

ECUADOR

2021

TOBACCO  
INDUSTRY  
INTERFERENCE  
INDEX

## Authors and acknowledgments

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### Disclaimer

This Tobacco Industry Interference Index in Ecuador is based on public information available. If the reader has information that could strengthen this report, please contact us through the emails listed below.

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## Abbreviations

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CAL	Legislative Administration Council
CILA	Interinstitutional Committee for Tobacco Control
COP	Conference of the Parties
FCTC	Framework Convention on Tobacco Control
FESAR	Ecuadorian Respiratory Health Foundation
GGTC	Global Centre for Good Governance in Tobacco Control
ITABSA	Tobacco, Food and Beverage Industries Limited Company
LORCT	Organic Law on Tobacco Control and Regulation
PAHO	Pan American Health Organization
PMI	Philip Morris International
PROESA	Ecuadorian Supplier Anonymous Society
SEATCA	Southeast Asia Tobacco Control Alliance
SENAE	National Customs Service of Ecuador
SIMAR	System of Identification, Marking, Authentication, Tracking and Fiscal Traceability of alcoholic beverages, beers and cigarettes of national production
SRI	Internal Rents Service
STOP	Stopping Tobacco Organizations and Products (Program by Bloomberg Philanthropies)
TANASA	Andean Tobacco Company Anonymous Society
WHO	World Health Organization

## Preface

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From an economic and public health perspective, prevention in health has always been a cost-effective strategy. Prevention not only stops the progression of a disease, but it also helps controlling the complication of pathologies in people who already suffer from it. In this sense, it is known that in order to avoid the tobacco epidemic, the most preventive cost-effective measures are: taxes on tobacco products, restricting the sale and purchase of individual cigarettes, limit smoking in closed spaces, among others. These measures are established in the WHO Framework Convention on Tobacco Control (FCTC), ratified by Ecuador in 2006; and the Organic Law for the Regulation and Control of Tobacco of 2011 (LORCT) that as provided in its article I, the Law aims to "promote the right to health to the habitants of the Republic of Ecuador, protecting them from the consequences of the consumption of tobacco products and their harmful effects".

The validity of these regulatory bodies encouraged the implementation of public policies that caused a constant decrease in lifetime consumption of tobacco and limited the access to these substances to young people. This has been internationally recognized, for example, the Tobacconomics unit of the University of Illinois, in its publication with Cigarette Tax Scorecard<sup>a</sup>, has qualified the tobacco tax policies at 4.63 out of 5 points. The identification, marking, authentication, tracking system and fiscal traceability of alcoholic beverages, beers and cigarettes of national production (SIMAR), has been an example to the region.

These tobacco control flags are a starting point to work on improving these and more public policies. Continuing to expand the scope of SIMAR in line with the provisions on conflict of interest provided in articles 5.3 of the FCTC and 4.2 of the Protocol for the Elimination of Illicit Trade in Tobacco Products, to develop taxes with its greatest impact, controlling smoke-free spaces, will not only limit the consumption of tobacco products, but it will also generate a delay in the beginning of the consumption of this health damager. The income effect of facing a higher price, in conjunction with other restrictions, has a greater impact in young people, for which it will delay or cancel his initiation into smoking. Which during the lifespan means a greater number of years of life free of progression in chronic diseases, of which the consumption of the products of tobacco is a determinant.

Unfortunately, these great efforts have been overshadowed by increased of the tobacco industry interference in different areas of our country. It worries even more that this occurs in the context of COVID-19, in which people with lung infections problems are one of the groups with the highest risk of complications in case of being infected with SARS-CoV-2.

The current Organic Law of Health, establishes in article 9, literal c, that it is the responsibility of the State to prioritize public health over commercial and economic interests, this is more important when it comes to the industry of public health damager, of which there is no absolute benefit neither for the one who consumes nor for those people who are around it. Therefore, increasing the intervention of this industry in the actions of the different State entities is to go against the national and regulatory presuppositions. Therefore, increasing the score from 69 points in 2019-2020 to 71 points in 2020-2021, not only demonstrates questionable behavior, but also demonstrates a clear violation of the right to health which the State must ensure.

The Ecuadorian Foundation for Respiratory Health-FESAR and Corporate Accountability, Latin America Office, have developed this second report on the Tobacco Industry Interference Index of Ecuador. This publication analyzes in detail and presents clear evidence to qualify seven indicators related to different aspects, to have a total indicator where the intervention of the tobacco industry is evaluated.

The results that are presented are of extreme concern, which denote the interests which are the basis for the development and implementation of our public policies. This is analyzed through the information and theories that the tobacco industry has released as truth in the population. Being the most used, the erroneous theory of higher taxes, higher contraband of cigarettes.

It is time to take scientific evidence, academic publications, and other sources of information and examples from other countries –free of conflicts of interest–, for decision-making. Opening ears and doors to the tobacco industry will not only eliminate the progress made, but will generate greater access for the population to tobacco products, which will generate higher costs in the Health System, the State Budget and the budget of Ecuadorian families.

**Tatiana Villacrés**  
**President**  
**Interinstitutional Committee for Tobacco Control (CILA)**

<sup>a</sup> <[tobacconomics.org/research/cigarette-tax-scorecard-2nd-edition/](http://tobacconomics.org/research/cigarette-tax-scorecard-2nd-edition/)>.

## Context and introduction. A note on COVID-19.

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Tobacco control faces an additional challenge this year: a dangerous and deadly virus that attacks the lungs, SARS-CoV-2, which globally has infected 148,815,508 million people and has killed more than 3,138,421 million people as of March 2021.<sup>1</sup>

Coupled with the tobacco pandemic, which kills more than 8 million people each year around the world,<sup>2</sup> in addition there is COVID-19, which is more dangerous for the elderly, individuals with hypertension, diabetes, obesity, those who are overweight, and those addicted to nicotine. Smoking is an important risk factor and can make a difference in the severity of symptoms or fatal consequences from COVID-19<sup>3</sup>

In Ecuador, 13,823 people as of May 2021 have died as a result of COVID-19<sup>4</sup> and approximately 19 people die every day from tobacco use,<sup>5</sup> one in ten people between the ages of 18 and 69 use tobacco,<sup>6</sup> and three out of ten adolescents between the ages of 13 and 15 have used tobacco at some point in their lives.<sup>7</sup> In addition, 10% of annual deaths in the country can be attributed to smoking (2,021 Chronic Obstructive Pulmonary Disease, COPD, 1,441 heart diseases, 884 other cancers, 781 passive smoking and other causes, 684 lung cancer, 514 pneumonia, 467 cerebrovascular accident, CVA)<sup>8</sup>. Tobacco use in the country generates annual direct medical costs of more than \$1,285,789 million USD, \$313 million USD in lost labor productivity, and informal care costs of more than \$314 million USD.<sup>9</sup> In total, these costs are equivalent to more than 1.3 percent of the entire Gross Domestic Product (GDP) of the country.<sup>10</sup> The tax collection for the sale of cigarettes is around USD \$97 million annually, a value that barely covers 8% of the total economic costs caused by cigarettes in the health system and society.<sup>11</sup>

It is also worth noting that, those who suffer from diseases attributable to tobacco use, require assistance and care. In Ecuador, approximately three out of every four caregivers are women. Annually 900 hours (up to six hours per day) is spent each day by family members or close friends caring for people with illnesses linked to smoking. This predominantly unpaid labor, is equivalent to \$314 million USD (0.3% of GDP).<sup>12</sup>

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<sup>1</sup> Source (visit 04/30/21):

[bit.ly/3tjODol](https://bit.ly/3tjODol).

<sup>2</sup> Source (visit 04/30/21):

[bit.ly/3aI5zy7](https://bit.ly/3aI5zy7).

<sup>3</sup> Source (visit 04/30/21):

[bit.ly/35Z6GHj](https://bit.ly/35Z6GHj).

<sup>4</sup> Source (visit 04/30/21):

[bit.ly/3uxZYTg](https://bit.ly/3uxZYTg).

<sup>5</sup> Source (visit 04/30/21):

[bit.ly/3xqTXtr](https://bit.ly/3xqTXtr).

<sup>6</sup> STEPS Fact Sheet, 2018, Ecuador. Source: Ministry of Public Health.

<sup>7</sup> GYTS Fact Sheet, 2016, Ecuador. Source: Ministry of Public Health.

<sup>8</sup> Source (visit 04/30/21):

[bit.ly/3dYNZIE](https://bit.ly/3dYNZIE).

<sup>9</sup> Source (visit 04/30/21):

[bit.ly/3dYNZIE](https://bit.ly/3dYNZIE).

<sup>10</sup> Source (visit 04/30/21):

[bit.ly/3dYNZIE](https://bit.ly/3dYNZIE).

<sup>11</sup> Source (visit 04/30/21):

[bit.ly/3dYNZIE](https://bit.ly/3dYNZIE).

<sup>12</sup> Source (visit 04/28/21):

[bit.ly/3dYNZIE](https://bit.ly/3dYNZIE).

In summary, the consumption of tobacco products is a public health problem due to its direct relationship with high rates of mortality and related morbidity among the Ecuadorian population. In addition, its use is a social and economic burden.

The tobacco industry is represented in Ecuador mainly by Philip Morris International (PMI), a company affiliated with three national companies: *Industrias del Tabaco, Alimentos y Bebidas Sociedad Anónima* (ITABSA), *Tabacalera Andina Sociedad Anónima* (TANASA), *Provedora Ecuatoriana Sociedad Anónima* (PROESA).<sup>13</sup> These companies sell brands like Marlboro, Líder, Lark, and Philip Morris. Additionally, British American Tobacco was established in Ecuador in 1995 but only began distributing brands, such as Kent Super Lights, Lucky Strike, and Casino a few years ago.<sup>14</sup> In addition, there are three companies that plant and harvest tobacco leaves: *Ecuacorcias Sociedad Anónima* (founded in 2012),<sup>15</sup> *Hacienda Tabaganesha Sociedad Anónima* (founded in 2010)<sup>16</sup> and *Tabacos Acendrados Sociedad Anónima* (founded in 2016).<sup>17</sup>

According to the study “Estimate of illicit trade in cigarettes in Ecuador”, published by the Pontificia Universidad Católica del Ecuador, written by Tatiana Villacrés, PhD and Jorge Salgado, MSc, indicated that the most consumed brand for those surveyed in said study is “Marlboro (30%), of which 58% are cigarettes of legal origin and 42% are illegal. In second place, is Lark, a brand similarly produced in the country, of which 18% of smokers consume it illegally. For its part, 58% of Líder brand cigarettes are considered illicit. Fourth is Elephant. This was the illicit brand most consumed by smokers surveyed, followed by Carnival, Ultima, Gold City and Modern. Said illicit brands account for 28.9% of total consumption. Given the responses of the respondents, there are a total of 40 illicit brands that are consumed in the cities where the information was collected.”<sup>18</sup>

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<sup>13</sup> Source (visit 04/30/21):  
[bit.ly/3dZJb5z](https://bit.ly/3dZJb5z).

<sup>14</sup> Source (visit 04/28/21):  
[bit.ly/32TImCa](https://bit.ly/32TImCa).  
[bit.ly/3vqcvId](https://bit.ly/3vqcvId).

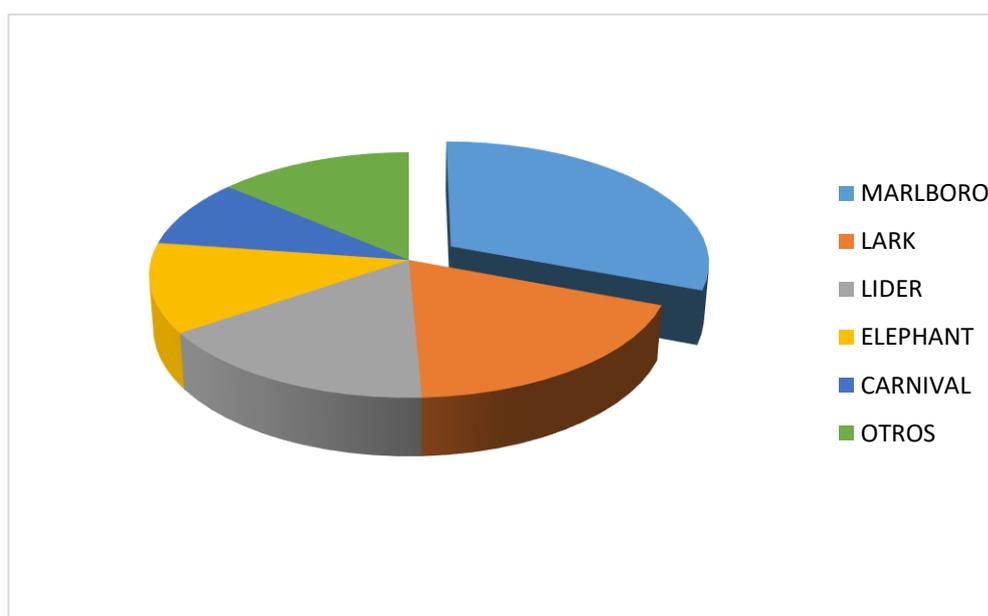
<sup>15</sup> Source (visit 04/28/21):  
[bit.ly/3vu1S79](https://bit.ly/3vu1S79).

<sup>16</sup> Source (visit 04/28/21):  
[bit.ly/3xsnzqa](https://bit.ly/3xsnzqa).

<sup>17</sup> Source (visit 04/28/21):  
[bit.ly/3nrVQBr](https://bit.ly/3nrVQBr).

<sup>18</sup> Source (visit 04/28/21):  
[bit.ly/33hnJ5K](https://bit.ly/33hnJ5K).

## Consumption of cigarette brands in the Ecuadorian market



Source: FESAR, *Corporate Accountability*, 2021.

In 2006, Ecuador ratified the World Health Organization Framework Convention for Tobacco Control (WHO FCTC), joining the other 182 states part of the United Nations treaty whose adoption was carried out in record time in the history of the organization, setting an example to be followed in public health matters.<sup>19</sup> This achievement was crucial in the discussion and subsequent passing of a comprehensive national tobacco control law. Thus, on July 22, 2011, the Law for Tobacco Control (*la Ley Orgánica para la Regulación y Control del Tabaco LORCT*) was approved in Ecuador.<sup>20</sup> The LORCT included provisions on the sale, distribution, packaging, advertising, promotion, and sponsorship of tobacco products, smoke-free environments, civil society participation in tobacco control policies, and responsibilities of local governments, among others.

Later, on February 10, 2012, the LORCT regulations were approved in order to provide more details for proper implementation.<sup>21</sup> These regulations included the establishment of some tobacco control terms, such as: tobacco products, additives, emissions, enclosed spaces, places of public access, accessories for tobacco products, electronic nicotine administration systems, among others. Additionally, these regulations also included provisions on information that the tobacco industry must present, such as deadlines for collecting health warnings from the Ministry of Public Health, as well as specifications on advertising of tobacco products, tobacco smoke-free environments, and participation of civil society.

In addition, the LORCT regulations established that the Interinstitutional Committee for Tobacco Control (CILA) would be the national body on tobacco control, attached to the Ministry of Public Health. CILA was created by Ministerial Agreement No. 955, approved on March 10, 1989. Consequently, on November 28, 2012, Ministerial Agreement No. 2486 defined the Operating Regulations of CILA, which established in which the institutions, organizations, and individuals that make up the Committee, how the

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<sup>19</sup> Source (visit 04/30/21): [bit.ly/3vu2f3](http://bit.ly/3vu2f3).

<sup>20</sup> Source (visit 04/30/21): [bit.ly/3eFwITx](http://bit.ly/3eFwITx).

<sup>21</sup> Source (visit 04/30/21): [bit.ly/3eHxmAh](http://bit.ly/3eHxmAh).

chairman and vice chairman of the Committee would be nominated, the frequency with which the plenary sessions of the Committee would be convened, responsibilities of the president, vice president, and the secretary of the Committee, and what would be the technical commissions with their specific responsibilities.<sup>22</sup>

Until the period of closing this index, Dr. José Ruales and Daniel Dorado, attorney, served as the president and vice president of CILA respectively.<sup>23</sup> It is important to mention that the executive secretariat is established by the Ministry of Public Health, which is represented by psychologist, Pablo Analuisa. CILA has organized a series of activities related to tobacco control, in collaboration with the Pan American Health Organization (PAHO/WHO), public institutions, local governments, civil society organizations, universities, and school. It has also actively participated in the discussion of *the bill that reforms various legal bodies to reinforce the prevention of and fight against Illicit Trade, strengthen the national industry and promote electronic commerce - Contraband Prevention Law- (previously bill for the Prevention and Combat of Smuggling and Customs Fraud of Merchandise)*, ensuring that its contents are aligned with the WHO FCTC and the Protocol to Eliminate Illicit Trade in Tobacco Products, *The Protocol*, as well as to warn about interference from the tobacco industry.<sup>24</sup>

On October 15, 2015, Ecuador ratified *The Protocol*, becoming one of the first ten countries in the world to do so. As of the closing date of this index (March 31, 2021), The Protocol has 61 State Parties<sup>25</sup> and held the first Meeting of the Parties in 2018. Ecuador was elected to preside as the president of the Bureau at the Meeting of the Parties and at said meeting, welcomed 44 State Parties and 56 States that were not parties to the Protocol at that time, together with civil society organizations and intergovernmental organizations.<sup>26</sup>

It is important to emphasize that, in the year of reporting this index, Ecuador commemorates ten years since the creation of national regulations that allowed taking action in tobacco control, an area that has been treated with the importance that it deserves. The approval of the LORCT was a crucial and historic step in Ecuador that allowed the beginning of a new era of work towards the prevention and reduction of the consumption of this highly addictive substance that causes so much damage to not only health, but as well to the economy and society itself.

However, despite the fact that Ecuador has made several improvements in the realm of tobacco control, national legislation has not been updated since 2011-2012, except for taxes regulations whose last provisions were issued in 2016. There was an attempt to revise the LORCT in 2016, in order to adopt additional tobacco control measures, such as plain packaging, a total ban on advertising, promotion and sponsorship of tobacco products, and smoke-free environments. Unfortunately, this bill was not discussed in the National Assembly.<sup>27</sup> In this regard, tobacco control in Ecuador faces a major challenge,

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<sup>22</sup> Source (visit 04/30/21):  
[bit.ly/3dYQuKC](https://bit.ly/3dYQuKC).

<sup>23</sup>Disclaimer: Daniel Dorado's technical collaboration in this report has nothing to do with his role as Vice President of CILA, since it is as a member of civil society. Nothing in this report commits or represents a formal position of CILA. Daniel Dorado, carried out the due diligence process, notifying the President of CILA about his collaboration in this report.

<sup>24</sup> Source (visit 04/30/21):  
[bit.ly/32VwYZf](https://bit.ly/32VwYZf).  
[bit.ly/3nukHo5](https://bit.ly/3nukHo5).  
[bit.ly/2R3G4ka](https://bit.ly/2R3G4ka).

<sup>25</sup> Source (visit 04/30/21):  
[bit.ly/2TTTT1yq](https://bit.ly/2TTTT1yq).

<sup>26</sup> Source (visit 04/30/21):  
[bit.ly/3xqB4sm](https://bit.ly/3xqB4sm).

<sup>27</sup> Source (visit 04/30/21):  
[bit.ly/3xGEkOF](https://bit.ly/3xGEkOF).

one of positioning the importance of updating a regulation that has been unchanged for ten years and need to be adapted to fit current socio-political situations.

Regarding local governments, Quito, the capital of Ecuador, is currently reviewing a draft ordinance on tobacco control, which strengthens national legislation and supports its proper implementation. This could be a potential achievement for the country and could motivate all local governments to comply with the provision of the LORCT to approve ordinances within a year (by 2012), which has not been fulfilled at the closing date of this index (March 31, 2021).

This report aims to demonstrate the current situation on interference of the tobacco industry in Ecuador, from the point of view of civil society. The information was gathered by two organizations: *Fundación Ecuatoriana de Salud Respiratoria* (FESAR) and Corporate Accountability, Latin America Office. In addition, tobacco control advocates have contributed to this report.

This report uses the questionnaire and methodology developed by the Southeast Asia Tobacco Control Alliance (SEATCA), based on the guidelines of Article 5.3 of the WHO FCTC. The information used in this report was based on public and freely accessible data (online news sources, newspapers, government agency news sources, online or otherwise, to tobacco industry websites and their sources, official reports, official information).

A rating system is applied to conduct the assessment. The rating ranges are from 0 to 5, where 5 indicates more interference from the tobacco industry; 1 is the lower end of the scale, or shows no interference, and 0 indicates that no incident was found. In general terms, in order to provide ratings, the base score was 3 for any incident of interference; this number was adjusted based on the severity of the interference; add 1 point (+1) for any aggravating circumstance, reduce by 1 point (-1) for mitigating circumstances. Thus, the lower the rating, the better the country is at avoiding interference from the tobacco industry.

**EXPLANATORY NOTE:** The period of time covered by this report is from the end of December 2019 to March 2021, with some specific mentions of regulations related to tobacco control policies that were in progress in the National Assembly (Contraband Prevention Law) and other government instances (Internal Revenue Service) that have taken place through May 2021. In addition, the information contained in the document has been updated through June 2021, due to the period established for its review. Given this, it is important to mention that, during this period, Ecuador has undergone a period of government transition, establishing, on May 24, 2021, a new President of the Republic, changing many of the national authorities. For this reason, even though the index was prepared until March 2021, the national authorities are updated through June 2021.

## Summary of Results

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### I. PARTICIPATION OF THE TOBACCO INDUSTRY IN POLICY DEVELOPMENT

From what is shown to date in the 2020 Ecuador Tobacco Industry Interference Index, we continue to observe a high level of interference from the tobacco industry, based strictly on political actions and the development of legislation against the interests of health, obviously with a vision of self-benefit and the safeguarding of profits.

Within the context of this historical moment that humanity is experiencing (COVID-19 pandemic), the tobacco industry has been present, with actions close to local governments, showing its “solidarity” related to “health washing” activities such as donations of medical supplies to support frontline staff.

It is essential to highlight that the inter-institutional and multi-sector cooperation in tobacco control has, apparently, not been affected by the interference of the tobacco industry, due to the deep commitment of the Ministry of Public Health and CILA in protecting and prioritizing the health interests of the majority against the commercial interests of the industry.

Furthermore, it is important to note that there is no evidence showing that Ecuador has allowed representatives of the tobacco industry on its delegation for meetings or to the Conference of the Parties (COP) of the WHO FCTC.

On the other hand, in the period of analysis covered by this index, the Contraband Prevention Law was approved by the National Assembly (May 4, 2021). Although the content of the law, still pending the presidential veto to enter into force, contemplates the participation of the private sector in the sessions of the Inter-Institutional Committee to Reinforce the Prevention and Combat of Illicit Trade “*Art. 177.- [...] When the Committee deems it necessary, for the better performance of its functions, it may summon the participation as guests of representatives of public or private entities to participate or attend the sessions of the Inter-Institutional Committee, in order for them to share information on the different economic sectors they represent, or belong to, regarding the impact that illicit trade has on them*”; nevertheless coordinated actions of CILA, the former president of the Health Commission of the National Assembly, and of the other actors of the international, regional, and national tobacco control community, have allowed the inclusion of provisions regarding conflicts of interest and aligning the issues of illicit trade in tobacco products to the provisions of the WHO FCTC and The Protocol.

Finally, and although there is no evidence to assert that the tobacco industry has collaborated in any way in the enactment of the resolution No. NAC-DGERCGC21-00000019, electronically signed by the General Director of the Internal Revenue Service -SRI- on April 13, 2021 and published in the Fourth Supplement of Official Registry No. 432 of April 15, 2021, through which is resolved “*Establish the general regulations for the application of the fiscal traceability mechanisms provided for in articles 279.1 and following of the Regulation for the application of the Internal Tax Regime Law, introduced by means of article 87 of the regulation for the application of the Law. Organic Tax Simplification and Progressivity*”, it is striking that Article 4 of the aforementioned resolution opens the door for the provision of the track and trace system service to be offered by any provider, without specifically determining how this regulation will apply for fiscal marking and traceability of “cigarettes”, which must comply with the provisions of the WHO FCTC and The Protocol, in order to guarantee, among others, the independence of SIMAR (Ecuador Track and Trace System) in the face of any conflict of interest that may arise with the tobacco industry, and thus avoid, for example, the implementation of technologies developed by the tobacco industry itself or other industries, as in the case of the “*Codentify*” technology originally developed by Philip Morris International (PMI)—in Ecuador these companies: Itabsa, Tanasa, and Proesa are affiliated to PMI.

## **2. CORPORATE OR BUSINESS SOCIAL RESPONSIBILITY ACTIVITIES OF THE TOBACCO INDUSTRY**

As previously mentioned, Ecuador ratified the WHO FCTC in 2006 and approved the Tobacco Control Law (LORCT) in 2011. During the gathering of information for this index, the presence of the industry via Corporate or Business Social Responsibility activities was uncovered in several cases with the endorsement of government officials, framed in the context of the health emergency of the COVID-19 pandemic. This was seen with the delivery of medical supplies for frontline personnel to the mayor of the city of Ibarra and to the Hospital Eugenio Espejo in the city of Quito, as well as delivery of food kits in the cities of Quito and Guayaquil and food kits to the Cecilia Rivadeneira Foundation.

These actions and other findings are documented in the responses to the questionnaire prepared for this report.

## **3. BENEFITS FOR THE TOBACCO INDUSTRY**

Since 2011, Ecuador has not been able to update the LORCT, either due to situations of political conjuncture or due to lack of interest to promote substantial changes in accordance with the new reality of tobacco control in the region.

In relation to the privileges, incentives, exceptions or direct benefits for the tobacco industry, there is no evidence that the Ecuadorian government engages in these types of policies. Although, there was an interest in the context of the COVID-19 pandemic and the discussion of the Contraband Prevention Law, where the tobacco industry presented a proposal to include fiscal exemptions for its own benefit.

Currently and as will be seen in the development of these questions, the aforementioned bill received direct contributions and suggestions from the tobacco industry, both in their appearances and as invited guests at the Justice and State Structure Commission of the National Assembly, and in working groups, emails from Mauricio Sáenz, General Manager of Itabsa, Tanasa and Proesa, subsidiaries of Philip Morris International (PMI) in Ecuador on April 29, 2021 and Verónica Poveda, of the tobacco sector, on November 8, 2021 which are registered as public documents on the internet in the justification of the work done by the Justice Commission.

Several media outlets echoed a tobacco industry interference alert that was generated by tobacco control advocates in the country and on social media:

- *EFE Agency*: Law to compensate tobacco companies for smuggling under the magnifying glass in Ecuador.
- *La Hora newspaper*: They censor a bill to compensate tobacco companies.
- *Plan V*: Smuggling and tobacco taxes put Health and the Assembly face to face.

## **4. UNNECESSARY INTERACTION**

The tobacco industry also shared academic and training spaces with authorities such as the former Vice President of Ecuador, in January 2020, when she was serving as Director of the Customs Authority (SENAE), and in December 2020, where a seminar was held in collaboration with the National Police *Methodology Workshop of the Operational System for the personnel of the National Directorate of Border Control*, offered by Itabsa.

Similarly, for July 2020, the Government of Chimborazo was part of the space on *Training on Illicit Cigarette Trade*, an action coordinated by Itabsa, Tanasa and Proesa.

The *Contraband and Illegal Trade Conversation, impact on the Economy and National Security*, was developed in June 2020 and was organized by the Chamber of Industries and Production. In this space officials such as Ivonne Baki, Ecuadorian Ambassador to the United States, María Alejandra Muñoz, Director of SENA (former Vice President of Ecuador), Former Assemblyman Patricio Muñoz, co-proponent of the Contraband Prevention Law, and Mauricio Sáenz, General Manager of Itabsa, Tanasa and Proesa, were invited.

Considering that Ecuador has not established specific regulations to prohibit unnecessary interactions between the government and the tobacco industry, these incidents will likely happen again. The optics of government officials interacting with an industry that deals in harmful products needs to be regulated, not necessarily collaborated with, As a result, said interactions remain problematic.

## **5. TRANSPARENCY**

Ecuador continues to lack an instrument to specifically regulate the disclosure of meetings and interactions that government agencies or their officials have with the tobacco industry.

What should be pointed out is that the National Assembly guarantees the publication of reports of the appearances made by all parties, during the processes of discussion, development, and approval of laws.

The Ministry of Public Health is the only government institution that registers delivery-receipt certificates, with a signature of responsibility, which contain details on the information delivered (health warnings) to the tobacco industry, these documents can be delivered upon written request and after evaluation of relevance.

Ecuador provides the right to access information held by the government. This presents the opportunity to establish transparency measures specifically for interactions with the tobacco industry. Ecuadorians should consider establishing rules for the disclosure of registration of representatives of the tobacco industry, including lobbyists, actions that should be included in the bill to regulate Lobby Activities---*Bill that Transparent and Regulates Lobbying and Lobbying Procedures Representing Private Interests Before Public Authorities and Servants*—which at the moment is designated to be discussed in the National Assembly and may be discussed by the new National Assembly that took office on May 14, 2021.

## **6. CONFLICT OF INTEREST**

Ecuador does not have a policy that prohibits contributions from the tobacco industry, or any entity that advances their interests, for political parties, candidates, or campaigns. There is no required disclosure of such contributions and, although the period that this index covers was an electoral period for the country due to the change of President and Assembly members, it has not been possible to register any kind of contribution or contact from the tobacco industry towards any particular candidate to finance their election campaigns. However, it cannot be guaranteed that these types of incidents have not occurred within the country. For these potential cases, the lack of procedures to publicly and transparently declare a conflict of interest through contact and/or contribution is a major weakness in the current policy platform.

In the preparing of this index, it has not been possible to demonstrate that retired government officials are part of the tobacco industry, nor their family members. Although, cooling-off periods should be

established to prevent revolving-door type situations from occurring between former officials and the industry.

It is worth considering that the reelected executive president of the Chamber of Industries and Production, for the 2021 to 2022 period, Pablo Zambrano Albuja (president since 2018), was Director of Corporate Affairs for Ecuador and Peru (2012-2014) / Manager of Corporate Affairs (2012) by Philip Morris Ecuador respectively; and the ex-Vice President of the Chamber of Industries and Production, for the same period. Carla Muirragui (Vice President since 2018) was part of Philip Morris Ecuador as Director of Corporate Affairs for Ecuador and Peru (2016-2018). These individuals are influential with close relationships to the Chamber of Industries and Production (Tanasa, which is affiliated with Philip Morris International, and is part of the Board of Directors of the Chamber of Industries and Production) and with the outgoing government and potentially with the incoming government. This is especially relevant for issues regarding the industry and production that are positioned in the discourse of economic reactivation that Ecuador must face due to the crisis generated by the pandemic.

## **7. PRECAUTIONARY MEASURES**

Ecuador does not have a government program, system, or plan to raise awareness among public institution officials or train them on policies related to Article 5.3 of the WHO FCTC and its implementation guidelines. However, it is important to mention that the Ministry of Public Health and the CILA has demonstrated a high level of compliance to the provisions of the WHO FCTC. Despite this, they have been hesitant in acting to raise awareness among other public institutions

Within the country, up until the closing date of this Index (March 31, 2021), no policy has been implemented to prohibit the acceptance of any form of contributions/gifts from the tobacco industry (monetary or other), including, but not limited to, offers of assistance, draft laws or invitations to conduct visits offered to the government, institutions, or their officials or direct family members. However, there is current national legislation which could be applied in the case of the tobacco industry.

In respect to information on production, manufacturing, market share, marketing expenses, profits from tobacco products and any other activity, including lobbying, philanthropy, political contributions and other activities, the LORCT and its regulations establish provisions that require information from the tobacco industry. In addition, the Internal Revenue Service (IRS) also requests information related to the Identification, Marking, Authentication, Tracking System and Fiscal Traceability (*Sistema de Identificación, Marcación, Autentificación, Rastreo y Trazabilidad Fiscal (SIMAR)*), which is applied to cigarettes, alcoholic beverages, and beer. Other current regulations, such as the Companies and Organizations Law, also allow the requesting of information, although it is not specific to the tobacco industry.

## Comparative: Period 2017-2019 / Period 2020-2021

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As mentioned in the introduction, tobacco control faces an additional challenge this year: a dangerous and deadly virus that attacks the lungs. SARS-CoV-2, has globally infected 148,815,508 million people and claimed the lives of more than 3,138,421 million people as March 2021.<sup>28</sup>

This information was collected during the COVID-19 pandemic and therefore is not easily comparable to the previously analyzed period for the First Ecuador Tobacco Industry Interference Index. With this we can see that, in comparing of results obtained, the tobacco industry has had the opportunity to explore other scenarios to generate interference or positioning, within which Corporate or Business Social Responsibility specifically stands out.

In addition, the tobacco industry has found a way to boost its activities and take action in terms of its digital approach to spaces for the development of legislation, as was the case of the Justice and State Structure Commission of the National Assembly. Also, they found in this new normal of mostly digital communication, ways to hold virtual meetings or be part of virtual events through which, they could reach wide audiences that were in constant digital contact

A slight improvement has been considered regarding question 19 since there seems to be intention by the legislature to establish regulations that regulate lobbying actions in the country, through the *Draft Law that Transparent and Regulates Lobbying and Steps Representing Private Interests Before Public Authorities and Servants*, which seeks to regulate this type of action and which must closely monitoring contributions from citizens and health-related entities, preventing the tobacco industry from making profit on this topic.

Equally worth noting, the approval of *Contraband Prevention Law* (May 4, 2021)—still pending presidential approval to be enacted— which, although it considers the participation of the private sector in the sessions of the Inter-Institutional Committee to Strengthen the Prevention and Combat of Illicit Trade “Art. 177.- [...] When the Committee deems it necessary, for the better fulfillment of its functions, it may summon the participation as guests of representatives of public or private entities to participate or attend the sessions of the Inter-institutional Committee, in order to that they can share information on the different economic sectors they represent, belong to, regarding the impact that illicit trade has on them”, as a result of the coordinated actions of CILA, the former president of the Health Commission of the National Assembly, and the other actors of the international, regional and national tobacco control community, allowed for the inclusion of provisions on conflicts of interest and for aligning the issues of illicit trade in tobacco products to the provisions of the WHO FCTC and of The Protocol.

That said, below is a table of results comparing the periods analyzed in the report from 2017 to 2019 against the report from 2020 to 2021.

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<sup>28</sup> Source (visit 04/30/21):  
[bit.ly/3tjODol](https://bit.ly/3tjODol).

**Rating System:**

\* A rating system is applied to conduct the assessment. The rating ranges are from 0 to 5, where:

- 5 indicates more interference from the tobacco industry.
- 1 is the lower end of the scale and shows no interference.
- 0 indicates that no incident was found.

In general terms, in order to provide these rates, the base score was 3 for any incident of interference; this number was adjusted based on the severity of the interference –add 1 point (+1) for any aggravating circumstance, reduce by 1 point (-1) for mitigating circumstances. Thus, the lower the rating, the better the country is in avoiding interference from the tobacco industry.

Questions	Score 2017-2019	Score 2020-2021
1. Government <sup>29</sup> accepts, supports or receives offers of assistance from the tobacco industry or in which it collaborates, or from any entity or person that works based on their interests, <sup>30</sup> for the development or implementation of public health policies related to tobacco control. <sup>31</sup> (Rec 3.1)	3	5
2. The government accepts, supports, or sponsors policy or legislative proposals developed by or in collaboration with the tobacco industry. (Rec 3.4)	4	5
3. The government allows / invites the tobacco industry to occupy a place in inter-institutional tables, multi-sector committees or advisory bodies where public health policies are established. (Rec 4.8)	2	2
4. The government nominates or allows representatives of the tobacco industry (including state tobacco companies) to be part of the delegation of the Conference of the Parties (COP), or other subsidiary bodies, or accepts sponsorships for delegates. (i.e. COP 4 & 5, ONI 4 5, WG) (Rec 4.9 & 8.3)	1	1
5. A. Government agencies or their officials accept, support, or form alliances with or participate in CSR or CSR activities organized by the tobacco industry. (Rec 6.2) B. The government (its agencies and officials) receive contributions <sup>32</sup> from the tobacco industry (monetary or otherwise, including CSR or CSR contributions) or from those who work according to their interests. (Rec 6.4) <i>NOTE: excludes tobacco control law enforcement actions, as that is the subject of another question.</i>	5	4
6. The government accommodates requests from the tobacco industry to delay implementation or postpone laws regarding tobacco control. (For example: it is common to request 180 days for the implementation of health warnings, a tax increase	5	5

<sup>29</sup> The term “government” refers to any public official who acts or does not act within his competence, provided that he has the authority to act or has been awarded by another person.

<sup>30</sup> The term "tobacco industry" includes those who represent their interests or who work in accordance with those interests, including state tobacco companies.

<sup>31</sup> The "offers of assistance" may include the drafting of legislation, technical support, recommendations, international study days.

<sup>32</sup> Political, social, economic contributions, in education, for the community, offer technical knowledge or training to combat smuggling, or any other type of contribution.

can be implemented within a month) (Rec 7.1)		
7. The government grants privileges, incentives, tax exemptions, or benefits to the tobacco industry (Rec 7.3)	3	3
8. High-level government officials (such as the President / Prime Minister or Ministers) <sup>33</sup> meet or build relationships with the tobacco industry, for example by attending social events and other events sponsored or organized by the tobacco industry or other companies / industries that promote their interests.	4	4
9. The government accepts assistance or offers of assistance from the tobacco industry in the implementation of tobacco control legislation, such as organizing operations to control the smuggling of tobacco products, enforcement of tobacco control policies, or the prohibition of tobacco use, sale to minors. (including economic contributions for these activities) (Rec 4.3)	4	4
10. The government accepts, supports, receives, or participates in alliances or agreements with the tobacco industry or another entity that works according to its interests. (Rec 3.1) <i>NOTE: CSR or CSR contributions, tobacco control law implementation actions or the development of tobacco control policies should not be included as they are topics of previous questions.</i>	4	4
11. The government did not publicly disclose meetings or interactions with the tobacco industry when it is strictly necessary to carry them out for regulatory reasons. (Rec 2.2)	4	4
12. The government establishes standards for the accreditation or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf, including lobbyists. (Rec 5.3)	3	3
13. The government does not prohibit contributions from the tobacco industry, or any entity that promotes its interests, to political campaigns, parties or candidates, nor does it require full disclosure of these contributions. (Rec 4.11)	4	4
14. Retired senior officials play a role in the tobacco industry (a former Prime Minister, Minister or Attorney General). (Rec 4.4)	1	1
15. Government officials and their families hold positions in the tobacco industry, for example as outside consultants. (Rec 4.5, 4.8, 4.10)	1	1
16. The government has established a procedure to publicly disclose the record of interactions with the tobacco industry and its representatives (i.e. agendas, attendees, minutes, results). (Rec 5.1)	5	5
17. The government has developed, adopted, or implemented a code of conduct for public officials that establishes the minimum standards that they must adhere to when interacting with the tobacco industry. (Rec 4.2)	4	4
18. The government requests the tobacco industry provide regular information on tobacco production, manufacturing activity, market share, marketing expenditures, profits, and any other activity, including lobbying, philanthropic activities, political contributions and other activities. (Rec 5.2)	3	3

<sup>33</sup> Includes direct relatives of senior officials.

19. The government has a systematic implementation program / system / plan <sup>34</sup> in their units to raise awareness about the policies of the Guidelines for the implementation of Article 5.3 of the WHO FCTC. (Rec 1.1, 1.2)	5	5
20. The government has taken measures to prevent the acceptance of any contribution or gift from the tobacco industry (monetary or otherwise), including collaborative proposals, bills or policies, or invitations to study sessions aimed at the government and its agencies, officials or their families. (Rec 3.4)	4	4

## TOBACCO INDUSTRY INTERFERENCE INDEX



**Source: FESAR, Corporate Accountability, 2021.**

The data obtained clearly shows that, within the context of the COVID-19 pandemic, the tobacco industry continued to carry out interference actions, including deliveries of medical supplies to local governments, hospitals, foundations, in order to portray themselves as socially responsible. The industry was also part of training spaces, workshops, talks, and seminars in which it shared spaces with high-level government officials, such as ministers or directors of executive institutions.

Due to these acts, for the 2020-2021 index, the interference score increases to 71 points compared to the 69 obtained in the past period, as shown in the graph above. The accredited score would be higher, were it not for advocacy by various actors including: Ministry of Public Health, CILA, the former president of the National Assembly Health Commission, and the other actors of the regional, national, and international tobacco control community.

<sup>34</sup>For the purposes of this question, "systematic" means: a. every time the WHO FCTC is discussed, art. 5.3.; and b. on every occasion and opportunity, for example when tobacco industry intervention is discovered or reported.

## Recommendations

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Taking into consideration the results obtained in this index and the relationship between the scores obtained in the 2020-2021 period of 71 points and 2017-2019 of 69 points, Ecuador should consider applying the following recommendations—many of which coincide with what is expressed in the First Tobacco Industry Interference Index—based on four lines of action, in order to aim at an adequate implementation of non-interference policies of the tobacco industry, as provided for in Article 5.3 of the WHO FCTC and its guidelines.

### Axis 1. - Strengthening

- Strengthen current policies, in order to avoid interference by the tobacco industry in the different government spaces, in CILA or other inter-institutional and multi-sector coordination activities on tobacco control proposed in the country.
- Strengthen the cooperation of national and international organizations, as well as between government institutions, in order to implement Article 5.3 of the WHO FCTC and its guidelines.
- Strengthen the current process of requesting information on production, import, manufacturing, distribution chain, market share, marketing expenses, profits and other activities related to tobacco products, including lobbying, philanthropy, political contributions and all other activities.

### Axis 2. - Development of regulations

- Propose an amendment to national legislation to add additional topics such as not allowing the tobacco industry to contribute, including activities or contributions from Corporate or Business Social Responsibility.
- Propose a Presidential Decree that prohibits attendance and participation by public officials in social or other events that are sponsored or organized by the tobacco industry or companies that seek to promote their interests—a provision that must be complied with by all public officials at all levels across all agencies.
- Propose an amendment to current legislation to prohibit any type of agreements between the branches of government and the tobacco industry in order to avoid any interference in the development and implementation of tobacco control policies.
- Propose an amendment to national legislation to require disclosure or registration rules for tobacco industry entities, affiliated organizations, and individuals who represent the industry, including lobbyists or public relations officers.
- Propose an amendment to current legislation to prohibit contributions from the tobacco industry or any entity that works to promote their interests towards political parties, candidates or campaigns, or require full disclosure of such contributions.
- Develop a specific policy to refuse acceptance of all forms of contributions/gifts/donations, including in-kind offerings, from the tobacco industry, presented to government institutions and their officials.
- Establish a code of conduct for public officials, clearly explaining the standards that they must comply with during their interactions with the tobacco industry, including penalties, such as disciplinary actions or punitive charges for non-compliance.
- On these proposals, be vigilant and seek to contribute to the development of the *Bill that Transparency and Regulates the Lobby and the Procedures that Represent Private Interests Before the Authorities and Public Servants*.

### **Axis 3. - Transparency**

- Make publicly available and easily accessible all information related to meetings or interactions with the tobacco industry, for situations where these interactions are strictly necessary to comply with regulations.
- Establish a procedure for making records of interaction accessible between the different state power authorities and the tobacco industry public and easily accessible and their representatives.

### **Axis 4. - Processes and programs**

- Establish a process for monitoring and analyzing information provided by the tobacco industry, in order to take action, if necessary, in a timely manner.
- Implement a training program for public officials on Article 5.3 of the WHO FCTC (i.e., implementation of conflict-of-interest protocols), in relation to the interference of the tobacco industry with the public sector, especially those involved in tobacco control.

## 2021 Ecuador Index: Tobacco Industry Interference

### Results and findings

	0	1	2	3	4	5
<b>INDICATOR 1: Level of Industry Participation in Policy Development</b>						
I. The government <sup>35</sup> accepts, supports, or endorses any offer for assistance by or in collaboration with the tobacco industry <sup>36</sup> in setting or implementing public health policies in relation to tobacco control. <sup>37</sup> (Rec 3.1)						5
<p>* As was noted in the first version of this index, the development of laws in Ecuador allows the opening of spaces to be able to present proposals for legislation, therefore the tobacco industry, as well as other industries, can participate in this process (more information in question no. 21). The bills of law can be presented/displayed by the President of the Republic, the National Assembly and/or the same citizenship fulfilling certain conditions.</p> <p>However, the discussion and approval are carried out in the Plenary of the National Assembly, after the qualification of the Project by the Legislative Administration Council (CAL), a body that sends the project to the commission that it's best suited for (the National Assembly has 12 permanent Commissions and has the power to create Occasional Specialized Commissions at the suggestion of the CAL).<sup>38</sup> In this commission, the project is worked on and consolidated, in the event that there are several similar proposals, contributions are collected from the different actors and a report is prepared that is discussed in the first debate before the Plenary, where they are received in the same way. Then contributions from other legislators are incorporated for the preparation of the second report that is debated and voted on in Plenary. If approved, it goes to the President of the Republic, who is a co-legislator and who has the power to approve or object to the project.</p> <p>* For April 6, 2020, the <i>Organic Law Project for the Prevention and Combat of Smuggling and Customs Fraud of Merchandise</i> is presented by Assemblyman Héctor Patricio Muñoz Alarcón, who was qualified and sent to the Permanent Specialized Commission of Justice and Structure of the State, chaired at that time by Ximena Peña of the Alianza País Political Party Bench, who would subsequently leave the presidency to run as a presidential candidate in the February 2021 elections, leaving José Serrano in the presidency since November 2020. In the same way, since June 7, 2019, it had already been presented by Assemblyman Juan Cristóbal Lloret Valdivieso, the <i>Organic Law Project that reforms Various Legal Bodies to Combat Crimes against the Customs Administration and strengthen the National Industry</i>.</p> <p>Finally, it is decided to unify the projects and work on it as one called the <i>Organic Law Project for the Prevention and Combat of Smuggling and Customs Fraud of Merchandise</i>.<sup>39</sup></p> <p>* For the construction of the first report, the Permanent Specialized Commission for Justice and State Structure of the National Assembly received different actors related to the issue, including María Alejandra Muñoz, director of the National Customs Service (SENAE), former Vice President of Ecuador; Daniel Legarda, former Vice Minister of the Ministry of Production, Foreign Trade, Investments and Fisheries; Oswaldo Jarrín, former Minister of Defense; José Almeida, former Deputy Director of Tax Compliance of the Internal Revenue Service-SRI; Pablo Encalada-Criminal Lawyer; Pablo Lucio Paredes, Director of the Institute of Economics of the San Francisco of Quito University. Likewise, on April 29, 2020, Mauricio Sáenz- General Manager of ITABASA, TANASA and</p>						

<sup>35</sup> The term “government” refers to any public official whether or not acting within the scope of authority as long as cloaked with such authority or holding out to another as having such authority

<sup>36</sup> The term, “tobacco industry” includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

<sup>37</sup> “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

<sup>38</sup> Source (visit 04/30/21):

[bit.ly/3uo6Gew](http://bit.ly/3uo6Gew).

<sup>39</sup> Source (visit 04/30/21):

[bit.ly/33hxbxy](http://bit.ly/33hxbxy).

PROESA (Tobacco Sector-affiliated with Philip Morris International<sup>40,41</sup>).<sup>42</sup>



Source: <[bit.ly/2QuKMaL](https://bit.ly/2QuKMaL)>.

\*This action of the Permanent Specialized Commission for Justice and State Structure of the National Assembly was monitored by civil society for tobacco control and CILA. Within the framework of the actions carried out, and the fact that CILA presented individual observations expressing the general and particular concerns that assisted it regarding to the text of the bill and its consent to actively participate in the process of discussion of the bill, also suggested the intervention of several actors (among them the Ministry of Public Health, international experts on issues of illicit trade in tobacco products and tobacco control, and the Secretariat of the WHO FCTC). As a result of this action, it is highlighted that the aforementioned commission called a public hearing on July 1, 2020. Dr. Adriana Blanco Marquizo, Head of the Secretariat of the WHO FCTC, spoke at the public hearings that took place for the preparation of the report for the first debate. However it should be noted that neither CILA nor the other suggested experts, were invited to present their contributions.<sup>43</sup>

In her speech, Adriana Blanco Marquizo stated that:

- *The illicit trade affects the health sector, especially when it comes to illegal tobacco, since, in the absence of quality control, the products can be harmful to people.*
- *It maintains that illicit trade implies lower prices and, therefore, the products are massively consumed, despite the serious repercussions on health.*
- *It states that the Protocol for the Elimination of Illicit Trade in Tobacco Products commits Ecuador to develop mechanisms to control the supply chain and to transfer information between institutions that fight against the smuggling of this product.*

<sup>40</sup> Source (visit 30/04/21):  
<[bit.ly/2PvMuYT](https://bit.ly/2PvMuYT)>.

<sup>41</sup> Source (visit 30/04/21):  
<[bit.ly/3dXhYjL](https://bit.ly/3dXhYjL)>.  
<[bit.ly/3tfMs55L](https://bit.ly/3tfMs55L)>.

<sup>42</sup> Source (visit 30/04/21):  
<[bit.ly/33hxbxy](https://bit.ly/33hxbxy)>.

<sup>43</sup>Source (visit 30/04/21):  
<[bit.ly/33hxbxy](https://bit.ly/33hxbxy)>.

- Mentions that the country has the SIMAR tracking and tracing system to control the quality of cigarettes and alcoholic beverages.
- Mentions that Ecuador must strengthen the tracking and tracing system at the national level, in order to exercise real control over crimes of illicit trade.
- Suggests intensifying the processes of international cooperation with other countries and international organizations, to control primary, secondary areas of interest, even the internet.<sup>44</sup>

\*For November 6, 2020, a working group was held that analyzed the Contraband Prevention Law which was attended by individuals representing the tobacco sector such as Diego Armendariz, who expressed:

- In the case of the Inter-institutional Committee, it is suggested: 1. Specify the participation of the private sector, which would include businesses, societies, unions, companies, chambers and academies; 2. Establish control and oversight mechanisms for confiscated products and warehouse storage; as well as the review of the process of destruction of the same, the donations or sales of products; and, 3. Establish a competence that allows verifying that the value chain monitoring systems are effective, cost-efficient, and are achieving the projected results.
- Proposed to develop the idea of traceability models, making reference to the value chain monitoring and track and trace systems.
- He argues that it is necessary to specify the issue of the time period in which the goods must be destroyed. For this reason, he proposes a temporary period of 30 days after the confiscation and, in addition, suggests that the responsible entity record the process, in a minute.<sup>45</sup>

This shows a clear presence of the tobacco industry in the development of the bill, and being part of the public hearings and working groups.

\*During the discussion of the report for the first debate before the plenary session of the Assembly, and within the process of the preparation of the report for the second debate of the *Contraband and Prevention Law*, actions led by CILA, and international, regional, and national civil society tobacco control groups, and the commitment of the former Commission on the Right to Health of the National Assembly, the following actions stand out:

- **Former President's intervention of the Right to Health Commission, before the Plenary of the National Assembly, for the discussion of the report for the first debate, on February 2, 2021, in which he highlighted the need for health advocates and organizations such as CILA or the Ministry of Health to participate before the Commission of Justice and Structure of the State and not only the tobacco industry. During his speech in the Plenary of the National Assembly, Dr. Garzón expressed:**

*The bill represents important regulatory advances; however, an important issue, such as public health, is not covered. Therefore, it is necessary to harmonize the normative proposal with the Ottawa Charter, the Rio Political Declaration on Social Determinants of Health, SDG 3 of the 2030 Agenda and the Protocol to Eliminate Illicit Trade in Tobacco Products, since illicit trade also affects the health sector, which is currently a critical area of great interest.*

#### **About the Inter-Institutional Committee**

*Within the integration of the Inter-Institutional Committee, it is not appropriate to call the "governing body of Public Health"; since, on page 13 of 175 only the Ministry of Public Health would be referred to as a service provider. Therefore, one should speak of "governing body of public health," in accordance with the Organic Law of Public Health. Furthermore, there is no "governing body for health regulation, control and surveillance;" since, currently, the National Agency for Health Regulation, Control and Surveillance is a secondary regulatory entity, of an operational nature and not a governing body. Likewise, as an auxiliary advisory and implementation entity, it should join the Inter-Institutional Anti-Tobacco Control*

<sup>44</sup>Source (visit 30/04/21):

[cutt.ly/IbbviYX](http://cutt.ly/IbbviYX), p. 42.

[bit.ly/3rh0gfQ](http://bit.ly/3rh0gfQ).

<sup>45</sup> Source (visit 30/04/21):

[cutt.ly/IbbviYX](http://cutt.ly/IbbviYX), p. 45.

[bit.ly/3vHgujW](http://bit.ly/3vHgujW).

Committee, due to the relevance that this product acquires for public health.

### **About the powers of the committee**

Add a subsection that says, “For the implementation of literals j, n, o, p and q, rules are adopted that address - avoid conflicts of interest that exist or may arise with representatives of the tobacco industry, thus abiding by the guidelines of the WHO FCTC, art. 5.3, its guidelines and the Protocol for the Elimination of Illicit Trade in Tobacco Products”. In addition, after literal k, include a subsection that says “Regarding the illicit trade of tobacco products, the technical commission will be coordinated by the Inter-Institutional Anti-Tobacco Control Committee and the Page 14 of 175 national health authority”.

### **On the powers of the bodies that make up the Committee**

Add the subsection “With regard to the issues of illicit trade in tobacco products, the Inter-Institutional Committee must observe at all times the provisions established in the Protocol for the Elimination of Illicit Trade in Tobacco Products and, consecrated in matters of international cooperation”.

### **About traceability models**

Regarding the safe traceability of tobacco products, it must be guaranteed that the identifying elements are safe and that they allow the authorities to recognize them. In addition, this traceability system must be in the public domain, in order to guarantee adequate customs control. Likewise, traceability should be extended to imported tobacco products, since, currently, the System of Identification, Marking, Authentication, Traceability and Fiscal Traceability (SIMAR) only applies to the national product.<sup>46</sup>

- **Appearance before the State Justice and Structuring Commission of the National Assembly, on February 27, 2021, of: Daniel Dorado, Vice President of CILA; Blanca Llorente, Economist expert in public health and evaluation, Fundación Anáas, Colombia; Tatiana Villacrés, PhD. Specialist in Public Health Policies from the Pontificia Universidad Católica del Ecuador; and Guillermo Paraje, expert in health economics and economic development from the Business School of the Adolfo Ibáñez University, Chile.**

These experts presented and strengthened effective arguments for the discussion of the bill, arguments such as in Ecuador, there is evidence of tax evasion, due to the illicit and informal trade in tobacco. In addition, to counteracting the illicit trade, it is essential to strengthen existing traceability systems, trying to find and identify the origin of illicit cigarettes consumed in the country.

Similarly, the consideration of international instruments as:

1. WHO Framework Convention on Tobacco Control.
2. Protocol for the Elimination of Illicit Trade in Tobacco Products.<sup>47</sup>

These interventions resulted in one of the proponents of the bill, former Assemblyman Héctor Patricio Muñoz Alarcón, publicly expressing that this legislation is not intended to benefit the tobacco industry with tax incentives,<sup>48</sup> a situation that was proposed at the beginning and was picked up by the Ecuadorian media:

*On May 6, María Alejandra Muñoz, then director of the National Customs Service (then, Vice President of Ecuador), told the Assembly's Justice Commission that one of the reasons for smuggling is the imposition of high taxes. She gave this example: “cigarettes are taxed so high that it costs a lot in the local market and then the*

<sup>46</sup> Source (visit 30/04/21):

[cutt.ly/mbbcZSF](http://cutt.ly/mbbcZSF).

[bit.ly/3aWRz3O](http://bit.ly/3aWRz3O).

<sup>47</sup>Source (visit 30/04/21):

[cutt.ly/mbbcZSF](http://cutt.ly/mbbcZSF).

[bit.ly/3aWRz3O](http://bit.ly/3aWRz3O).

<sup>48</sup>Source (visit 30/04/21):

[cutt.ly/mbbcZSF](http://cutt.ly/mbbcZSF).

[bit.ly/3aWRz3O](http://bit.ly/3aWRz3O).

entry of cheaper cigarettes is encouraged or promoted.” She mentioned it during the session of the Commission to deal with the Contraband and Prevention Law bill”.<sup>49</sup>

\*Although at the closing date of the evidence for this index (March 31, 2021) the bill was still under discussion for a second debate before the Plenary of the National Assembly. It is necessary to indicate that on May 4, 2021, its vote was moved and it was approved.<sup>50</sup> Although, the text of the law must be sent to the President of the Republic for the veto process (he can object to it in its entirety, partially or say that he agrees), it is worth noting that some of CILA’s observations (especially those related to rules to regulate conflicts of interest and issues related to the powers of the Inter-Institutional Committee to Strengthen the Prevention and Combat of Illicit Trade related to the illicit trade of tobacco products) and of the other actors mentioned above that have been advocating that the text of the project be aligned with the WHO FCTC and The Protocol, have been taken into account (This will be discussed in depth in question No. 3).<sup>51</sup>

\*Although monitoring potential incidents of tobacco industry interference, through civil society actions, can help protect public health policies, there is no legislation to guarantee it, nor financial assistance for these types of projects, which is a major limitation. Therefore, Ecuador is still highly vulnerable to interference from the tobacco industry at different levels of decision-making.

\*On the other hand, the implementation of most public health policies in relation to tobacco control is handled by the Ministry of Public Health and the investigation did not reveal any type of evidence that could assert or verify the interference of the tobacco industry in such processes. However, it is worth mentioning that there are several measures that need to be strengthened with the help of civil society (more information in questions 11, 12, 13, 16, 17, 19 and 21).

2. The government accepts, supports, or endorses <u>policies or legislation drafted by or in collaboration with the tobacco industry. (Rec 3.4)</u>						5
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\*As background, it can be considered that, the Presidency of the Republic at the end of 2019, presented a draft on taxes on tobacco products, among other issues. This reform granted privileges to electronic cigarettes and heated tobacco products, under the language of defending the interests of public health.<sup>52</sup>

Fortunately, tobacco control civil society joined forces to discredit the discourse on giving tax benefits to e-cigarettes and heated tobacco products. Several tobacco control organizations sent a letter to the Presidency, the National Assembly, the Ministry of Public Health and the Ministry of Economy and Finance.<sup>53</sup> Consequently, the Health Commission of the National Assembly proposed in Plenary, to set taxes on electronic cigarettes and heated tobacco products without preferences, compared to traditional tobacco products.<sup>54</sup>

Although these incidents could suggest that the tobacco industry was behind them, there is no evidence to prove it.

\* On the other hand, it is important to point out that the Contraband and Prevention Law was presented for

<sup>49</sup>Source (visit 30/04/21): [bit.ly/3hdzdjd](http://bit.ly/3hdzdjd).

<sup>50</sup>Source (visit 30/04/21): [bit.ly/3xObOKG](http://bit.ly/3xObOKG).

<sup>51</sup> Source (visit 30/04/21): [cutt.ly/mbbcZSF](http://cutt.ly/mbbcZSF).

<sup>52</sup>Source (visit 30/04/21): [bit.ly/3vDUSow](http://bit.ly/3vDUSow).

<sup>53</sup>Source (visit 30/04/21): [bit.ly/33bEY8L](http://bit.ly/33bEY8L).

Information provided by the Ecuadorian Respiratory Health Foundation -FESAR, member of the Inter-Institutional Committee for the Fight Against Tobacco -CILA.

<sup>54</sup>Source (visit 30/04/21): [bit.ly/3h0eT4p](http://bit.ly/3h0eT4p).

qualification in the first four months of 2020, considering that in Ecuador we were already confined by COVID-19 and that the priority at that time was the impact of the pandemic in the country and the world. This may lead us to think that a bill of this type was created and presented perhaps to go under the radar and therefore pass in such a way that the interests of the tobacco industry prevail over the primary interests of the health of Ecuadorians (although like the project that was presented at the end of 2019, there is no evidence to prove it).

However, it is worth noting the following facts: i) The development of the bill at first, as already mentioned in question No. 1, took into consideration direct contributions and suggestions from the tobacco industry, both in the public hearings and invitation to the Commission of Justice and Structure of the National Assembly in work tables<sup>55</sup>; emails from Mauricio Sáenz, General Manager of Itabsa, Tanasa and Proesa, PMI subsidiaries on April 29, 2021<sup>56</sup> and, by Verónica Poveda from the Tobacco Sector on November 8, 2021<sup>57</sup>, rest on justification documents of the Commission's work; ii) The current text of the bill (as of the closing date of this index, March 31, 2021),<sup>58</sup> includes in its explanatory memorandum references to the Global Illicit Trade Environment Index 2018, prepared by The Economist and the Transnational Alliance to Combat Illicit Trade (TRACIT), despite the ample evidence regarding the links that TRACIT has with the tobacco company Philip Morris International (a company to which, as already mentioned, ITABSA TANASA and PROESA are affiliated) and others<sup>59</sup> -in the same way the approved Contraband and Prevention Law on May 4, 2021, incorporates it.<sup>60</sup>

Similarly, it is appropriate to refer to how the above behaviors were collected in various media outlets that echoed this alert of interference from the tobacco industry:

- EFE Agency: *Law to compensate tobacco companies for smuggling under the microscope in Ecuador.*<sup>61</sup>
- La Hora Newspaper: *They censor bill to compensate tobacco companies.*<sup>62</sup>
- Plan V: *Smuggling and tobacco taxes put Health and the Assembly face to face.*<sup>63</sup>

In addition, the media reported on the proposals put on the table by the tobacco industry in the voice of Mauricio Sáenz, General Manager of Itabsa, Tanasa and Proesa, who argued “(...) *Through executive decree, that tax bonds be issued for companies to use to reduce prices for the final consumer.*”<sup>64</sup>

\*On the other hand, and although there is no evidence to assert that the tobacco industry has collaborated in any way in the enactment of the resolution No. NAC-DGERCGC21-00000019, electronically signed by the General Director of the Internal Revenue Service (SRI) on April 13, 2021 and published in the Fourth Supplement of Official Registry No. 432 of April 15, 2021, through which is resolved “*Establish the general regulations for the application of the fiscal traceability mechanisms provided for in articles 279.1 and following of the Regulation for the*

<sup>55</sup> Source (visit 30/04/21): [cutt.ly/cbbmw9k](http://cutt.ly/cbbmw9k). p. 45

<sup>56</sup> Source (visit 30/04/21): [cutt.ly/cbbmw9k](http://cutt.ly/cbbmw9k). p. 126

<sup>57</sup> Source (visit 30/04/21): [cutt.ly/cbbmw9k](http://cutt.ly/cbbmw9k). p. 129

<sup>58</sup> Source (visit 30/04/21): [cutt.ly/TbbWyU0](http://cutt.ly/TbbWyU0). p. 141

<sup>59</sup> Source (visit 30/04/21): [bit.ly/3ejQE5](http://bit.ly/3ejQE5).

<sup>60</sup> Source (visit 30/04/21): [bit.ly/3zbEPQj](http://bit.ly/3zbEPQj).

<sup>61</sup> Source (visit 30/04/21): [bit.ly/3xKmTwy](http://bit.ly/3xKmTwy).

<sup>62</sup> Source (visit 30/04/21): [bit.ly/3xGEkOF](http://bit.ly/3xGEkOF).

<sup>63</sup> Source (visit 30/04/21): [bit.ly/3hdS4dZ](http://bit.ly/3hdS4dZ).

<sup>64</sup> Source (visit 30/04/21): [bit.ly/3ecuNGO](http://bit.ly/3ecuNGO).  
[bit.ly/3nKozBq](http://bit.ly/3nKozBq).

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<p>application of the Internal Tax Regime Law, introduced by means of article 87 of the regulation for the application of the Law. Organic Tax Simplification and Progressivity”,<sup>65</sup> it is striking that, although with regard to “Cigarettes”, the aforementioned Resolution, in its Article 2, expands the scope of application to nationally produced and/or imported goods,<sup>66</sup> a case that currently does not cover the SIMAR system, which, among others, would contribute enormously to strengthen the tools to control Illicit Trade of these products -a recent study for the country published by researchers from the Pontificia Universidad Católica del Ecuador, identified as one of their main findings that “a large part of the smuggled cigarettes found in the study are cigarettes produced and / or marketed by Philip Morris Colombia SA and Coltabaco SAS, the two companies affiliated with PMI in Colombia. These cigarettes are produced in Colombia and carry the corresponding Colombian health warnings, but they are illegally brought to Ecuador without paying the due Ecuadorian taxes. It is clear that Philip Morris International is complicit in the illicit trade of tobacco products in Ecuador by failing to comply with due diligence in its commercial operations in Colombia”;<sup>67</sup> it is no less true that Article 4 of the aforementioned Resolution No. NAC-DGERCGC21-00000019,<sup>68</sup> opens the door for the provision of the fiscal marking and traceability service to be provided by any provider, without specifically determining how this regulation will apply for the fiscal marking and traceability of “cigarettes”, which must comply with the provisions of the WHO FCTC and The Protocol, in order to guarantee, among others, the independence of SIMAR in the face of any conflict of interest that could arise with the tobacco industry thus avoiding, for example, that the implementation of technologies developed by the tobacco industry itself or other industries becomes feasible, as is the case with the “Codentify” technology originally developed by Philip Morris International (PMI)<sup>69</sup> –in the country, with the PMI affiliated companies ITABSA, TANASA, and PROESA..</p> <p>*Ecuador needs to work to improve various tobacco control measures in order to comply with the provisions and guidelines of the WHO FCTC and the protocol for their implementation and avoid following the recommendations of the tobacco industry.</p>						
<p>3. The government allows/invites the tobacco industry to sit in the government interagency/ multi-sector committee/ advisory group body that sets public health policy. (Rec 4.8)</p>			2			
<p>*As noted in the first version of this index, the LORCT<sup>70</sup> and its Regulations<sup>71</sup> establish that CILA is the national body in charge of tobacco control.</p> <p>CILA was created in 1989 by Ministerial Agreement No. 955 and its Operating Regulations were approved in 2012, by Ministerial Agreement No. 2486.<sup>72</sup> Both Agreements were issued by the Ministry of Public Health. In addition, in 2019, CILA established that all its members must sign a Declaration of Conflict of Interest, which requires the declaration of any current or past relationship with the tobacco industry and other industries that may represent the interests of the tobacco industry, as well as whether or not they are currently consumers of tobacco products.<sup>73</sup> There is no evidence to demonstrate any kind of interference from the tobacco industry</p>						

<sup>65</sup> Source (visit 30/04/21): [bit.ly/33jjqH2](http://bit.ly/33jjqH2).

<sup>66</sup> Source (visit 30/04/21): [bit.ly/33jjqH2](http://bit.ly/33jjqH2).

<sup>67</sup> Source (visit 30/04/21): [bit.ly/33hnJ5K](http://bit.ly/33hnJ5K).  
[bit.ly/3xNa04L](http://bit.ly/3xNa04L).

<sup>68</sup> Source (visit 30/04/21): [bit.ly/33jjqH2](http://bit.ly/33jjqH2).

<sup>69</sup> Source (visit 30/04/21): [bit.ly/3uiOAu8](http://bit.ly/3uiOAu8).

<sup>70</sup> Source (visit 30/04/21): [bit.ly/3tfOcv7](http://bit.ly/3tfOcv7).

<sup>71</sup> Source (visit 30/04/21): [bit.ly/3nNlb94](http://bit.ly/3nNlb94).

<sup>72</sup> Source (visit 30/04/20): [bit.ly/3b1Mt6k](http://bit.ly/3b1Mt6k).

<sup>73</sup> Information provided by the National Undersecretariat for Health Promotion and Equality of the Ministry of Public Health, Executive Secretariat of CILA.

upon the delegates and authorities of CILA, in fact the presidents and authorities have always shown a strong interest in the implementation of the WHO FCTC, including Article 5.3.

\*As mentioned in questions No. 1 and 2, in the period of analysis covered by this index, the Contraband and Prevention Law has been discussed and approved on May 4, 2021. Although the content of the law, still pending the presidential veto to enter into force, contemplates the participation of the private sector in the sessions of the Inter-Institutional Committee to Strengthen the Prevention and Combat of Illicit Trade “Art. 177.- [...] When the Committee deems it necessary, for the better fulfillment of its functions, it may summon the participation as guests of representatives of public or private entities to participate or attend the sessions of the Inter-Institutional Committee, in order to that they can share information on the different economic sectors to which they represent, belong, with respect to the impact that illicit trade has on them,”<sup>74</sup> the same law, as a result of the coordinated actions of CILA, the Former President of the Health Commission of the National Assembly, and members of the international, regional, and national tobacco control community, included provisions on the matter of conflicts of interest and to align the issues of illicit trade in tobacco products to the provisions of the WHO FCTC and the Protocol:

**Art. 177. - Inter-Institutional Committee to Reinforce the Prevention and Combat of Illicit Trade.**

[...]

“The permanent members of the Committee will be called to declare and sign a declaration of conflicts of interest, which the president of the Committee will draw up, in order to point out any conflict of interest that he or she has or could have, with respect to any private actor. Those invited to the sessions of the Committee or any space that it summons, will be called to declare the conflicts of interest that they have or could have regarding the issues, proposals or any other consideration that is going to be addressed, through the format that the President of the Committee to prepare for this purpose.”

[...]

“Any activity or development within the framework of the activities of the Committee, related to the illicit trade of tobacco products, will strictly observe the provisions of the Framework Convention of the World Health Organization for Tobacco Control and the Protocol to Eliminate Trade Illicit, in matters of conflict of interest, in coordination with the competent entities in the matter.”

**Art. 187.- Of the participation of the Private Sector:**

[...]

“The participation of the private sector, in matters related to the illicit trade of tobacco products, will be subject to strict observance of rules that address and / or avoid conflicts of interest that exist or may arise with representatives of the tobacco industry.”<sup>75</sup>

\*The answer to this question will be expanded to questions No. 11, 12, 13, 16, 17, 19 and 21, this in relation to the open system for the formulation of laws in Ecuador, in which there are several actors involved and they can propose laws for discussion, approval, or veto. It should be noted that current Ecuadorian legislation does not have regulations for lobbying activities or for the actions of authorities or public servants against lobbyists, without it becoming an activity of privileged attention or aimed at granting a particular benefit.

For these reasons, the tobacco industry, like other industries, can participate in the legislative process and generate meeting spaces with government institutions and political actors.

4. The government nominates or allows representatives from the tobacco industry (including state-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG) (Rec 4.9 & 8.3)		1					
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\*According to available information, the Ecuadorian delegation to the COP and other meetings of the WHO FCTC has not included representatives of the tobacco industry.

<sup>74</sup> Source (visit 30/04/21): [bit.ly/3zbEPQj](http://bit.ly/3zbEPQj).

<sup>75</sup> Source (visit 30/04/21): [bit.ly/3zbEPQj](http://bit.ly/3zbEPQj).

\*List of participants from Ecuador:

- COP8 (2018):

According to Document No. FCTC / COP / 8 / DIV / I of COP8, the Ecuadorian delegation was made up of representatives of the Ministry of Public Health and the Permanent Mission of Ecuador in Geneva.

Head of the delegation: C. Cisneros, National Undersecretary for Health Promotion and Equality, Ministry of Public Health. Delegates: L. Gallegos, Ambassador of the Permanent Mission of Ecuador in Geneva; A. Dávalos, Minister, Permanent Mission of Ecuador in Geneva; C. Balseca, National Director of Cooperation and International Relations, Ministry of Public Health; JD Stacey, Counselor, Permanent Mission of Ecuador in Geneva; W. Schuldt, First Secretary, Permanent Mission of Ecuador in Geneva; P. Diaz, Second Secretary, Permanent Mission of Ecuador in Geneva.<sup>76</sup>

- COP7 (2016):

Delegates: L. Espinosa-Salas, Counselor, Permanent Mission of Ecuador in Geneva.<sup>77</sup>

- COP6 (2014):

Head of the delegation: Mr. Acurio, Vice Minister of Governance and Health Surveillance, Ministry of Public Health.

Delegates: C. Cisneros, National Director of Health Promotion, Ministry of Public Health; C. Luna Ribadeneira, Senior Management Analyst of Cooperation and International Relations, Ministry of Foreign Affairs and Human Mobility; MC Samaniego Vélez, Analyst of Cooperation and International Relations, Ministry of Foreign Affairs and Human Mobility.<sup>78</sup>

- COP5 (2012):

Head of delegation: JA Icaza Gutiérrez, Official, Embassy, South Korea. Delegates: H. Noboa Cruz, Head of the Health Promotion Unit.<sup>79</sup>

- COP4 (2010):

Head of the delegation: P. Jácome, Leader of the Mental Health Program, Ministry of Public Health. Delegates: L. Romo Arellano, Technical Cooperator for International Cooperation, Ministry of Public Health; AM Betancourt, Internal Revenue Service.<sup>80</sup>

- COP3 (2008):

Delegates: H. Noboa, Executive Director of the National Health Council (CONASA), Ministry of Public Health.<sup>81</sup>

<sup>76</sup> Source (visit 30/04/21): [bit.ly/3tnjXVV](https://bit.ly/3tnjXVV).

<sup>77</sup> Source (visit 30/04/21): [bit.ly/395oXry](https://bit.ly/395oXry).

<sup>78</sup> Source (visit 30/04/21): [bit.ly/3unIwAw](https://bit.ly/3unIwAw).

<sup>79</sup> Source (visit 30/04/21): [bit.ly/3unKfWD](https://bit.ly/3unKfWD).

<sup>80</sup> Source (visit 30/04/21): [bit.ly/3eUYkEL](https://bit.ly/3eUYkEL).

<sup>81</sup> Source (visit 30/04/21): [bit.ly/3tdlvz2](https://bit.ly/3tdlvz2).

**INDICATOR 2: Industry CSR activities**

5. A. The government agencies or its officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)
- B. The government (its agencies and officials) receives contributions<sup>82</sup> (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4)

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\*In the context of the pandemic caused by COVID-19, the tobacco industry in Ecuador was cautious in showing itself openly in its social responsibility actions, but social networks showed the actions of the industry through donations of medical supplies to local governments, as was the case registered in accounts of the social network Twitter, where said donation of inputs were shown.

- **Donation to the Mayor of Ibarra<sup>83</sup>**



<sup>82</sup> Political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions.

<sup>83</sup> Source (visit 30/04/21): [bit.ly/3nLOxVg](http://bit.ly/3nLOxVg).

- **Donation to the Eugenio Espejo Hospital<sup>84</sup>**



- **Delivery of food kits in the cities of Quito and Guayaquil<sup>85</sup>**



<sup>84</sup> Source (visit 30/04/21): [bit.ly/3h2f9Qs](https://bit.ly/3h2f9Qs).

<sup>85</sup> Source (visit 30/04/21): [bit.ly/3ulqqzk](https://bit.ly/3ulqqzk).

- **Delivery of food kits with the Cecilia Rivadeneira Foundation<sup>86</sup>**



\*In the same sense, the promotion of good practices of the tobacco industry and its subsidiaries Itabsa, Tanasa and Proesa in specialized business magazines is highlighted.<sup>87</sup>



<sup>86</sup> Source (visit 30/04/21): [bit.ly/3eNIVWw](https://bit.ly/3eNIVWw).

<sup>87</sup> Source (visit 30/04/21): [bit.ly/3ej6wPH](https://bit.ly/3ej6wPH).

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<b>INDICATOR 3: Benefits to the Tobacco Industry</b>						
6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month). (Rec 7.1)						<b>5</b>
<p>*As mentioned in the first version of this interference index, Ecuador has been a State Party to the WHO FCTC since 2006 and after five years it approved the National Tobacco Control Law. By December 2009, the first draft<sup>88</sup> was presented and took a year and a half to finally become the law, which entered into force on the same day as it was signed on July 2011 and established several deadlines for provisions, such as: 90 days to create a national tobacco control body; 90 days to issue the regulation, which is requested to be updated according to the advances of the WHO FCTC, its guidelines and protocols; 360 days for local governments to pass ordinances to support the LOCRT implementation; and 360 days to implement tobacco product packaging provisions.<sup>89</sup></p> <p>*The LORCT Regulation was issued approximately 120 days after the established deadline, which established that CILA would be the national tobacco control body, also approximately 120 days later.<sup>90</sup> It is important to mention that the LORCT Regulation has not been updated (no update registered until March 2021). Additionally, most of the 221 local governments have not passed ordinances supporting the implementation of the LORCT. Quito and Guayaquil, the main and most populated cities in Ecuador, have not discussed or approved a tobacco control ordinance.</p> <p>The implementation deadline for the packaging of tobacco products was been met, adjusting to the time indicated. It is important to note that, each year, the Ministry of Public Health approves, through Ministerial Agreement a manual with the six new pictograms that must be applied by the tobacco industry in the packaging of all tobacco products, within a period of 120 days after the date established to withdraw the information.<sup>91</sup></p> <p>The Organic Law on Tobacco Control and Regulation has not been updated since 2011, but there was a reform proposal presented in 2016, with several amendments related to plain packaging, additional tobacco smoke-free spaces, and a complete ban on advertising, promotion and sponsorship, among others. This draft was reviewed and qualified for treatment in the Right to Health Commission to start the approval process, but it was not discussed, much less approved; in fact, on the website of the National Assembly it is shown as pending.<sup>92</sup> There is no clear evidence to state that all of these delays and noncompliance were caused by tobacco industry interference or the change in legislators and the proponent's departure from these adjustments.</p> <p>On this issue, it is important to note that it was preferred not to promote to civil society since, at that time, the Organic Health Code was under discussion and structure and the probabilities that the LORCT would be included in this legal body, could risk independence and new adjustments and future improvements. The Organic Health Code was vetoed in its entirety by President Lenin Moreno Garcés in September 2020, after 8 years of discussion, and must be discussed by the new National Assembly after his inauguration on May 14 from 2021-<sup>93</sup></p> <p>* Regarding taxes, several national laws have been established with the corresponding provisions in this regard,</p>						

<sup>88</sup> Source (visit 30/04/21):

[bit.ly/3xJ7hJE](https://bit.ly/3xJ7hJE).

<sup>89</sup> Source (visit 30/04/21):

[bit.ly/3tfOcv7](https://bit.ly/3tfOcv7).

<sup>90</sup> Source (visit 30/04/21):

[bit.ly/3tfOcv7](https://bit.ly/3tfOcv7).

<sup>91</sup> Source (visit 30/04/21):

[bit.ly/2PRuOXO](https://bit.ly/2PRuOXO).

<sup>92</sup> Source (visit 30/04/21):

[bit.ly/3unWi6j](https://bit.ly/3unWi6j).

[bit.ly/3nPpjppe](https://bit.ly/3nPpjppe).

<sup>93</sup> Source (visit 30/04/21):

[bit.ly/2RqZgsh](https://bit.ly/2RqZgsh).

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the most recent one was approved at the end of 2019, and it entered into force on the same day of its publication in the Official Registry. <sup>94</sup> The previous law was approved in 2004 and its last amendment on tobacco products was issued in 2016, which came into effect on the same day of publication in the Official Gazette. <sup>95</sup> It is important to note that the tax rate has not changed since 2016, however the current law regarding tobacco taxes included new taxes that cover electronic cigarettes and heated tobacco products.						
* Considering the criteria explained above, the rating in this question for Ecuador is 5 since there are some deadlines that exceeded the 90 days stipulated in the regulation and only one provision has been fulfilled on time. Unfortunately, a very long deadline was set for local governments to pass ordinances and this has not been met by the vast majority. Additionally, amendments to tobacco control legislation have not been issued since 2011 in most measures, and since 2016 in relation to tobacco taxes.						
<b>7. The government gives privileges, incentives, exemptions, or benefits to the tobacco industry (Rec 7.3)</b>				<b>3</b>		
* As mentioned in the first version of this interference index, there is no record or verifiable data where the State benefits from the tobacco industry in terms of tax exemptions, but in 2017 the SENA established a resolution regarding the personal items that travelers over the age 18 arriving in Ecuador by plane can carry without paying taxes, among which is included: <ul style="list-style-type: none"> <li>• Up to 20 cigarette packs of 20 units each.</li> <li>• Up to a pound of tobacco.</li> <li>• Up to 25 cigars.<sup>96</sup></li> </ul> <p>* Similarly, as mentioned in question No. 1, regarding the request made by Mauricio Sáenz, General Manager of Itabsa, Tanasa and Proesa in the context of the discussion of the Contraband and Prevention Law approved on May 4, 2021,<sup>97</sup> who posited that "(...) Through executive decree, that tax bonds be issued for companies to use to reduce prices for the final consumer".<sup>98</sup> From the revision of the text of the law approved by the National Assembly (still pending the veto of the President of the Republic as of the closing date of this index), this proposal was denounced in several instances by CILA and other actors of the community of tobacco control, and was not incorporated.<sup>99</sup></p>						
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<b>INDICATOR 4: Forms of Unnecessary Interaction</b>						
<b>8. Top level government officials (such as President/ Prime Minister or Minister<sup>100</sup>) meet with/ foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests. (Rec 2.1)</b>					<b>4</b>	
* The participation in the forum called <i>Towards an Ecuador without Contraband</i> , planned by the SEK International University, had government officials and tobacco company representatives both on the panel. Government						

<sup>94</sup> Source (visit 30/04/21): [bit.ly/2PPZkRV](http://bit.ly/2PPZkRV).

<sup>95</sup> Source (visit 30/04/21): [bit.ly/3uluUpE](http://bit.ly/3uluUpE).

<sup>96</sup> Source (visit 30/04/21): [bit.ly/2TPjJbu](http://bit.ly/2TPjJbu).

<sup>97</sup> Source (visit 30/04/21): [bit.ly/3zbEPQj](http://bit.ly/3zbEPQj).

<sup>98</sup>Source (visit 30/04/21): [bit.ly/3eeuNGO](http://bit.ly/3eeuNGO).

[bit.ly/3nKozBq](http://bit.ly/3nKozBq).

<sup>99</sup> Source (visit 30/04/21): [cutt.ly/mbbcZSF](http://cutt.ly/mbbcZSF).

<sup>100</sup> Includes immediate members of the families of the high-level officials

authorities such as the Minister of Government María Paula Romo are promoted as panelists (at that time she served in such capacity) and María Alejandra Muñoz, director of SENA (later Vice President of the Republic of Ecuador) and Alexander Wittich, manager of Brand Integrity of the Andean Cluster of Philip Morris International in January 2020<sup>101</sup>. It is verified via the reports of the activity in networks that the Director of SENA was in attendance.<sup>102</sup>



La Universidad Internacional SEK  
invita cordialmente a toda la sociedad al foro:

### Hacia un Ecuador Sin Contrabando

**Lugar:** Campus Felipe Segovia UISEK  
Calle Italia y Av. Mariana de Jesús  
Quito - Ecuador

**Fecha:** 28 de enero del 2020

**Hora:** 09:00



**Universidad SEK**  
@UISEK

Este foro contará con la participación de la Ministra de Gobierno, @mariapaularomo; @AlexanderWitti6, representante de Philip Morris International; María Alejandra Muñoz, Directora de @SENAE\_Aduana; y, Javier Díaz Crespo, Presidente de @AITE\_Ecuador. ENTRADA LIBRE. #UISEK

11:02 a. m. · 20 ene. 2020 · Twitter Web App

3 Retweets 3 Tweets citados 10 Me gusta



**Nadia Rodriguez**  
@rodriguezjnadia

En respuesta a @rodriguezjnadia

Este evento contó con la presencia de invitados especiales como la Ministra de Gobierno, @mariapaularomo; @munozmalejandra, Directora de @SENAE\_Aduana; @panchidalbo, presidente de @AITE\_Ecuador; y @AlexanderWitti6, representante de ITABSA. Gracias por su aporte!



5:59 p. m. · 28 ene. 2020 · Twitter for Android

6 Retweets 17 Me gusta

**Universidad SEK**  
@UISEK

"De cada 200 cigarrillos que entran a Ecuador, 20 son de Colombia", con estas cifras, @AlexanderWitti6 de ITABSA señala que se requiere fortalecer el control en las fronteras.  
#UISEK #EcuadorSinContrabando

3:18 p. m. · 28 ene. 2020 · Twitter Web App

3 Retweets 5 Me gusta

<sup>101</sup> Source (visit 30/04/21): [bit.ly/2Sr9n0F](https://bit.ly/2Sr9n0F).

<sup>102</sup> Source (visit 30/04/21): [bit.ly/2Sst08A](https://bit.ly/2Sst08A).



\* Similarly, the *Contraband and Illegal Trade Conversation, impact on the Economy and National Security*, organized by the Chamber of Industries and Production on June 10, 2020, had invited officials such as Ivonne Baki, Ambassador of Ecuador to the United States; María Alejandra Muñoz, Director of SENAE (later Vice President of the Republic); Assemblyman Héctor Patricio Muñoz, proponent of the Draft Organic Law for the Prevention and Combat of Smuggling and Customs Fraud of Goods; and Mauricio Sáenz, General Manager of Itabsa, Tanasa and Proesa<sup>103</sup>



\* Finally, the appearance of high government officials in communication spaces of companies is highlighted. Ekos is one of these spaces with a high level of credibility, this platform allows different channels of connection between industries, academia and government, representing an important space for the tobacco industry to disseminate its actions as well as allowing it to interact with government authorities as in the EKOS magazine CEO Panel event, where guests included Iván Ontaneda, Minister of Production, Munir Abedrabbo, CEO Textiles El Rayo;

<sup>103</sup> Source (visit 30/04/21): [bit.ly/3un05AW](https://bit.ly/3un05AW).



- December 1, 2020, National Police: Seminar Workshop *Methodology of the Operational System to the personnel of the National Directorate of Border Control*, dictated by Itabsa.<sup>105</sup>



- July 29, 2020, Government of Chimborazo: *Training on Illicit Cigarette Trade*, action coordinated by Itabsa, Tanasa and Proesa.<sup>106</sup>

\* Also, in the report "Cigarette smuggling in Ecuador reaches 72.4%", developed on May 20, 2020 for the newspaper *El Telégrafo* via Zoom, Carlos Guzmán, vice president of Philip Morris International for the Andean Countries, is interviewed. The newspaper points out that "[...] as a private company they advise regional governments to do joint work to combat smuggling."<sup>107</sup>

\* There is no evidence to claim that incidents involved monetary contributions by the Tobacco Industry.

<p>10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</p>					4	
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\* As indicated in the first version of this interference index, despite the fact that the Ministry of Public Health has been emphatic in pointing out to the different institutions that it is essential to comply with the WHO FCTC, The Protocol, the LORCT and other regulations on the matter (more information in question No. 19), it seems that the relations between government agencies and the tobacco industry is fully normalized. In addition, there must be no specific regulation to manage actions for this harmonious coexistence between industry and political actors (without prejudice to what is mentioned in Question No. 3 With respect to the Prevention and Smuggling Act adopted on 4 May 2021,<sup>108</sup> which incorporates provisions on conflicts of interest), it is almost certain to state that these incidents will continue to arise (more information in questions 11, 12, 13, 16, 17 and 21).

<sup>105</sup> Source (visit 30/04/21):

[bit.ly/3uqOBfG](https://bit.ly/3uqOBfG).

<sup>106</sup> Source (visit 30/04/21):

[bit.ly/3emgoYU](https://bit.ly/3emgoYU).

<sup>107</sup> Source (visit 30/04/21):

[bit.ly/3tkBPOo](https://bit.ly/3tkBPOo).

<sup>108</sup> Source (visit 30/04/21):

[bit.ly/3zbEPQj](https://bit.ly/3zbEPQj).

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* There is a lack of commitment on the part of the authorities to not enter into these relationships, who see this relationship as normal and do not look at the particular interests that the tobacco industry may have, not only in Ecuador but worldwide.						
<b>INDICATOR 5: Transparency</b>						
<b>11. The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation. (Rec 2.2)</b>					<b>4</b>	
<p>* As mentioned in the first version of this interference index, Ecuador does not have regulations that require public disclosure of meetings or interactions with the tobacco industry.</p> <p>Although it is important to know that the information generated by the institutions must be public in terms of contracting, payroll, plans, and programs in execution, citizen accountability mechanisms, etc., as regulated by the Ecuadorian legal system will be developed later.</p> <p>* In the case of the National Assembly, you can find on its public website reports of the appearances of the actors to the different specialized commissions for the creation of the laws as well as reports of the debates and the laws approved. Said reports must include all persons, institutions, organizations, companies, among others that appear and present their contributions.</p> <p>These documents show in an official report the presence of the tobacco industry in the discussion and contributions for the development of legislation.<sup>109</sup> No public record of tobacco industry contributions has been found.</p> <p>* The highest health authority in the country, which is represented by the Ministry of Public Health, annually publishes a Ministerial Agreement that issues health warnings, which are given to the tobacco industry, leaving as evidence a certificate of delivery receipt, where the persons involved, and the delivery date are verified. It is important to note that this act is not publicly accessible.<sup>110</sup></p> <p>* Ecuador recognizes the right of access to public information by everyone in different regulatory bodies (Annex B).</p>						
<b>12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists (Rec 5.3)</b>				<b>3</b>		
<p>* As noted in the first version of this interference index, Ecuador has certain rules on the disclosure or registration of tobacco industry entities, which will be shown in question No. 18.</p> <p>* There is no registry of people who may be representatives of the tobacco industry in Ecuador or in turn lobby or try to influence on their behalf.</p> <p>This information will be expanded in question No. 21, when dealing with the bill to regulate Lobby Activities <i>Bill that Transparency and Regulates the Lobby and Steps Representing Private Interests Before Public Authorities and Servants</i>.</p>						

<sup>109</sup> Source (visit 30/04/21): [bit.ly/3b3PF1c](http://bit.ly/3b3PF1c).

<sup>110</sup> Information provided by the National Undersecretariat for Health Promotion and Equality of the Ministry of Public Health, Executive Secretariat of CILA.

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<b>INDICATOR 6: Conflict of Interest</b>						
13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions. (Rec 4.11)					4	
* As noted in the first version of this interference index, Ecuador does not have regulations that prohibit contributions from the tobacco industry and does not require full disclosure of such contributions, if applicable. But there are certain regulations that may refer to this question and will be addressed in question No. 21.						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General). (Rec 4.4)		1				
* As noted in the first version of this interference index, there is no evidence that retired government officials have joined the tobacco industry.						
* However, it is worth mentioning that the Head of External Affairs of Philip Morris Ecuador, Glenda Ruiz (from 2019 to present), used to be an advisor to the Ministry of Finance for the Free Trade Agreement between Ecuador and the United States during 2006/2007. <sup>111</sup>						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)		1				
* As noted in the first version of this interference index, despite the search carried out, no evidence has been found on current government officials and/or their relatives who hold positions in the tobacco industry business. This investigation was also carried out for consulting contract relationships.						
* It is important to mention that:						
<ul style="list-style-type: none"> <li>• The reelected executive president of the Chamber of Industries and Production for 2021 to 2022<sup>112</sup>, Pablo Zambrano Albuja (president since 2018)<sup>113</sup>, was Director of Corporate Affairs for Ecuador and Peru (2012-2014) / Manager of Corporate Affairs (2012) of Philip Morris Ecuador, respectively.<sup>114</sup></li> <li>• The former Vice President of the Chamber of Industries and Production (who was re-elected), Carla Muirragui (Vice President since 2018), was part of Philip Morris Ecuador as Director of Corporate Affairs for Ecuador and Peru from 2016 to 2018).<sup>115</sup></li> <li>• TANASA, affiliated with Philip Morris International, is on the Board of Directors of the Chamber of Industries and Production.<sup>116</sup></li> </ul>						

<sup>111</sup> Source (visit 30/04/21): [bit.ly/3gYmCQG](https://bit.ly/3gYmCQG).

<sup>112</sup> Source (visit 30/04/21): [bit.ly/3gYqwZQ](https://bit.ly/3gYqwZQ).

<sup>113</sup> Source (visit 30/04/21): [bit.ly/3vHEROd](https://bit.ly/3vHEROd).

<sup>114</sup> Source (visit 30/04/21): [bit.ly/3xHxJ6m](https://bit.ly/3xHxJ6m).

<sup>115</sup> Source (visit 30/04/21): [bit.ly/33hkfQP](https://bit.ly/33hkfQP).

<sup>116</sup> Source (visit 30/04/21): [bit.ly/3vHEROd](https://bit.ly/3vHEROd).

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<b>INDICATOR 7: Preventive Measures</b>						
16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. (Rec 5.1)						<b>5</b>
<p>* As indicated in the first version of this interference index, Ecuador does not have a policy or procedures for the disclosure of the interactions that the tobacco industry could develop (without prejudice to what was mentioned in question No. 3 regarding the Organic Law that Reforms Various Legal Bodies to Reinforce the prevention and combat of Illicit Trade, strengthen the National Industry and promote Electronic Commerce approved on May 4, 2021,<sup>117</sup> incorporating provisions on conflicts of interest).</p> <p>* In question No. 21, this answer will be expanded when the bill to regulate lobby activities is mentioned, <i>Bill to Transparency and Regulate Lobbying and Steps Representing Private Interests Before Public Authorities and Servants</i>.</p>						
17. The government has formulated, adopted, or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2)						<b>4</b>
<p>* As noted in the first version of this interference index, the country still does not have general guidelines on the subject and worse still, it does not have a code so that public officials can know how to interact with the tobacco industry, the treatment, and limitations that must be handled in the event that it pretends to have some kind of closeness.</p> <p>* It is interesting to note that currently there are certain codes of conduct which could be a starting point to advance this issue. The codes are detailed below :</p> <ul style="list-style-type: none"> <li>• <i>Code of Ethics for the Good Living of the Executive Function, 2013</i>.<sup>118</sup></li> <li>• <i>Code of Ethics of the Presidency of the Republic, 2014</i>.<sup>119</sup></li> <li>• <i>Code of Ethics of the Ministry of Public Health</i>.<sup>120</sup></li> <li>• <i>Code of Ethics for the Servants and Servants of the Internal Revenue Service</i>.<sup>121</sup></li> <li>• <i>Declaration of no conflict of interest by the delegates to the Inter-Institutional Anti-Tobacco Control Committee (CILA)</i>.<sup>122</sup></li> </ul> <p>* Finally, as indicated in question No. 3 regarding the Contraband and Prevention Law approved on May 4, 2021,<sup>123</sup> that incorporates provisions on conflicts of interest, which is positioned as a legal standard, this can contribute significantly to advance the regulations that must exist when interacting with the tobacco industry.</p>						

<sup>117</sup> Source (visit 30/04/21): [bit.ly/3zbEPQj](https://bit.ly/3zbEPQj).

<sup>118</sup> Source (visit 30/04/21): [bit.ly/3xTFtSQ](https://bit.ly/3xTFtSQ).

<sup>119</sup> Source (visit 30/04/21): [bit.ly/3b82wzL](https://bit.ly/3b82wzL).

<sup>120</sup> Source (visit 30/04/21): [bit.ly/3qa1NV1](https://bit.ly/3qa1NV1).

<sup>121</sup> Source (visit 30/04/21): [bit.ly/3fdQLsT](https://bit.ly/3fdQLsT).

<sup>122</sup> Information provided by the Ecuadorian Respiratory Health Foundation -FESAR, member of the Interinstitutional Committee for the Fight Against Tobacco -CILA.

<sup>123</sup> Source (visit 30/04/21): [bit.ly/3zbEPQj](https://bit.ly/3zbEPQj).

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18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities. (5.2)				3		
<p>* As was pointed out in the first version of this interference index, Ecuador does not have any instrument that specifically regulates this issue, but there are some regulations that could serve as a basis for advancing in the development of regulations on this matter.</p> <p>* To review the content of each of the legal provisions in detail, you can review in Annex C:</p> <ul style="list-style-type: none"> <li>• <i>Information that manufacturers must provide:</i> LORCT, 2011. Title II, Chapter II. - "Of the National Health Authority", art. 10.<sup>124</sup></li> <li>• <i>Additional information that tobacco product manufacturing, import and wholesaling companies must provide:</i> Regulation to the Organic Law for the regulation and control of tobacco, 2012. Title I. - "Object and scope", arts. 3 and 4.<sup>125</sup></li> <li>• <i>Information collected by the Identification, Marking and Tracking System (SIMAR) on manufacturers, production, products and marketing:</i> Internal Revenue Service –SRI–, Resolution No. NAC-DGERCGCI4-00749, 2016. Section I. - "Identification, marking and tracking system-SIMAR", arts. 2 and 3.<sup>126</sup></li> <li>• <i>Information that companies incorporated in Ecuador, foreign companies and subsidiaries, must provide:</i> Companies Law, 1999 (modified by the Reform Law to the Companies Law, 2019 and the Modernization Law to the Companies Law 2020).<sup>127</sup> - Section I. - "General provisions", arts. 20, 21, 22, 23, 25 and 33.<sup>128</sup></li> <li>• <i>Constitution requirements for corporations, foundations and other forms of national or foreign social organization and information that is required to provide:</i> Executive Decree No. 193, Regulation of legal personality for social organizations, 2017. Title I. - General Chapter I "Purpose and scope of application", art. 2; and, Title II. - Chapter II "Rights and obligations of social organizations", art. 6.<sup>129</sup></li> </ul>						
19. The government has a program / system/ plan to consistently <sup>130</sup> raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec I.1, I.2)						5
<p>* As indicated in the first version of this interference index, there is no government program / system / plan to generate alerts within its different instances or directorates on policies related to the Guidelines of Article 5.3 of the FCTC of the WHO, as stated by Ecuador in the 2018 Basic Questionnaire of the WHO FCTC reporting instrument:</p>						

<sup>124</sup> Source (visit 30/04/21): [bit.ly/3tfOcv7](http://bit.ly/3tfOcv7).

<sup>125</sup> Source (visit 30/04/21): [bit.ly/2Rwtwlg](http://bit.ly/2Rwtwlg).

<sup>126</sup> Source (visit 30/04/21): [caircb.com/Portals/0/NAC.pdf](http://caircb.com/Portals/0/NAC.pdf).

<sup>127</sup> Source (visit 30/04/21): [bit.ly/3vI5DG7](http://bit.ly/3vI5DG7).

<sup>128</sup> Source (visit 30/04/21): [bit.ly/3xPe6cB](http://bit.ly/3xPe6cB).

<sup>129</sup> Source (visit 30/04/21): [bit.ly/2QPNpEd](http://bit.ly/2QPNpEd).

<sup>130</sup> For purposes of this question, "consistently" means: a. each time the FCTC is discussed, 5.3 is explained. AND b. Whenever the opportunity arises such when the tobacco industry intervention is discovered or reported.

“C124. Please provide a brief description of the progress made in implementing Article 5.3 in the past two years or since submission of your last report presentation of his latest report.

*In 2015, a delegate official of the Ministry of Public Health attended a training on the guidelines for the application of Article 5.3 of the FCTC, which convened representatives of other countries of the Region of the Americas, such as: Colombia, Costa Rica, Panama, among others. Based on this training, the MSP manifests the need to have a legal instrument for the protection of public health policies, related to tobacco control, against commercial interests and other created by the tobacco industry. Currently, a conference of multi-sectoral and inter-institutional activities is being coordinated to develop a legal instrument for the protection of public health policies related to tobacco control against commercial interests and other vested interests of the tobacco industry.”<sup>131</sup>*

\* Although these tools are not necessary for the correct action, both the Ministry of Public Health and CILA, framed and supported by the LORCT,<sup>132</sup> either unofficially or in response to the alerts generated by civil society, they have consistently demonstrated their commitment to raising awareness within the different government agencies about the policies related to Article 5.3 of the WHO FCTC and its Guidelines for implementation, as reflected in:

- 2020 Core Questionnaire of the WHO FCTC reporting instrument:  
Please provide a brief description of the progress made in implementing Article 5.3 in the past two years or since submission of your last report the presentation of his latest report).  
*“On July 3, 2018, the agreement signed between the National Customs Service of Ecuador (SENAE) and the Tobacco Industry, Alimentos y Bebidas SA (ITABSA) was made public, with the alleged purpose of 'establishing exchanges of information, coordination, training and assistance necessary for common development in the customs, tax, facilitation of foreign trade and customs control areas.' The Ministry of Public Health, as the National Health Authority, in the exercise of its powers and in compliance with the provisions of the FCTC, the WHO Protocol for the Elimination of Illicit Trade in Tobacco Products, the Organic Law for the Regulation and Tobacco Control (LORCT) and its Regulations; expressed its great concern generated by the signing of said cooperation instrument, that evidenced a clear sample of interference from the tobacco industry, and mobilized all resources in order to immediately terminate the cooperation agreement signed between SENAE and ITABSA, considering that it violated current national and international regulations regarding relations and collaboration with the tobacco industry. With the support of civil society organizations and institutions involved, the agreement was unilaterally finalized by the Ecuadorian State. Additionally, CILA Anti-Tobacco Control Committee has implemented a document for the declaration of not having conflicts of interest with the tobacco industry in all its delegates from national institutions, civil society and academia.”<sup>133</sup>*
- The appearances before the Specialized Commission of Justice and Structure of the State of the National Assembly (for more information see question No. 1), make clear the position of CILA, in the face of the presence of the tobacco industry in the discussion tables and workshops of work for the development of the "Organic Law Project that Reforms Various Legal Bodies to Reinforce the prevention and fight against Illicit Commerce, strengthen the National Industry and promote Electronic Commerce".

<sup>131</sup> Source (visit 30/04/21):  
[bit.ly/33sY8H2](https://bit.ly/33sY8H2).

<sup>132</sup> Source (visit 30/04/21):

LORCT: “Art. 3. -Responsibility of the National Health Authority. - It is the responsibility of the National Health Authority, within the scope of its competence, to formulate and implement policies and strategies for full compliance with this Law. [...]

Transitory Provision, first. - The President of the Republic, within a period of ninety (90) days, counted from the effective date of this Law, will create the national coordinating body for tobacco control, attached to the National Health Authority.

. Until the date of its formation, the Interinstitutional Committee for the Fight Against Tobacco, CILA, created by Ministerial Agreement No. 955 of March 10, 1989, will continue to fulfill these functions.-”

[bit.ly/3tfOcv7](https://bit.ly/3tfOcv7).

<sup>133</sup> Source (visit 30/04/21):  
[bit.ly/2RCTROA](https://bit.ly/2RCTROA).

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<ul style="list-style-type: none"> <li>• CILA action, against the resolution of SRI No. NAC-DGERCGC21-00000019, published in the Fourth Supplement of the Official Registry No. 432 of April 15, 2021, resolved “To establish the general regulations for the application of the fiscal traceability mechanisms provided for in the Articles 279.I and following of the Regulation for the application of the Law of Internal Tax Regime, introduced by means of article 87 of the regulation for the application of the Organic Law of Tax Simplification and Progressivity ”,<sup>134</sup> so that its contents are aligned with the contents of the WHO FCTC and the protocol.</li> </ul>						
<p>20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)</p>					4	
<p>* In the framework of the COVID-19 pandemic, the government's attention has been directed to this global health problem, so to date, no specific policy has been established to:</p> <ul style="list-style-type: none"> <li>• Prohibit offers of assistance, draft policies or invitations to study visits or offered to the government, its agencies, officials and their families.</li> <li>• Refuse to accept all forms of contributions / gifts from the tobacco industry.</li> </ul> <p>* There is no evidence that any government official has rejected any kind of contribution from the tobacco industry, without prejudice to what is mentioned in questions No.5 and No.9.</p> <p>But we can indicate that there are certain regulations that could be used for this particular issue. To review the content of each of the legal provisions in detail, you can review in Annex D:</p> <ul style="list-style-type: none"> <li>• <i>Duty to report and combat acts of corruption and the principles of public administration: Constitution of the Republic of Ecuador, 2008, arts. 83, 204, 227 and 297.</i><sup>135</sup></li> <li>• <i>Rules of the public administration for the prohibition of receiving contributions, requesting mandatory contributions, delivery of any type of resource of illicit origin; and rules for the use of public resources: Organic Electoral Law, Democracy Code, 2009 (amended by the Organic Law Reform of the Organic Law on Elections and Political Organizations, Code of Democracy, 2020), arts. 216 and 219.</i><sup>136</sup></li> <li>• <i>Prohibitions on public servants and public servants and reasons for expulsion: Public Service Organic Law (LOSEP), 2010 (amended by the Organic Reform Law to the Organic Law of Public Service, 2019), arts. 24 d), j), k), l), ñ); 48 d); and, 116.</i><sup>137</sup></li> <li>• <i>Sanctions in anti-corruption matters: Comprehensive Organic Penal Code -COIP-, 2014 (amended by the Organic Law Reforming the Comprehensive Organic Criminal Code 2019 and the Organic Law Reforming the Organic Comprehensive Criminal Code in Anti-Corruption Matters 2021), arts. 285, 286, 287, 320.1.</i><sup>138</sup></li> </ul> <p>* For this question we have left the treatment and analysis on the <i>Bill that Transparent and Regulates the Lobby and the Procedures Representing Private Interests before the Authorities and Public Servants</i>, which was presented on September 10, 2019, by Assemblywoman Gabriela Larraátegui Fabara, which was approved by the Legislative</p>						

<sup>134</sup> Source (visit 30/04/21):

[bit.ly/33jjqH2](https://bit.ly/33jjqH2).

<sup>135</sup> Source (visit 30/04/21):

[bit.ly/3vFGGuL](https://bit.ly/3vFGGuL).

<sup>136</sup> Source (visit 30/04/21):

[bit.ly/3gOyV01](https://bit.ly/3gOyV01).

<sup>137</sup> Source (visit 30/04/21):

[bit.ly/2SR5QZX](https://bit.ly/2SR5QZX).

<sup>138</sup> Source (visit 30/04/21):

[bit.ly/3iWZ1Ra](https://bit.ly/3iWZ1Ra).

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Administration Council - CAL and referred to the Permanent Specialized Commission for Citizen Participation and Social Control, on January 29, 2020 <sup>139</sup> .						
According to the proponent, “lobbying is a paid or unpaid activity, carried out by Ecuadorian or foreign natural or legal persons in order to promote, defend or represent any particular interest to influence the decisions that, in the exercise of their functions, the authorities must adopt or public servants of the State”. <sup>140</sup>						
The project deals with issues such as advertising, equal treatment, promotion of culture and integrity, opening of the agenda and access to public information - at this point the project contemplates that citizens have the right to know the issues addressed and agreements reached, among the parties involved, therefore, it is important for the case of possible meetings between the different government bodies and the tobacco industry.						
Along this same line, for February 12, 2021, at the initiative of Assemblyman Fabricio Villamar, the "Draft Law on Lobbying and the Management of Interests in Public Administration and Creation of the National Registry of Lobbyists" was presented to the CAL. It was qualified on March 10, 2021 and sent, in the same way, to the Permanent Specialized Commission for Citizen Participation and Social Control, in order to start its processing <sup>141</sup> , surely in a single legal body with the project of Assemblywoman Larreátegui.						
The political moment of transition that Ecuador is currently experiencing, where the majority of assembly members changed on May 14, 2021, shows that this project will be processed by the new plenary of the Assembly since, according to public information from the website of the National Assembly, This project is at the stage of treatment in the Commission, and has not yet passed even the report for the first debate.						
<b>TOTAL</b>						<b>71</b>

<sup>139</sup> Source (visit 30/04/21):  
[bit.ly/3nWIygs](https://bit.ly/3nWIygs).

<sup>140</sup> Source (visit 30/04/21):  
[bit.ly/3nWIygs](https://bit.ly/3nWIygs).

<sup>141</sup> Source (visit 14/04/20):  
[ppless.asambleanacional.gob.ec/alfresco/d/d/workspace/SpacesStore/b81c92a2-8c18-4d63-9d63-a19120cba926/cc-19-21-449-fvillamar-c11-09-03-2021.pdf](https://ppless.asambleanacional.gob.ec/alfresco/d/d/workspace/SpacesStore/b81c92a2-8c18-4d63-9d63-a19120cba926/cc-19-21-449-fvillamar-c11-09-03-2021.pdf).

**ANNEX A**  
**SOURCES OF INFORMATION**

TOBACCO INDUSTRY ACTIVITY

LOCAL TOBACCO COMPANIES

Top 5 Tobacco Companies/distributors	Market Share and Brands	Source
<b>Itabsa</b> <b>Tanasa</b> <b>Proesa</b>	Philip Morris International Affiliates  <b>Brands:</b> Marlboro, Leader, Lark	<a href="https://www.pmi.com/markets/ecuador/es">https://www.pmi.com/markets/ecuador/es</a> . <a href="https://www.emis.com/php/company-profile/EC/Industrias_del_Tabaco_Alimentos_y_Bebidas_SA_Itabsa_es_2081601.html">https://www.emis.com/php/company-profile/EC/Industrias_del_Tabaco_Alimentos_y_Bebidas_SA_Itabsa_es_2081601.html</a> . <a href="https://www.emis.com/php/company-profile/EC/Tabacalera_Andina_SA_Tanasa_es_1219060.html">https://www.emis.com/php/company-profile/EC/Tabacalera_Andina_SA_Tanasa_es_1219060.html</a> . <a href="https://www.emis.com/php/company-profile/EC/Provedora_Ecuatoriana_SA_Proesa_es_2443838.html">https://www.emis.com/php/company-profile/EC/Provedora_Ecuatoriana_SA_Proesa_es_2443838.html</a> .
British Tobacco  American	<b>Brands:</b> Kent Super Lights, Lucky Strike, Casino	<a href="https://www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO9FBKMD">https://www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO9FBKMD</a> . <a href="https://cityseeker.com/es/quito/178788-british-american-tobacco">https://cityseeker.com/es/quito/178788-british-american-tobacco</a> . <a href="https://www.bloomberg.com/profile/company/1604922Z:CB">https://www.bloomberg.com/profile/company/1604922Z:CB</a> . <a href="https://www.emis.com/php/company-profile/EC/British_American_Tobacco_Limited_SOUTH_AMERICA_es_4901815.html">https://www.emis.com/php/company-profile/EC/British_American_Tobacco_Limited_SOUTH_AMERICA_es_4901815.html</a> .
Ecuacorcias SA		<a href="https://www.emis.com/php/company-profile/EC/Ecuacorcias_SA_es_5466296.html">https://www.emis.com/php/company-profile/EC/Ecuacorcias_SA_es_5466296.html</a> .
Hacienda Tabaganasha SA		<a href="https://www.emis.com/php/company-profile/EC/Hacienda_Tabaganasha_SA_es_3963455.html">https://www.emis.com/php/company-profile/EC/Hacienda_Tabaganasha_SA_es_3963455.html</a> .
Tabacos Acendrados SA		<a href="https://www.emis.com/php/company-profile/EC/Tabacos_Acendrados_SA_es_5466265.html">https://www.emis.com/php/company-profile/EC/Tabacos_Acendrados_SA_es_5466265.html</a> .

## TOBACCO INDUSTRY FRONT GROUPS

Top 5 Tobacco Industry Representative	Type (Front Group/ Affiliate/ Individual)	Source
Ecuadorian American Chamber of Commerce	Business Partner: Itabsa	<a href="https://www.amchamec.com/index.php/nosotros/socios/socios-empresariales">https://www.amchamec.com/index.php/nosotros/socios/socios-empresariales</a> .
Top Employers Institute	Itabsa, Tanasa, Proesa- Affiliated with Philip Morris International have been certified as top employers in Ecuador, Latin America, and globally.	<a href="https://www.eltelegrafo.com.ec/noticias/economia/4/empresas-ecuatorianas-certificacion-equidad-salarial">https://www.eltelegrafo.com.ec/noticias/economia/4/empresas-ecuatorianas-certificacion-equidad-salarial</a> .
Business Network for an Ecuador Free of Child Labor	Itabsa, Member	<a href="https://www.corresponsables.com/actualidad/sector-publico-y-privado-unidos-para-la-erradicacion-y-prevencion-del-trabajo-infantil">https://www.corresponsables.com/actualidad/sector-publico-y-privado-unidos-para-la-erradicacion-y-prevencion-del-trabajo-infantil</a> .
Chamber of Industries and Production	Board of Directors: Tanasa	<a href="https://www.cip.org.ec/somos-cip/">https://www.cip.org.ec/somos-cip/</a> .
UN Global Compact - Ecuador	Member: Ecuadorian American Chamber of Commerce  Chamber of Industries and Production	<a href="https://www.unglobalcompact.org/engage-locally/latin-america/ecuador">https://www.unglobalcompact.org/engage-locally/latin-america/ecuador</a> .
National Federation of Chambers of Industries of Ecuador	Board of Directors:  Chamber of Industries and Production	<a href="https://www.cip.org.ec/2019/02/08/pablo-zambrano-albuja-es-el-nuevo-Presidente-de-la-federacion-nacional-de-camaras-de-industrias-del-Ecuador/">https://www.cip.org.ec/2019/02/08/pablo-zambrano-albuja-es-el-nuevo-Presidente-de-la-federacion-nacional-de-camaras-de-industrias-del-Ecuador/</a> .
Ecuador Human Management Association	Board of Directors:  Itabsa, Former Vice President (Irwing Buitrón)	<a href="http://www.adghe.com/index.php">http://www.adghe.com/index.php</a> .  <a href="http://fidagh.org/joomlafidagh/noticias/103-articulo1/247-nuevas-juntas-directivas-aparh-paraguay-y-adghe-ecuador">http://fidagh.org/joomlafidagh/noticias/103-articulo1/247-nuevas-juntas-directivas-aparh-paraguay-y-adghe-ecuador</a> .

Ecuadorian American Chamber of Commerce	Business Partner: Itabsa	< <a href="https://www.amchamec.com/index.php/nosotros/socios/socios-empresariales">https://www.amchamec.com/index.php/nosotros/socios/socios-empresariales</a> >.
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## NEWS SOURCES

Top 5 Newspaper/Dailies	Type (Print/Online)	URL
The Universe	Both	< <a href="https://www.eluniverso.com">https://www.eluniverso.com</a> >.
Trade	Both	< <a href="https://www.elcomercio.com">https://www.elcomercio.com</a> >.
Plan V	Both	< <a href="https://www.planv.com.ec">https://www.planv.com.ec</a> >.
The Time	Both	< <a href="http://www.lahora.com.ec">http://www.lahora.com.ec</a> >.
The Telegraph	Both	< <a href="https://www.eltelegrafo.com.ec">https://www.eltelegrafo.com.ec</a> >.

Institution	Specify if more than one institution is involved in this function:	General Sources of Information
1. Office of the Highest Authority	President Vice president	<ul style="list-style-type: none"> <li>• &lt;<a href="https://www.presidencia.gob.ec/">https://www.presidencia.gob.ec/</a>&gt;.</li> <li>• &lt;<a href="https://www.vicepresidencia.gob.ec/">https://www.vicepresidencia.gob.ec/</a>&gt;.</li> </ul>
2. Legislators	National Assembly	<ul style="list-style-type: none"> <li>• &lt;<a href="https://www.asambleanacional.gob.ec/es">https://www.asambleanacional.gob.ec/es</a>&gt;.</li> </ul>
3. Agriculture	Ministry of Agriculture and Livestock	<ul style="list-style-type: none"> <li>• &lt;<a href="https://www.agricultura.gob.ec/">https://www.agricultura.gob.ec/</a>&gt;.</li> </ul>
4. Customs	National Customs Service of Ecuador	<ul style="list-style-type: none"> <li>• &lt;<a href="https://www.aduana.gob.ec/">https://www.aduana.gob.ec/</a>&gt;.</li> </ul>
5. Education	Ministry of Education	<ul style="list-style-type: none"> <li>• &lt;<a href="https://educacion.gob.ec/">https://educacion.gob.ec/</a>&gt;.</li> </ul>

6. Environment	Ministry of the Environment, Water and Ecological Transition	<ul style="list-style-type: none"> <li>• <a href="https://www.ambiente.gob.ec/">https://www.ambiente.gob.ec/</a>.</li> </ul>
7. Finance / Income / Investments	Internal Revenue Service of Ecuador  Ministry of Economy and Finance	<ul style="list-style-type: none"> <li>• <a href="https://www.sri.gob.ec/web/guest/home">https://www.sri.gob.ec/web/guest/home</a>.</li> <li>• <a href="https://www.finanzas.gob.ec/">https://www.finanzas.gob.ec/</a>.</li> </ul>
8. Health	Ministry of Public Health	<ul style="list-style-type: none"> <li>• <a href="https://www.salud.gob.ec/">https://www.salud.gob.ec/</a>.</li> </ul>
9. Labor	Ministry of Labor	<ul style="list-style-type: none"> <li>• <a href="http://www.trabajo.gob.ec/">http://www.trabajo.gob.ec/</a>.</li> </ul>
10. Trade and Industry / Investments	Ministry of Production, Foreign Trade, Investments and Fisheries  Ministry of Foreign Affairs and Human Mobility	<ul style="list-style-type: none"> <li>• <a href="https://www.produccion.gob.ec/">https://www.produccion.gob.ec/</a>.</li> <li>• <a href="https://www.cancilleria.gob.ec/">https://www.cancilleria.gob.ec/</a>.</li> </ul>
Additional institutions	Government ministry  Ministry of Economic and Social Inclusion	<ul style="list-style-type: none"> <li>• <a href="https://www.ministeriodegobierno.gob.ec/">https://www.ministeriodegobierno.gob.ec/</a>.</li> <li>• <a href="https://www.inclusion.gob.ec/">https://www.inclusion.gob.ec/</a>.</li> </ul>

Main 15 Public Institutions / Offices / Sectors	Specify if more than one institution is involved in this function:	Source
I. Office of the Highest Authority	President  Vice president	<ul style="list-style-type: none"> <li>• <a href="https://www.presidencia.gob.ec/">https://www.presidencia.gob.ec/</a>.</li> <li>• <a href="https://www.vicepresidencia.gob.ec/">https://www.vicepresidencia.gob.ec/</a>.</li> </ul>

2. Legislators	National Assembly	<ul style="list-style-type: none"> <li>• <a href="https://www.asambleanacional.gob.ec/es">https://www.asambleanacional.gob.ec/es</a>.</li> <li>•</li> </ul>
3. Agriculture	Ministry of Agriculture and Livestock	<ul style="list-style-type: none"> <li>• <a href="https://www.agricultura.gob.ec/">https://www.agricultura.gob.ec/</a>.</li> </ul>
4. Customs	National Customs Service of Ecuador	<ul style="list-style-type: none"> <li>• <a href="https://www.aduana.gob.ec/">https://www.aduana.gob.ec/</a>.</li> </ul>
5. Education	Ministry of Education	<ul style="list-style-type: none"> <li>• <a href="https://educacion.gob.ec/">https://educacion.gob.ec/</a>.</li> </ul>
6. Environment	Ministry of the Environment, Water and Ecological Transition	<ul style="list-style-type: none"> <li>• <a href="https://www.ambiente.gob.ec/">https://www.ambiente.gob.ec/</a>.</li> </ul>
7. Finance / Income / Investments	Internal Revenue Service of Ecuador  Ministry of Economy and Finance	<ul style="list-style-type: none"> <li>• <a href="https://www.sri.gob.ec/web/guest/home">https://www.sri.gob.ec/web/guest/home</a>.</li> <li>• <a href="https://www.finanzas.gob.ec/">https://www.finanzas.gob.ec/</a>.</li> <li>•</li> </ul>
8. Health	Ministry of Public Health	<ul style="list-style-type: none"> <li>• <a href="https://www.salud.gob.ec/">https://www.salud.gob.ec/</a>.</li> </ul>
9. Labor	Ministry of Labor	<ul style="list-style-type: none"> <li>• <a href="http://www.trabajo.gob.ec/">http://www.trabajo.gob.ec/</a>.</li> </ul>
10. Trade and Industry / Investments	Ministry of Production, Foreign Trade, Investments and Fisheries  Ministry of Foreign Affairs and Human Mobility	<ul style="list-style-type: none"> <li>• <a href="https://www.produccion.gob.ec/">https://www.produccion.gob.ec/</a>.</li> <li>• <a href="https://www.cancilleria.gob.ec/">https://www.cancilleria.gob.ec/</a>.</li> </ul>

Additional institutions	Government ministry  Ministry of Economic and Social Inclusion	<ul style="list-style-type: none"><li>• <a href="https://www.ministeriodegobierno.gob.ec/">https://www.ministeriodegobierno.gob.ec/</a>.</li><li>• <a href="https://www.inclusion.gob.ec/">https://www.inclusion.gob.ec/</a>.</li></ul>
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## ANNEX B

### Regulations pertaining to transparency (Question No. 11)

- *Constitution of the Republic of Ecuador, 2008*<sup>142</sup>:
  - **Art. 18.-** All people, individually or collectively, have the right to:
    1. Search, receive, exchange, produce and disseminate truthful, verified, timely, contextualized, plural information, without prior censorship about the facts, events and processes of general interest, and with subsequent responsibility.
    2. Free access to the information generated in public entities, or in private entities that handle State funds or carry out public functions. There will be no reservation of information except in cases expressly established by law. In case of violation of human rights, no public entity will deny the information.
  - **Art. 91.-**The action of access to public information will aim to guarantee access to it when it has been expressly or tacitly denied, or when the information provided is not complete or reliable. It may be filed even if the refusal is based on the character to secret, reserved, confidential or any other classification of the information. The reserved nature of the information must be declared prior to the request on, by competent authority and in accordance with the law.
- *Organic Law of Transparency and Access to Public Information, 2004*<sup>143</sup>:
  - **Art. 2. Purpose of the Law-** This law guarantees and regulates the exercise of the fundamental right of people to information in accordance with the guarantees enshrined in the Political Constitution of the Republic, the International Covenant on Civil and Political Rights, the Inter-American Convention on Human Rights and other international instruments in force, of which our country is a signatory.

It pursues the following objectives:

- a) Comply with the provisions of the Political Constitution of the Republic regarding publicity, transparency and accountability to which all State institutions that make up the public sector, dignitaries, authorities and public officials, including the entities indicated in the previous article, the legal persons of private law that carry out works, services, etc., with public assignments. For this purpose, they will adopt the measures that guarantee and promote the organization, classification and management of the information that account for public management.
- b) Compliance with international conventions that our country has legally signed on the matter.
- c) Allow the control of public administration and public resources, making a true social control effective.
- d) Guarantee the protection of personal information held by the public and / or private sector;
- e) The democratization of Ecuadorian society and the full validity of the rule of law, through genuine and legitimate access to public information; and,
- f) Facilitate effective citizen participation in making decisions of general interest and their supervision.

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<sup>142</sup> Source (visit 30/04/21):  
[bit.ly/3vFGGuL](http://bit.ly/3vFGGuL).

<sup>143</sup> Source (visit 30/04/21):  
[bit.ly/3uok565](http://bit.ly/3uok565).

## ANNEX C

### Regulations pertaining to the periodic presentation of information (Question No. 18)

- *Organic Law for the Regulation and Control of Tobacco-LORCT, 2011:*
  - **3Art. 10. - Competences** -The following are the competences of the National Health Authority: [...] e. Determine the information that manufacturers are obliged to provide, to the corresponding authorities and the general public, regarding tobacco products and their harmful effects.<sup>144</sup>
- *Regulation to the Organic Law for the regulation and control of tobacco-Regulation LORCT, 2012:*
  - **Art. 3.-** The companies that manufacture, import and wholesale the tobacco products listed in this regulation must register with the Ministry of Public Health, attaching:
    - a) Notarized copies of the documents of incorporation of the company or company, duly registered in the instances related to the production, import and / or commercialization; and,
    - b) The documents that contain the identification data and physical addresses, telephone numbers, emails, web pages, social network addresses, etc., of the institution. Data that must be updated each time there is a change in them.
  - **Art. 4.-** Manufacturers, importers, and wholesalers must declare at the time of registration through a complete and clear technical report, what type of tobacco product, brands and the number of units per individual package for sale to the public they manufacture, import or they commercialize, as well as information corresponding to ingredients, components, additives and other substances that are used in their manufacture, design features, residues and emissions; to which they will add copies of reports of studies or tests that they have carried out as well as the data of the laboratory where they were performed.  
This information will not include data related to trade secrets.  
The information will be updated annually until June 30 of each year and will be made public in the manner provided by the National Health Authority.<sup>145</sup>
- *Internal Revenue Service –SRI–, Resolution No. NAC-DGERCGC14-00749, 2016:*
  - **Art. 2. - Purpose of the Identification, Marking and Tracking System (SIMAR).**  
This system consists of an integral platform that will contain information regarding the production, commercialization and aspects of tax interest, of nationally produced goods taxed with the Special Consumption tax and will operate through the placement and activation of physical and technological security components in each product.  
SIMAR has the purpose of identifying, marking and tracing goods taxed with the Special Consumption Tax of national production: cigarettes, alcoholic beverages and beer. The Tax Administration may include other products by resolution.  
SIMAR must be incorporated in the production lines or in the production processes used for the manufacturers of the goods subject to control and will have the following components:
    - **Information management system:** System that collects general data on manufacturers, production, products and marketing; information that will make it possible to carry out control procedures.
    - **Physical security component:** Code or physical component, visible, attached or printed on the products, on their lid, container, wrapping, packaging, which allows inspection of its

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<sup>144</sup>Source (visit 30/04/20):

[http://instituciones.msp.gob.ec/images/Documentos/tabaco/Ley\\_Organica\\_para\\_la\\_Regulacion\\_y\\_Control\\_del\\_Tabaco.pdf](http://instituciones.msp.gob.ec/images/Documentos/tabaco/Ley_Organica_para_la_Regulacion_y_Control_del_Tabaco.pdf).

<sup>145</sup>Source (visit 30/04/20):

<https://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2015/07/reglamento-a-la-ley-organica-para-regulacion-y-control-del-tabaco.pdf>.

validity to control bodies, public entities, taxpayers of the Special Consumption Tax and final consumers, with the characteristics and under the parameters approved by the Internal Revenue Service.

- **Art. 3. - Information-** The information in the system will be managed by the Internal Revenue Service in accordance with article 101 of the Internal Tax Regime Law. As such, the reserved information may not be delivered to third parties by the implementer and executor of the system.<sup>146</sup>
- *Companies Law, 1999:*
  - **Art. 20.-** Companies incorporated in Ecuador, subject to the supervision and control of the Superintendency of Companies and Securities, will send to it, in the first four months of each year:
    - a) Authorized copies of the complete set of financial statements, prepared based on current accounting and financial regulations, as well as the memos and reports of the administrators established by the Law and of the inspection bodies, if their creation has been agreed.
    - b) The payroll of administrators, legal representatives and partners or shareholders, including both legal owners and beneficial owners, in accordance with international standards of transparency in tax matters and the fight against illegal activities, in accordance with the resolutions issued for that purpose the Superintendency of Companies, Securities and Insurance. The information of foreign partners or shareholders will observe the specific requirements set forth in the law.

In the case of Ecuadorian anonymous companies that are registered in one or more national stock exchanges, their list of shareholders must identify those shareholders who have a percentage equal to or greater than 10% of their capital; and,
    - c) Other data that is considered in the regulations issued by the Superintendency of Companies and Securities.

The company's financial statements and their annexes, prepared based on current accounting and financial regulations, will be approved by the general meeting of partners or shareholders, as the case may be those documents, as well as those referred to in literals b) and c) of the previous paragraph, will be signed by the persons determined by the regulations and will be presented in the manner indicated by the Superintendency.

With the annual presentation of the document requested by the national tax authority by any of the mercantile companies and other entities regulated by this law, it will be considered that the obligation provided for in articles 20 and 23 of this law has been fulfilled, regarding to the individual Statement of Financial Position and Statement of Comprehensive Income. The presentation of the other financial statements and annexes will be subject to the regulations issued by the Superintendency for that purpose.

For the fulfillment of this obligation, if this documentation has not been approved by the general meeting of partners or shareholders before the maximum date of presentation but is ready to be sent, the legal representative, under his personal and exclusive responsibility, must send it in line to the Superintendency, together with a statement that proves that the general meeting has not been installed or having installed, has not made any declaration on it. With this procedure, the obligation set forth in this article shall be understood to have been fulfilled. If it is required to present corrective financial statements, it will proceed in accordance with this law and its applicable regulations. In the case of non-compliance in the presentation of the information, the administrator may be sanctioned according to what is established in article 445 of this law.

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<sup>146</sup>Source (visit 30/04/20):  
<http://www.caircb.com/Portals/0/NAC.pdf>.

Unless required by law, the Superintendency of Companies, Securities and Insurance or other competent authority, the presentation of reports and the complete set of financial statements mentioned above will be optional for companies in a state of dissolution or liquidation and for companies that have a cancellation resolution not registered in the Mercantile Registry, because those are not considered as companies that are running. In the case that they are reactivated, companies must present information from all the previous years that had not been reported.

- **Art. 21.** - Transfers of shares and participation of companies incorporated in Ecuador, subject to the supervision of the Superintendency of Companies and Securities; They will be communicated to the latter, indicating the name and nationality of the transferor and transferee, by the administrators of the respective company, within eight days after the registration in the corresponding books.
- **Art. 22.** - Foreign investment made in companies and other entities subject to the control and surveillance of the Superintendency of Companies and Securities will not require prior authorization from any State agency.
- **Art. 23-** Foreign companies that operate in the country and are subject to the supervision of the Superintendency of Companies and Securities must send to it, in the first four months of each year:

a) Authorized copies of the complete set of financial statements from its branch or establishment in Ecuador.

b) The payroll of the proxies or representatives.

c) Authorized copy of the annex on the Financial Movement of Goods and Services, of the respective fiscal year; and,

d) Any other information requested by the Superintendency.

The documents that contain the data required in this article will be submitted signed by the representatives and in the manner indicated by the Superintendency of Companies and Securities.

- **Art. 25-** If the Superintendent does not receive the documents referred to in the previous articles in a timely manner, or if they do not contain all the required data, he will impose a fine on the legal representative of the referring company in accordance with Art. 457 of this Law, except that before the expiration of the term, the respective extension has been obtained from the Superintendent, because it has been proven that it is impossible to present said documents and data in a timely manner.

The fine may be repeated until due compliance with the required obligation.

[...]

The Superintendent may demand, by an official letter or at the request of the partners or shareholders of the company, the presentation of financial statements and any accounting documentation that may be necessary to determine the current financial situation of a company subject to its surveillance. These financial statements must be delivered within fifteen days following the Superintendent's mandate, under the same penalties provided in the previous paragraphs, unless the company, for justified reasons, has obtained an extension of the term.

The partners or shareholders will have the right to request from the control body, at any time, free and timely access to financial information and other company documents. For such purposes, it will be proceeded according to the previous paragraph.

- **Art. 33-** The increase or decrease of capital, the extension of the social contract, the transformation, merger, spin-off, change of name, change of address, validation, and early dissolution, as well as all the agreements and resolutions that alter the clauses that must be registered and published, that reduce the duration of the company, or exclude any of its members, will be subject to the solemnities established by the Law for the foundation of the company according to its kind. The establishment of branches of foreign companies will be subject to the procedure provided in this law.  
The opposition of third parties to the registration of the decrease in capital, change of name, early dissolution, change of address or validation of the company, will be subject to the procedure provided for in Arts. 86, 87, 88, 89, and 90.<sup>147</sup>
- *Executive Decree No. 193, Regulation of legal personality social organizations, 2017:*
  - **Art. 4. Types of organizations-** Natural and legal persons with civil capacity to contract and be bound, in exercise of the constitutional right of free association, may constitute:
    1. Corporations
    2. Foundations and,
    3. Other forms of national or foreign social organization.
  - **Art. 6. Obligations of the organizations-** Without prejudice to the obligations established in other regulatory provisions, social organizations will have the following obligations:
    1. Comply with the Constitution, the Law, its statutes and other current provisions.
    2. Deliver to the competent State entity, when the case requires it, the documentation and information established in these Regulations, including that which will be generated in the future as a consequence of the operation of the social organization; and,
    3. Be accountable to its members through their directors or to the person responsible for that purpose, at least once a year, or by formal request of a third or more of them. The obligation of the directors to render accounts will be fulfilled with respect to the period of their functions even when these have ended.<sup>148</sup>

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<sup>147</sup> Source (visit 30/04/20):

[https://portal.compraspublicas.gob.ec/sercop/wp-content/uploads/2018/02/ley\\_de\\_companias.pdf](https://portal.compraspublicas.gob.ec/sercop/wp-content/uploads/2018/02/ley_de_companias.pdf).  
[bit.ly/3vI5DG7](https://portal.compraspublicas.gob.ec/sercop/wp-content/uploads/2018/02/ley_de_companias.pdf) f.

<sup>148</sup> Source (visit 30/04/20):

[https://www.cancilleria.gob.ec/wp-content/uploads/2017/11/reglamento\\_para\\_el\\_otorgamiento\\_de\\_personalidad\\_juridica\\_a\\_las\\_organizaciones\\_sociales.pdf](https://www.cancilleria.gob.ec/wp-content/uploads/2017/11/reglamento_para_el_otorgamiento_de_personalidad_juridica_a_las_organizaciones_sociales.pdf).

## ANNEX D

### Regulations pertaining to the rejection of contributions (Question No. 20)

- *Constitution of the Republic of Ecuador, 2008:*
  - **Art. 83.-** The duties and responsibilities of Ecuadorians and Ecuadorians, without prejudice to others provided for in the Constitution and the law:  
8. Administer the public assets honestly and with unrestricted adherence to the law and denounce and combat acts of corruption.
  
  - **Art. 204. -** The people are the principal and first inspector of public power, in exercise of their right to participation.  
The Transparency and Social Control Function will promote and promote the control of public sector entities and organizations, and of natural or legal persons of the private sector that provide services or carry out activities of public interest, so that they carry out them with responsibility, transparency and equity; promote and encourage citizen participation; protect the exercise and fulfillment of rights; and it will prevent and fight corruption.  
The Transparency and Social Control Function will be made up of the Council for Citizen Participation and Social Control, the Ombudsman's Office, the State Comptroller General and the superintendents. These entities will have legal personality and administrative, financial, budgetary and organizational autonomy.
  
  - **Art. 227. -** Public administration constitutes a service to the community that is governed by the principles of effectiveness, efficiency, quality, hierarchy, de-concentration, decentralization, coordination, participation, planning, transparency and evaluation.
  
  - **Art. 297. -** Every program financed with public resources will have objectives, goals and a predetermined term to be evaluated, within the framework of what is established in the National Development Plan.  
The institutions and entities that receive or transfer public goods or resources shall be subject to the rules that regulate them and to the principles and procedures of transparency, accountability and public control.<sup>149</sup>
  
- *Organic Electoral Law, Democracy Code, 2009:*
  - **Art. 216.-** Political organizations may receive contributions for the electoral campaign from the following sources:
    1. The ordinary and extraordinary compulsory fees of its members, as well as the voluntary and personal fees that the candidates contribute to their campaigns.
    2. Contributions or donations made in money or in kind, freely and voluntarily by individuals of Ecuadorian nationality, whether they reside in the country or abroad, and by foreign individuals residing in Ecuador; and,
    3. The income that the parties and their sectoral fronts obtain from the income from their assets, as well as from their promotional activities.  
Political organizations must declare, register and justify the origin and amount of the resources and goods obtained.
  
  - **Art. 219.-**The reception of contributions, contributions, or delivery of any type of resource of illicit origin is prohibited.  
Likewise, the acceptance of contributions that come from national natural persons who have contracts with the State is prohibited, as long as the contract has been signed for the execution

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<sup>149</sup> Source (visit 30/04/20):  
[bit.ly/3vFGGuL](http://bit.ly/3vFGGuL).

of a public work, the provision of public services or the exploitation of natural resources, through concession, association or any other contractual modality.

It is forbidden to accept contributions from natural persons who have direct or indirect legal disputes with the State for public works or services contracts.

Servants, agencies or public institutions are prohibited from using public resources and assets to promote their names or their political organizations in the institutions, works or projects under his charge.

It is forbidden for state institutions to request mandatory contributions in favor of political organizations or any candidacy.

Legal persons under private law with national, foreign or mixed capital may not provide contributions to electoral campaigns.<sup>150</sup>

- *Organic Law Public Service –LOSEP, 2010:*

- **Art. 24. - Prohibitions to public servants and servants** - The following are prohibited for public servants: [...]

- d) Privilege in the provision of services to family members and people recommended by superiors, except in the cases of people immersed in priority care groups, duly justified;

- j) Resolve matters, intervene, issue reports, manage, process or sign agreements or contracts with the State, by itself or through an interposed person or obtain any benefit that implies privileges for the servant, their spouse or partner in a legally recognized de facto union, their relatives up to the fourth degree of consanguinity or second degree of affinity. This prohibition will also apply to companies, societies or legal persons in which the servant, his spouse or partner in a legally recognized de facto union, his relatives up to the fourth degree of consanguinity or second degree of affinity have an interest;

- k) Request, accept or receive, in any way, gifts, rewards, gifts or contributions in kind, goods or money, privileges and advantages due to their functions, for themselves, their superiors or their subordinates; without prejudice to the fact that these acts constitute crimes such as: embezzlement, bribery, concussion, extortion or illicit enrichment.

- l) Receive additional remuneration or income, either with appointment or contract, without providing effective services or performing any specific work, in accordance with the regulations of the respective institution; and,

- ñ) The others established by the Constitution of the Republic, the laws and regulations.

- **Art. 48. - Grounds for dismissal** - The grounds for dismissal are: [...]

- d) Receive any kind of gift, gift or money other than their remuneration.

- **Art. 116.- Prohibition-** In addition to their budgetary remuneration established, no servant or servant of the entities and organisms contemplated in Article 3 of this Law<sup>151</sup>, may ask the

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<sup>150</sup> Source (visit 30/04/20):

[bit.ly/3vJ2Dcz](http://bit.ly/3vJ2Dcz).

[bit.ly/3gOyV01](http://bit.ly/3gOyV01).

<sup>151</sup> “Art. 3.- Scope.- The provisions of this law are of mandatory application, in terms of human resources and remuneration, throughout the public administration, which includes:

1. The organisms and dependencies of the Executive, Legislative, Judicial and Indigenous Justice, Electoral, Transparency and Social Control functions, the Attorney General's Office and the Constitutional Court;

2. The entities that make up the decentralized autonomous regime and special regimes;

3. The organisms and entities created by the Constitution or the law for the exercise of the state power, for the provision of public services or to develop economic activities assumed by the State; Y,

4. Legal entities created by normative act of decentralized autonomous governments and special regimes for the provision of public services [...].”

State or individuals, or accept from them, any payment in money, kind or other values, advantages or gifts, for the fulfillment of their official duties [...].<sup>152</sup>

- *Comprehensive Organic Criminal Code -COIP, 2014:*

- **Art. 285. - Influence peddling-** Public servants, and persons acting by virtue of a State authority in any of the State institutions,<sup>153</sup> enumerated in the Constitution of the Republic, taking advantage of the powers of his office or any other situation derived from his personal or hierarchical relationship, exerts influence on another or another server to obtain an act or resolution favorable to his interests or third parties, will be punished with a custodial sentence of three to five years.

The maximum of the foreseen penalty will be applicable when the people described in the first paragraph, taking advantage of popular representation or the position they exercise, favor or have favored natural or legal persons so that, contrary to express legal or regulatory provisions, grant them contracts or allow them to do business with the State or with any other public sector body.

Included in this provision are the members of the administrative bodies of the State or the public sector in general, who, with their vote, cooperate in the commission of this crime.

- **Art. 286. - Offer to carry out influence peddling-** The person who, offering to carry out the conduct described in the previous article, requests from third parties: gifts, presents or any other remuneration or accepts an offer or promise, will be sanctioned with a custodial sentence of three to five years.

- **Art. 287. - Usurpation and simulation of public functions-** The person who exercises public functions without authorization or simulates a position or public function, will be punished with a custodial sentence of one to three years.

The person who exercises public functions and is dismissed, suspended or legally declared in interdiction and who continues in the exercise of his functions after to be notified with the dismissal, suspension or interdiction, will be sanctioned with imprisonment of six months to one year.

- **Art. 320.I.- Acts of corruption in the private sector-** The director, general manager, administrator, chief executive officer, shareholders, partners, legal representatives, proxies, advisors, auditors, sponsoring attorneys or any employee who exercises management positions in a legal person under private law, non-governmental organization, association, foundation, committee, including irregular entities, that intentionally accepts, receives or requests donations, gifts, presents, promises, rights, fees, contributions, income, interest, advantages, salaries, gratuities, intangible benefits or undue economic benefits or other material goods, omits or commits an act that allows to favor himself or a third party, in the course of economic, financial or commercial activities, will be sanctioned with imprisonment of five to seven years, and a fine of five hundred to one thousand unified basic salaries of the worker in general.

The person who, directly or indirectly, promises, offers or grants to directors, managers, administrators, main executives, shareholders, partners, legal representatives, attorneys-in-

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<sup>152</sup> Source (visit 30/04/20):

[bit.ly/2SR5QZX](http://bit.ly/2SR5QZX).

<sup>153</sup> “Art. 225.- Competition.- The public sector includes:

1. The bodies and dependencies of the Executive, Legislative, Judicial, Electoral and Transparency and Social Control functions.

2. The entities that make up the decentralized autonomous regime.

3. The bodies and entities created by the Constitution or the law for the exercise of state authority, for the provision of public services or to develop economic activities assumed by the State.

4. Legal entities created by normative act of the decentralized autonomous governments for the provision of public services”. Source (visit 30/04/20):

[https://www.oas.org/juridico/pdfs/mesicic4\\_ecu\\_const.pdf](https://www.oas.org/juridico/pdfs/mesicic4_ecu_const.pdf).

fact, advisers or any employee who holds the position of address in a legal person of private law, non-governmental organization, association, foundation, committee, including irregular entities, donations, gifts, presents, promises, rights, fees, contributions, income, interests, advantages, salaries, bonuses, intangible benefits or undue economic benefits or other material goods, so that as consideration, lacking the inherent duty of their functions, omits or commits an act that allows a third party to favor oneself, in the course of economic, financial activities or commercial.

If the subjects indicated in the first and second paragraphs, carry out the acts or do not carry out the due act, they will be punished with imprisonment of seven to ten years.

The subjects described in the first and second paragraphs, who in the course of economic, financial or commercial activities, intentionally abuse, appropriate, distract or arbitrarily dispose of movable or immovable property, public money, will be sanctioned with the same penalty as the previous paragraph or private, effects that represent them, pieces, titles or documents that are in their possession by virtue or reason of their position.

The maximum penalty for the indicated conduct will be applied if economic or immaterial benefit is proven to a third party; when it is carried out taking advantage of a declaration of emergency or state of exception; or, when contracts are made directly or indirectly with the public sector and therefore there are State resources involved.

In case of determining the responsibility of the legal person, it will be sanctioned with the dissolution and liquidation and the payment of a fine of five hundred to one thousand unified basic salaries of the worker in general, however, if only the responsible natural person or third parties outside the legal person involved, the responsibility will not fall on the legal person.<sup>154</sup>

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<sup>154</sup> Source (visit 30/04/20):  
[bit.ly/3iWZ1Ra](http://bit.ly/3iWZ1Ra).