type of designated tobacco product, per year, is less than 1% of the total sales of that type of designated tobacco product in Canada in the year preceding the two-year period, as well as in the first year of that two-year period; and

**(b)** in the case of kreteks, the manufacturer's total sales of that type of designated tobacco product, per year, is less than 5% of the total sales of that type of designated tobacco product in Canada in the year preceding the two-year period, as well as in the first year of that two-year period.

### **Short report – content**

**(9)** The short report must set out the information referred to in subsection (2) in relation to the tar, nicotine, carbon monoxide, benzene, hydrogen cyanide and formaldehyde emissions contained in the smoke produced from the designated tobacco product, as well as the information referred to in subsection (7).

**(10)** [Repealed, SOR/2019-64, s. 10]

Source: [Tobacco Reporting Regulations](#) (SOR/2000-273), Justice Laws Website, Government of Canada, March 04, 2019.

## **IMPROVING TRANSPARENCY MEASURES**

### **Tobacco Industry Information Should not be Classified a Trade Secret or Confidential**

Keeping in mind the general rule that the fundamental right to public health is primordial and takes precedence over commercial rights, the requirement to publish internal documents of the TI and ensure its accessibility to the public reflects the public's right to such type of information.

This gives all the more reason that the tobacco industry information submitted to the government should not be considered confidential by virtue of it being a trade secret or any other justification. If any, such confidentiality should be a matter of exception, not a rule. The EU Directive provides that for the tobacco industry to claim confidentiality, it must duly justify its claims. It further specifies that some types of information should not be classified as confidential or trade secret such as amount of additives and ingredients and studies on toxicity and addictiveness.

## Examples of Good Transparency Measures

**Canada:** The tobacco industry's claim or marking that a submission is "confidential" does not automatically make it so. The tobacco industry is expected to make way for transparency requirements in accordance with Article 5.3 Guidelines, which includes provisions on transparency- all its submissions to the government are expected to be put up on the website for everyone to access, including the general public.

**European Union:** Tobacco industry is required to justify its claim to information it considers confidential, as below.

### Article 6

#### Confidential data and disclosure of data

1. In their submission, manufacturers and importers shall mark all information which they consider to be a trade secret or otherwise confidential and shall, upon request, duly justify their claims.
2. In using the data transmitted for applying Directive 2014/40/EU and Regulation (EC) No 1049/2001 of the European Parliament and of the Council (4), the Commission shall, in principle, not consider the following information to be confidential or amount to a trade secret:
  - (a) ingredients used in quantities above 0,1 % of the final formulation of the liquid;
  - (b) studies and data submitted according to Article 20(2) of Directive 2014/40/EU, in particular on toxicity and addictiveness. Where those studies are linked to specific brands, the explicit and implicit references to the brand shall be removed and the redacted version shall be accessible.

Source: COMMISSION IMPLEMENTING DECISION (EU) 2015/2183 of 24 November 2015 establishing a common format for the notification of electronic cigarettes and refill containers, Official Journal of the European Union.

## MAKING INFORMATION PUBLICLY ACCESSIBLE

According to Article 19 of the Universal Declaration of Human Rights, *'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'*

This includes all information that has been submitted to the government. Over 130 countries have now adopted access to information laws and are taking measures to effectively implement these laws. Many have, as recommended in Model Policies, designated focal agencies and officials to oversee implementation of the law ensuring that proactive disclosure of information is undertaken and that requests for information is addressed within specified number of days. This right is monitored under the United Nations Human Rights Council (UN HRC) review process and to some extent, the Regional Human Rights councils in Latin America Africa and EU provide for remedial measures should national policies fail to provide this fundamental right.

access to information (ATI) rights facilitate implementation of Art 5.3 Guidelines in at least 2 aspects:

- a. requiring information from the tobacco industry and ensuring these are transparent and
- b. ensuring transparency of interactions with the tobacco industry.

This gives citizens/ CSOs the power to demand information from the government as to its engagements with the tobacco industry and as to the information or any matter shared with them by the tobacco industry. Any such information, based on the principles and rationale of the WHO FCTC, and given the nature of the tobacco industry, would be imbued with public interest and could affect public health. This also calls for the development of ATI policies that are responsive to the goals of tobacco control, which are based on the fundamental right to health. Governments involved in TC, including Ministry of Health, Education, Environment, Social welfare, agriculture etc., should set the stage for “proactive” disclosures by posting in appropriate places esp digitally, all interactions with as well as information received from the tobacco industry.

### **Mandatory Tobacco Control Reporting as opposed to Sustainability Reporting**

The EU and the US have been deliberating on mandatory rules and standards on sustainability or Environment, Social and Governance (ESG) reporting. Practically all major tobacco corporations will be covered as these have a nexus in EU and US (affiliate, principal, Headquarters, etc) It bears stressing that the tobacco industry, which is in the business of profiting from a product that provides no benefit but kills its consumers, is incapable of undertaking social 'good' and cannot contribute to sustainability . Hence, tobacco companies must not be allowed to deceive the public with “ESG or Sustainability Reports”. Instead, it should be required to report additional information to demonstrate how it prevented itself from being the biggest barrier to treaty implementation. This includes:

- Ensuring that there is no publicity of its CSR or ESG reports (only direct communication that is necessary for business administration). For purposes of transparency, the government should make the data publicly accessible.
- Avoiding engagements with any government official or agency unless it is called on as part of government effort to effectively regulate it or its products.
- Not entering into partnerships or agreements with governments.
- Not undertaking any advertising, promotion or sponsorship, including so-called CSR activities.
- Not becoming a member of a body, committee or group that has the task of developing or implementing policies related to tobacco control.
- Not making contributions, including political contributions.
- Not exploiting less stringent laws, especially in countries where legislation has loopholes, and in developing nations where enforcement may be weaker.
- Not interfering in tobacco control policy development or implementation and legally challenging governments on the same.
- Removing cigarette filters to end consumer deception, as filters cause more health risks and result in toxic plastic litter.
- Making it easier for its victims to claim compensation for harms, and for governments to disincentivize tobacco production.[5]

Reports that are required from the tobacco industry under the ambit of Art 5.3 Guidelines, such as those defined herein, should take the place of/ prevail over any ESG or Sustainability Report. Any ESG or sustainability report or other non financial disclosure requirements or policies should give way to the requirements of tobacco control, including those outlined in the WHO FCTC.

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1 Guidelines for Implementation of Article 5.3 of the WHO FCTC, Recommendation 5.1.

2 Ibid., Recommendation 5.3.

3 Ibid., Recommendation 6.2.

4 Ibid., Par. 41.

5. An Inherent Contradiction: The Tobacco Industry's Environment, Social & Governance Activities. STOP, Oct 31, 2022.