



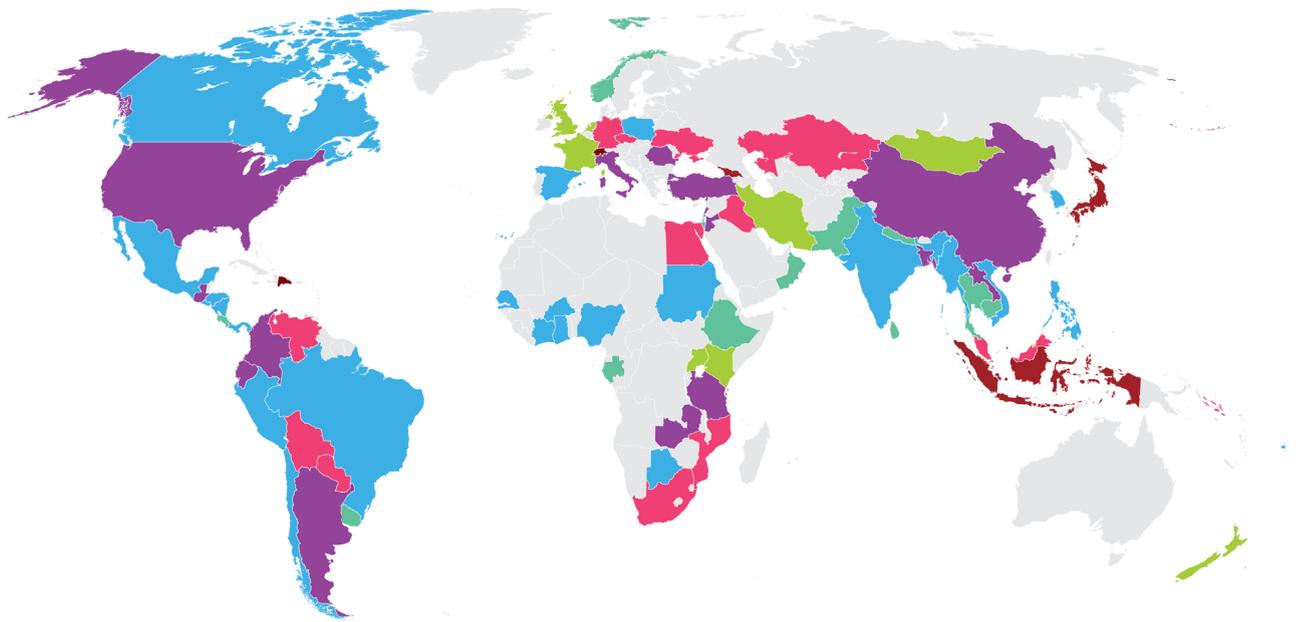
A GLOBAL
TOBACCO
INDUSTRY
WATCHDOG



Ukraine

**TOBACCO
INDUSTRY
INTERFERENCE
INDEX
2021**

Global Tobacco Industry Interference



The lower the score, the better the ranking



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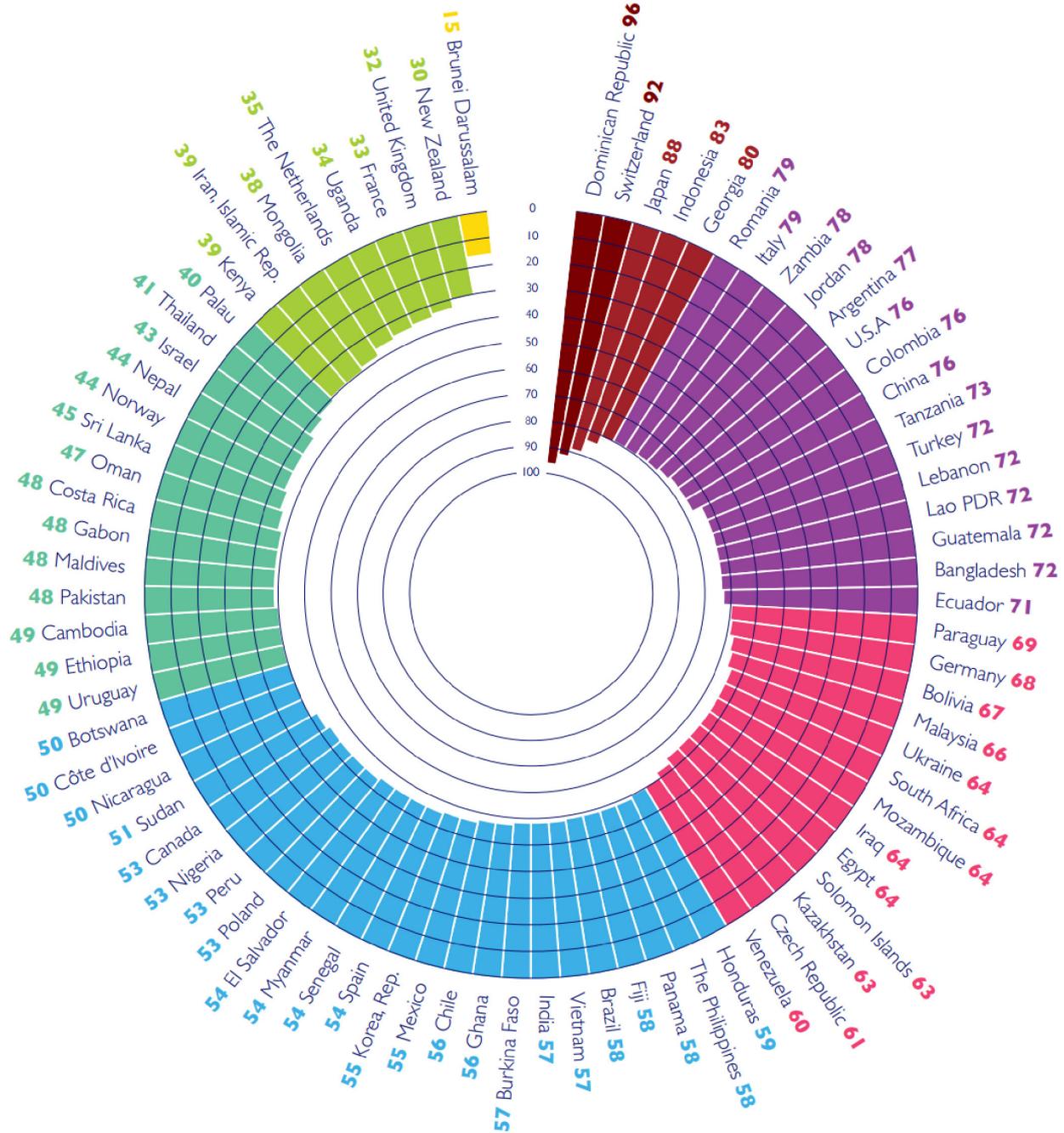
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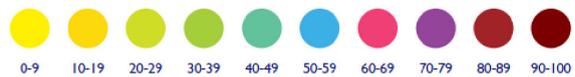
Tobacco Industry Interference Index 2021



A GLOBAL TOBACCO INDUSTRY WATCHDOG



The lower the score, the better the ranking



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This report is part of the Global Tobacco Interference Index, which measures governments' effectiveness in combating the tobacco industry's interference in tobacco control policies and is based solely on publicly available information. The Global Tobacco Interference Index was first introduced by the South-East Asia Tobacco Control Alliance and is currently run by the Global Center for Good Governance in Tobacco Control research at Thammasat University (Thailand).

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Introduction

In 2017 8.2 million adults 15+ years old were current tobacco users in Ukraine: 39.7% of men and 8.9% of women¹. Each year about 85 thousand people die due to tobacco-related diseases every year².

Ukraine achieved great progress in implementing tobacco control measures according to the WHO Framework Convention on Tobacco Control (WHO FCTC) and in reducing smoking prevalence. According to the State Statistics Service of Ukraine - annual household surveys, daily smoking prevalence among the population 12+ years old has decreased for the last twelve years by 36%, from 25,6% in 2008 to 16.5% in 2020³. According to the State Treasury data, the state budget revenues from tobacco taxation grew by 24% in 2020 compared to 2019⁴. According to the PMI Annual Report 2020, the tobacco market (cigarettes + heated tobacco products) in 2020 decreased in Ukraine by 10.2%⁵. However, tendencies demonstrate the slowing of the smoking prevalence decrease in 2020 compared to 2019⁶.

The year 2020 is characterized by the tobacco industry (TI) using the country's scrutiny of the COVID-19 pandemic to find ways in delaying, hampering and discrediting new legislative initiatives. Regardless of the continuation of the long-term positive tendencies of the smoking prevalence and tobacco consumption decrease, these trends have been secured only by the stable increase of tobacco taxes and are threatened by the absence of the other updated new regulations. The tobacco control efforts in Ukraine should be accelerated and strengthened according to the adopted documents such as WHO FCTC⁷ and UN Sustainable Development Goals. Particularly this is important under the presence of the growing tobacco industry interference in public health-related policy development and adoption, and nearly unrestricted funding to their front groups, lobbyists, and media. Tobacco industry interference is a problem that challenges and impedes the progress of strengthening policies to protect public health globally. Guidelines for implementation of the WHO FCTC Article 5.3 provide clear steps the government can take to protect public health policies. The political will to use this tool should be demonstrated and capitalized.

1 World Health Organization, «Global Adult Tobacco Survey», (2017). Available at: <https://bit.ly/3UhyPTt>. (Accessed: May 20, 2021).

2 Peto R, Lopez AD, Pan H, Boreham J, Thun M. Mortality from smoking in developed countries 1950–2000 Oxford: Oxford University Clinical Trial Service Unit; 2015

3 The State Statistics Service of Ukraine, POPULATION'S SELF- PERCEIVED OF HEALTH STATUS AND AVAILABILITY OF SELECTED TYPES OF MEDICAL AID (2020). Available at: <https://bit.ly/3wwVxIR>. (Accessed: May 20, 2021).

4 The State Treasury Service of Ukraine, «Monthly report on the implementation of the State Budget of Ukraine for January-December 2020». Available at: <https://bit.ly/3oO2IJX>. (Accessed: May 20, 2021).

5 PHILIP MORRIS INTERNATIONAL, «PHILIP MORRIS INTERNATIONAL INC. REPORTS 2020 FOURTH-QUARTER & FULL-YEAR RESULTS». Available at: <https://bit.ly/3oU4LMD>. (Accessed: May 20, 2021).

6 Advocacy center «LIFE», «In 2020, the decline in smoking prevalence in Ukraine slowed down». Available at: <https://bit.ly/2SnzXYr> (based on the State Statistics Service of Ukraine Report (2020). Available at: http://ukrstat.gov.ua/druk/publicat/kat_u/2021/zb/03/zb_snsz_20.pdf). (Accessed: May 20, 2021).

7 WHO Framework convention on Tobacco Control, «Global Strategy to Accelerate Tobacco Control: Advancing Sustainable Development through the Implementation of the WHO FCTC 2019-2025». Available at: <https://bit.ly/3vkdE4I> (Accessed: May 20, 2021).

The list of the largest tobacco companies in Ukraine in 2020 remained unchanged and comprised of four transnational corporations with their registered branches in Ukraine. Among them are Philip Morris International (Philip Morris Ukraine), Japan Tobacco International, (JT International Company Ukraine), Imperial Tobacco (Imperial Tobacco Production Ukraine) and British American Tobacco (British American Tobacco Ukraine). These transnational corporations dominate the market in Ukraine, holding around 92% of the cigarette market share: Philip Morris International led with a 28% market share, followed by British American Tobacco (24%), Japan Tobacco (22%) and Imperial Tobacco (18%)⁸. Ukrainian tobacco manufacture Marvel International Tobacco Group (MITG)⁹ (also known as Vynnyky Tobacco Factory), follows the transnationals and occupies the rest of the market share. Also, it is important to consider the largest tobacco products retail distributor – TEDIS Ukraine when analyzing the tobacco industry. In 2020, this company was suspected to become the main beneficiary of the Government decision on the status of “national distributor of tobacco products”¹⁰.

This is Ukraine’s third report on TI Interference Index, prepared by the civil society organizations, which assesses how the government¹¹ is responding to the tobacco industry’s tactics by using or avoiding using the WHO FCTC Article 5.3 and its Guidelines¹². During the reporting period, the overall TI interference index score, based on the investigated and analysed cases has been calculated as 64. While this score is a bit less than the score of the previous report, its structure is different in many sections. These differences were described in the above introduction and also became the grounds for the following recommendations.

This report uses the questionnaire developed by the Southeast Asia Tobacco Control Alliance (SEATCA)¹³. Information for this report was collected on 20 questions, divided into seven categories, from publicly available sources including government websites, reports published in mass media, reports and websites of tobacco companies. The scores range from 0 to 5. The lower the score is, the better compliance with the WHO FCTC Article 5.3 and its Guidelines.

This report provides evidence for the period of 1 January 2020 to 31 March 2021.

8 The Campaign for Tobacco-Free Kids, The Toll of Tobacco in Ukraine (2019), Available at: <https://bit.ly/34g6wKl> . (Accessed: April 20, 2021).

9 MARVEL International Tobacco Group, Available at: <http://marvel-itg.com>. (Accessed: April 20, 2021).

10 Hromadske, «The government wants to consolidate Tedis’ monopoly on the tobacco market. Earlier, the company was fined for abuse» (2020). Available at: <https://bit.ly/3hYzZAC> . (Accessed: April 20, 2021).

11 According to the SEATCA methodology, for the purpose of this report the term “government” includes all government institutions such as ministries, state services and institutions and their official representatives and staff, representatives of the Office of the President of Ukraine, and representatives of the Parliament of Ukraine, including MPs, their assistants and other official representatives.

12 Framework Convention on Tobacco Control, «Guidelines for implementation of FCTC Article 5.3, Geneva 2008, [decision FCTC/COP3(7)]». Available at: <https://bit.ly/3fLlpsn> . (Accessed: April 20, 2021).

13 Assunta, M. Dorotheo, E. U. SEATCA Tobacco Industry Interference Index: a tool for measuring implementation of WHO Framework Convention on Tobacco Control Article 5.3. April 2015. Available at: <https://bit.ly/3oV2y3G> . (Accessed: April 20, 2021).

Summary findings

1. INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

In the reported period, the tobacco industry, its front and lobbying groups were focused on influencing three blocks of policies. First, due to the tobacco industry interference, primarily through fuelling the legislation spam and interacting with lawmakers on the highest level, the Parliament failed to pass the comprehensive tobacco control bill No. 2813 (later re-registered as bill No. 4358) even in the first reading. The bill was aimed at the implementation of the Directive 2014/40/EU of the European Parliament (also known as Tobacco Products Directive (TPD)¹⁴, which is part of Ukraine’s political and economic obligations under the Agreement of Association between Ukraine and the European Union)¹⁵. This is worth mentioning that the Parliament Committee on the Nation’s Health, Healthcare and Health Insurance (further – Parliament Health Committee) and the majority of its members (MPs) demonstrated their adherence to the public health priority principles, nevertheless, the progress of the policy promotion was undermined.

Second, the tobacco industry actively tried to undermine the tobacco taxation policies, including taxation of HTPs and cigarillos. The industry intensified misleading messages in media about the “increased level of illicit tobacco trade”, including the “projected increase of illicit market of HTPs due to the increased taxes”. By the end of the reporting period, the tobacco industry did not succeed in any tobacco tax policy revision. However, they seem to continue the work on persuading high officials and high risk remains that this policy might be revised in the nearest future.

Third, the tobacco industry seemed to consolidate its front groups and several MPs who continuously have been undermining tobacco control fiscal and non-fiscal measures in the Parliament through registering amendments or separate bills in favour of the industry. This group of MPs that belong to the majority MPs’ fraction of the political party “Servant of the People” in the Parliament, made the work of promoting the tobacco control policies particularly difficult.

2. INDUSTRY CSR ACTIVITIES

The reporting period is characterized by intensified CRS-related activities of the tobacco industry that used the scrutiny of the government at different levels at the beginning of the Covid-19 pandemic in March – April 2020. Several cases of financial support from tobacco companies were spotted such as the provision of medical equipment and personal protective equipment (PPEs) to the government institutions and communal hospitals. These cases were publicly promoted by officials at the local level while

¹⁴ Official Journal of the European Union, «DIRECTIVE 2014/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL» (2014). Available at: <https://bit.ly/3yzDpjf> . (Accessed: May 20, 2021).

¹⁵ Government portal of Ukraine, «Association Agreement between the European Union and Ukraine». Available at: <https://bit.ly/34cRw07> . (Accessed: May 20, 2021).

were rejected by MOH and the Office of the President of Ukraine. Tobacco companies continued supporting some local projects in cities where their production facilities are located.

3. BENEFITS TO THE INDUSTRY

The government avoided providing financial preferences to the tobacco industry and substantially increased tax rates for novel tobacco and nicotine products at the beginning of 2020. Alignment of the tax rates on heated tobacco products with traditional tobacco products (cigarettes) also became a global breakthrough and the best practice. However, active attempts were made to create some preferences for the tobacco product distributors. Thus, some MPs, that were said to be connected with the tobacco retail business tried to lobby favourable amendments to regulate the tobacco retail prices. Also, the government adopted an unprecedented decision to identify a “national distributor of tobacco products”. Even though this decision had not been made operational since September 2020 due to MPs’ collective appeal to the Constitutional Court of Ukraine, this decision demonstrated the government’s readiness to cooperate with the tobacco retailers regardless of the absence of any obvious public interests in it.

At the same time, the Parliament did create the regulatory preferences for the producers of HTPs by the adoption of bill No.3628 (Law No.1019). The bill was finalized by the Parliament Committee on finance, tax and customs policies (further – Parliament Tax Committee) that supported the definition of HTPs as “tobacco-containing products” (not “tobacco products”) and by this having excluded these products from the regulations of tobacco control legislation (in other words, smoke-free and TAPS policies would not apply to HTPs). Also, the Parliament Tax Committee excluded the term “tobacco products” from the tobacco control law No. 2889, which created further difficulties for the tobacco control policy implementation. Moreover, the law enforcement date was postponed by 1,5 years, supporting the current vacuum in HTPs regulations.

4. UNNECESSARY INTERACTION

In the reporting period, the government continued its practice of interactions with the tobacco industry based on the platform of the Memorandum with Mineconomics¹⁶ and on the proposed assistance from the tobacco industry in combating smuggling and illicit trade. Also, the government continued discussing the introduction of the Track&Tracing mechanism with the tobacco industry. So, called “guarantee letter” from the tobacco industry to pay tobacco taxes in advance and secure state budget revenues of about 11 billion UAH should also be mentioned here. This manipulative agreement (that had not been yet fulfilled) was reached under the coordination of some lawmakers of the political party “Servant of people”.

¹⁶ ACCESS TO TRUTH (2021) The text of the Govt memo with tobacco business on transparent, predictable regulation for development of tobacco sector. Available at: <https://bit.ly/3fJzQOX> . (Accessed: April 10, 2021).

5. TRANSPARENCY

No substantial changes were identified in regards to the government transparency for these matters. However, general consideration should be given that during Covid-19 lockdown and restriction measures the overall government transparency and accountability decreased. Official meetings were mostly switched to an online format and were given less visibility. At the same time, based on the Law on Access to Public Information¹⁷, it was possible to receive many documents regarding the activity of the working groups, including protocols of the meetings and participants lists.

6. CONFLICT OF INTEREST

The conflict-of-interest issue is well regulated by the national legislation concerning public servants and lawmakers. However, implementation of these provisions remains weak and in most cases is attached to the anti-corruption measures. Also, cases of conflict of interests are often revealed by the journalists' investigations but follow up measures by enforcement agencies leaves much to be desired. The tobacco industry is prohibited from any contributions to the political parties and no violation cases of this provision were exposed.

7. PREVENTIVE MEASURES

No tobacco industry interference preventive measures were implemented by the government in the reporting period. The previous Index counted Article 5.3 WHO-supported technical seminar for government officials and no similar activities were conducted in 2020. There are enough legislative norms that request information and accountability reports on the content of the tobacco products, licenses, pricing and taxation. However, most of the requirements for the content of tobacco products are basic and yet poorly implemented. Also, tobacco marketing and novel products information is not available and not requested by law.

Recommendations

1. in 2021 Ukraine became among the first cohort of countries that imposed equally high taxation on both conventional cigarettes and heated tobacco products. It is recommended to secure such a policy that will favourably impact both the state budget revenues and public health goals.
2. This report as well as two previous reports highlights that the tobacco industry interference remains the key obstacle for passage of the comprehensive tobacco control bill aimed at closing loopholes in smoke-free, advertising and sponsorship

¹⁷ Law of Ukraine «About access to public information» (2011). Available at: <https://zakon.rada.gov.ua/laws/show/2939-17#Text> . (Accessed: May 20, 2021).

ban and health warning legislation. Thus, the influence of the tobacco industry on decision-makers remained high and results in the absence of substantial progress in the adoption and implementation of life-saving tobacco control measures. It is recommended to the Members of Parliament and the government to stay informed about this challenge and secure public health policies from TI negative impact.

3. The Parliament and the government have already made several attempts to implement EU TPD into the national legislation in recent years. Serious considerations should be given to the obvious trials of the tobacco industry front groups to block any legislation towards EU TPD implementation. It is recommended though to introduce EU TPD as soon as possible, as among the other positive regulations it is introducing higher reporting requirements for the tobacco industry.
4. All forms of novel tobacco products, particularly heated tobacco products should be regulated as conventional cigarettes in terms of smoke-free spaces, TAPS and pictorial-health warnings legislation provisions. It is recommended to decision-makers stay alerted to the misleading and manipulative messages of the tobacco industry about the “reduced harm” of HTPs and impose effective tobacco control regulations as soon as possible.
5. It is recommended to investigate CSR-related activities of the tobacco industry and close the legislative gaps as recommended in the WHO FCTC and its implementation guidelines.
6. Considerations should be given to implementing the best practices of the WHO FCTC Article 5.3 and its implementation guidelines¹⁸ and set the obligations to publicly disclose any results of the meetings and interactions of the government and Parliament representatives with the tobacco industry.
7. Any divergence in taxation of different tobacco products should be perceived as financial incentives to the tobacco industry. The government should ensure equally high taxation on all tobacco products and eliminate differences if any.
8. Legislation amendments should be considered and adopted to require the tobacco industry to report on its expenditure on marketing and lobbying activities.
9. Based on the existing best practices, it is recommended to develop and adopt a code of conduct for government officials when dealing specifically with the tobacco industry.

¹⁸ WHO Framework Convention on Tobacco Control, «Good country practices in the implementation of WHO FCTC Article 5.3 and its guidelines» (2018). Available at: <https://www.seatca.org/dmdocuments/fctc-article-5-3-best-practices.pdf>. (Accessed: April 20, 2021).

2021 Tobacco Industry Interference Index

Results and Findings

Law of Ukraine “On Measures of Prevention and Reduction of Use of Tobacco Products and Their Harmful Influence on People’s Health” No. 2899 (further – Law No.2899) declares the priority of healthcare policy over the financial, tax and corporate interests of economic entities whose activities are connected with the tobacco industry and of participation of individuals and groups of citizens whose activity is not connected to the tobacco industry in the actions taken to prevent and reduce the consumption of tobacco products and their harmful influence on the public health¹⁹. However, this provision remains declarative, since there is no oversight mechanisms or administrative punishment for the representatives of public authorities for not compiling with this provision.

INDICATOR 1: Level of Industry Participation in Policy-Development.

1. The government²⁰ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry²¹ in setting or implementing public health policies in relation to tobacco control²² (Rec 3.1) – 4.

CASE N°1.

On December 24, 2019, the Cabinet of Ministers of Ukraine (CMU) approved the draft Law of Ukraine «On Amendments to Certain Laws of Ukraine on Adaptation of Legislation to the Requirements of Directive 2014/40/EU of the European Parliament» (on the protection of public health from the harmful effects of tobacco)²³, and ordered the Ministry of Health of Ukraine (MoH) to finalize the text by conducting an agreement meeting with the Ministry of Justice of Ukraine (Ministry of Justice), the Ministry of Economics (Mineconomics), the Antimonopoly Committee of Ukraine (AMCU) and the representatives of business associations. The decision also ordered to submit the bill to the Secretariat of CMU for the registration, by January 03, 2021. MoH conducted this agreement meeting with the above-mentioned ministries and the representatives of

19 Law of Ukraine “On measures to prevent and reduce the use of tobacco products and their harmful effects on public health”. Available at: <https://zakon.rada.gov.ua/laws/show/2899-15#Text>. (Accessed: April 22, 2021).

20 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

21 The term, “tobacco industry” includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

22 “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour.

23 Interfax Ukraine (24.12.2019), CMU equates e-cigarettes and the novel tobacco products to tobacco products – Goncharuk. Available at: <https://ua.interfax.com.ua/news/political/632341.html>. (Accessed: April 22, 2021).

the business sector, particularly with the American Chamber of Commerce (ACC), the European Business Association (EBA) and the Federation of Employers of Ukraine (FEU). All these groups have the tobacco industry as their members, and actively promote TI's interests. Even though the bill underwent all necessary agreement procedures and was approved by the order of CMU, participants of the meeting opposed any regulations concerning heated tobacco products, justifying their position by the arguments that HTPs were not directly regulated by the Directive 2014/40/EU (EU TPD).

On January 24, 2020, MoH submitted the bill with minor changes, including some of HTP regulations to the Secretariat of CMU. By law, the Secretariat should have had to redirect it to the Parliament for registration. In reality, the Secretariat for some reason, held back the registration of the bill for more than a month and submitted the bill²⁴ for the registration exactly on the day of the resignation of Prime Minister O. Honcharuk on March 04, 2020²⁵ (bill No. 3163). In this case, according to legislation, all bills submitted on the PM's resignation day should be declined and returned to the policy initiator (MoH) for another round of the agreement with the new government. Taking into consideration that PM's resignation caused the reload of the full government, MoH had not been able to resubmit the bill since then. By this blunt action, the Secretariat crossed out the efforts of the MoH's team towards the adoption of EU-based legislation that included banning flavoured cigarettes and flavoured e-liquids, introducing new health warnings, imposing regulation for e-cigarettes and HTPs, and raise the standards for the tobacco industry accountability.

CASE N°2.

On January 28, 2020, a group of MPs who mainly represent the Parliament Health Committee registered a comprehensive bill No. 2813 "On Amendments to Some Laws of Ukraine on Public Health Protection from Harmful Exposure to Tobacco"²⁶. Aside from provisions that fully reflect the EU TPD regulations, the bill comprised several effective WHO FCTC measures, such as tobacco product display ban, plain packaging and raised tobacco purchase age to 21 years.

The bill was immediately attacked traditionally by registering four "alternative" bills. Cases of registering many alternative bills are known as "legislative spam", it is illustrative of the tobacco industry interference and often makes legislative progress impossible. Thus, after four months of trying in vain to submit bill No. 2813 and the alternative bills for the first reading in the Parliament, the Health Committee decided (or, with high probability – was forced) to create a working group to accommodate various stakeholders' positions when possible and register the new "consolidated" bill in the Parliament. Available intelligence allowed making the conclusions that the Parliament Health Committee was asked to delete the plain packaging from the bill for the sake of future "compromise".

24 Ukrainian Weekly (01.03.2020) Eternal theme. Available at: <https://tyzhden.ua/Politics/240707> . (Accessed: April 22, 2021).

25 Verkhovna Rada of Ukraine (2021) Draft Law on Amendments to Certain Laws of Ukraine on Prevention and Reduction of Harmful Impact of Tobacco Products on Public Health and Harmonization with European Legislation. Available at: <https://bit.ly/3fioNNN> . (Accessed: April 22, 2021).

26 Verkhovna Rada of Ukraine (2021) Draft Law on Amendments to Some Laws of Ukraine on Public Health Protection from Harmful Tobacco Exposure. Available at: <https://bit.ly/2RMStcJ> . (Accessed: April 22, 2021).

Thus, the Parliament Health Committee created a working group that included MPs, experts, civil society and the organizations that pursue the TI interests. Among them were ACC, EBA, National retail distribution organization (NORT) and other organizations (the list is provided here)²⁷. Even though the Parliament Health Committee demonstrated the motivation towards the dynamic and constructive dialogue, and adherence to the public health interests, the work on the consolidating of the bill lasted for 5 months. The Health Committee finally ensured that the strong provision remains in the bill (except plain packaging) while the process took too long and the bill was not prioritized by the Parliament in 2020. The new “consolidated” bill was registered only on November 10, 2020 (No. 4358)²⁸. In December 2020 the Parliament Health Committee recommended this bill again for the first hearing.

However, in January 2021 the Parliament Health Committee recalled the bill by its decision for some revision again. The official reason for this was the adoption of some new regulations of e-cigarettes in December 2020 (draft law No. 3628)²⁹ that required the “harmonisation” of the terminology. It took nearly two months to “revise” and submit the new version of the bill for registration: the new bill with the same number No. 4358 was registered on March 30, 2021. The text of the bill had some “compromises”: deleted 21 years of age purchase limit, 30% health warnings on e-cigarettes instead of 65%, and a prolonged enforcement period for the display ban. As a result, there is an obvious conclusion that the tobacco industry utilized its ties in the Parliament to continue the blockade of the EU TPD implementation, and other tobacco control measures in 2020.

CASE N°3.

In October 2020 media announced that the head of PMI Andree Kalantsopoulos was arriving in Ukraine to meet the President of Ukraine V. Zelenskyi to “discuss the possibility to postpone taxation increase for IQOS”³⁰. Further journalist investigations could not prove or reject this information: an official letter from the President’s Office said they had no information about all meetings of the President of Ukraine³¹.

CASE N°4.

Persons, connected to the tobacco industry continued serving as official MPs’ assistants. Valentyna Khomenko, Director of the Ukrainian association of tobacco manufacturers “Ukrtiutiun» is an assistant to MP Kovalyov³². Serhiy Sholomitskyi, former Head of

27 List of candidates for the working group at the Committee of the Verkhovna Rada of Ukraine on Nation Health, Medical Care and Medical Insurance to develop a draft law on amendments to some legislative acts of Ukraine on the protection of public health from the harmful effects of tobacco. Available at: bit.ly/3fMol3E . (Accessed: April 22, 2021).

28 Verkhovna Rada of Ukraine (2021) Draft Law on Amendments to Some Laws of Ukraine on Public Health Protection from Harmful Tobacco Exposure. Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70397 . (Accessed: April 22, 2021).

29 Verkhovna Rada of Ukraine (2021) Draft Law on amendments to some legislative acts of Ukraine concerning strengthening the responsibility for violation in the field of selling e-cigarettes, and e-liquids for e-cigarettes to minors http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69099

30 FOCUS (28.10.2020) Philip Morris CEO Andre Kalancopoulos arrives for a meeting with Vladimir Zelensky to postpone raising excise taxes on IQOS. Available at: <https://bit.ly/3hR5ahx> . (Accessed: April 22, 2021).

31 Natalia Sokolenko Face Book page (18.04.2021). Available at: <https://bit.ly/3fMui4> . (Accessed: April 22, 2021).

32 Verkhovna Rada of Ukraine (2021), Card of the People’s Deputy of Ukraine of the 9th convocation Kovalov Oleksiy Ivanovych. Available at: <https://itd.rada.gov.ua/mps/info/page/21140> (Accessed: May 23, 2021).

Secretariat of the Parliament Tax Committee, who was suspected of connections with TI³³, is an assistant to MP Zablotskyi³⁴. Both MPs from the fraction “Servant of the People”.

2. The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry. (Rec 3.4) – 4.

CASE N°1.

On January 29, 2020, CMU approved the Action Plan for the implementation of the Strategy to combat illicit production and circulation of tobacco products for the period up to 2021 (Order No. 128-p)³⁵ (further — Strategy). The Action Plan was developed to enforce the Strategy; however, it has several major drawbacks. First of all, although the Strategy³⁶ appoints the State Fiscal Service of Ukraine (SFS) and the Ministry of Health as main implementers, the Action Plan fully excludes MoH’s from the Strategy implementers. Second, the Strategy was developed to implement the WHO FCTC while the Action Plan had no connection neither to the WHO FCTC nor to the Protocol to Eliminate the Illicit Trade in Tobacco (ITP). The tobacco industry was supportive of this plan and participated in its elaboration.

CASE N°2.

In January 2020 – March 2021 several MPs actively promoted legislative amendments favourable for some of the tobacco producers. Thus, the most obvious attempt to endorse the pro-tobacco industry amendment was made on December 16, 2020, by a group of MPs: MP Arakhmiya, MP Zablocky and MP Petrunyak. They defended the position of reducing the excise tax on cigarillos and HTPs (sticks for IQOS and Glo devices). The Parliament previously adopted legislation to increase taxes for heated tobacco products, more known as HEET sticks, produced by PMI, and Neo sticks, produced by BAT, and cigarillos produced mostly by MITG, to the level equal to traditional cigarettes. MPs’ amendments aimed at decreasing both tax levels for the HTP by 33% (320% increase from January 1, 2021, was supposed to change to 200%). The head of the Parliament majority fraction “Servant of the People”, MP Arakhmia was spotted by the journalists promoting his amendment using the arguments of TI and mentioning some agreements with them³⁷.

33 Ukrinform: Transparency international identified the tobacco lobbyists by names <https://www.ukrinform.ua/rubric-society/2243182-transparency-poimenno-nazvala-tutunovi-lobi-v-ukraini.html>

34 Verkhovna Rada of Ukraine (2021), Card of the People’s Deputy of Ukraine of the 9th convocation Zablotsky Mar’yan Bohdanovych. Available at: <https://itd.rada.gov.ua/mps/info/page/21045> . (Accessed: May 23, 2021).

35 Verkhovna Rada of Ukraine (2021), CMU Decree On approval of the action plan for the implementation of the Strategy in the field of combating illicit production and circulation of tobacco products for the period up to 2021. Available at: <https://zakon.rada.gov.ua/laws/show/128-2020-%D1%80#Text> . (Accessed: April 18, 2021).

36 Verkhovna Rada of Ukraine (2021), CMU Decree on the Strategy in the field of combating illegal production and circulation of tobacco products for the period up to 2021. Available at: <https://zakon.rada.gov.ua/laws/show/570-2017-%D1%80#n7> . (Accessed: April 18, 2021).

37 BUKVY (16.12.2020) Arakhmiya invites colleagues to enter into an agreement with tobacco producers. Available at: <https://bit.ly/2RDamee> . (Accessed: April 18, 2021).

In argumentation of his amendment, MP Arakhamia mentioned some “guarantee letter” received from the tobacco producers where they promised to pay a sufficient amount of taxes in advance in case their proposal to decrease taxes will be supported, and warn of possible negative outcomes in another case. After public exposure campaign and strong interventions of several pro-tobacco control MPs, the Parliament did not support these amendments in December 2020.

Again, in February 2021 MP Arakhamia took part in the meeting of the Parliament Tax Committee and convinced its members to support his amendment on reduction of the minimum specific excise on HTPs by 33%, and add it to bill No. 4278 which was initially aimed and changing the postage tariffs. The lawmaker confirmed at his press conference that they (MPs) negotiated with PMI “the guaranteed payment of 11 bln. UAH” in state budget revenue regardless of the sales volumes of the HTPs in 2021 - 2022. He again mentioned that they received “a guarantee letter” from the tobacco producer. Journalist investigations suggested that MP Arakhamia may act by the orders from the President’s Office³⁸. As of March 31, 2021 the amendment was not voted yet.

3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy. (Rec 4.8) – 4.

The law does not prohibit the government to interact with the tobacco industry. Article 4. of Law No. 2899 “On Measures for the Prevention and Reduction of the Use of Tobacco Products and their Harmful Impact on the Health of the Population” includes the following provisions: participation of physical persons, associations of citizens, whose activities are not associated with the tobacco industry, in measures for the prevention and reduction of the use of tobacco products and their harmful impact on the health of the population; priority of the policy in the health sphere in comparison with the financial, tax and corporate interests of entities whose activities are related to the tobacco industry. However, Article 4 of the Law does not include any enforcement mechanism or fines for violation therefore, it’s not properly enforced.

CASE N°1.

EU mission on technical assistance to Moldova and Ukraine (EUBAM) remained to serve as a meeting platform for the government officials and the tobacco industry. Thus, on November, 18-19 November 2020, the EUBAM Annual Task Force Tobacco held a video conference with representatives of government law enforcement agencies of the Republic of Moldova, Ukraine, Poland, Romania, and EU agencies such as Europol and OLAF, as well as Ukrainian Tobacco Association “Ukrutun” and the major cigarette producers. As per the official website the event “provided an opportunity for the participants to share their experience and exchange views on trends, modus operandi, risks, and countermeasures for preventing illicit tobacco trade”³⁹.

38 Yevgeniy Plinskyi’s YouTube channel (28.02.2021) Philip Morris bought the Servants of the People for \$ 3 billion. David Arakhamia is the main tobacco lobbyist. Available at: <https://www.youtube.com/watch?v=5WTZFEIEAwA> . (Accessed: April 18, 2021).

39 EUBAM, «The European Union Border Assistance Mission to Moldova and Ukraine». Available at: <https://bit.ly/3fh7Hlg> . (Accessed: April 10, 2021).

CASE N°2.

As described in Indicator 1.1 (Case 2) the antitobacco bill No.2813 was returned to the Parliament Health Committee by the Parliament decision, due to four “alternative” bills submitted by different MPs. The Parliament Health Committee had to create a working group to accommodate various stakeholders’ positions when possible and register the new “consolidated” bill in Parliament. The working group included MPs, experts, civil society and the organizations that promote the TI interests. Among them were ACC, EBA, NORT and other organizations (a full list of the working group is available⁴⁰).

CASE N°3.

As reported in the previous Index, on December 12, 2019, Mineconomics signed a Memorandum⁴¹ with four transnational tobacco corporations “on the intentions to maintain transparency and competition in the market”, and formed a Working Group⁴² that included a wide range of the tobacco industry representatives, business association, distributors and retailers, and MPs, their consultants and government representatives. In 2020, Mineconomics conducted at least four official meetings of this Working Group to enact the Memorandum. Based on the request of the tobacco control organizations, Mineconomics provided information about the following meetings, their agendas and protocols:

1. The meeting on January 28, 2021, discussed the issues of illicit trade in tobacco products and the taxation policy⁴³.
2. The meeting on February 25, 2020, discussed the issues of the effective administration of the retail tax on tobacco products and the implementation of the trace and tracking system.
3. The meeting on March 11, 2020, discussed the elimination of frauds in working with counteragents and “effective taxation of the heated tobacco products”⁴⁴. The second point was focused on challenging the recent Parliament decision to increased taxes on HTPs three times and align them with traditional cigarettes. The tobacco industry, particularly PMI was strongly opposed to it.

40 NGO LIFE (2021) List of candidates for the working group at the Committee of the Verkhovna Rada of Ukraine on Nation Health, Medical Care and Medical Insurance to develop a draft law on amendments to some legislative acts of Ukraine on the protection of public health from the harmful effects of tobacco. Available at: <https://bit.ly/3fMol3E> . (Accessed: April 22, 2021).

41 ACCESS TO TRUTH (2021) The text of the Govt memo with tobacco business on transparent, predictable regulation for development of tobacco sector. Available at: <https://bit.ly/3fJzQOX> . (Accessed: April 10, 2021).

42 ACCESS TO TRUTH (2021) The list of the attendees present at the meeting of the working group on the implementation of the provisions of the Memorandum of Intent to ensure stability in the tobacco market and maintain a competitive environment for all its participants between the Cabinet of Ministers of Ukraine and tobacco companies. Available at: <https://bit.ly/3fgAynS> . (Accessed: April 10, 2021).

43 ACCESS TO TRUTH (2021) Documents on the meeting under the government memo with tobacco business on transparent, predictable regulation for development of tobacco sector. Available at: <https://bit.ly/2QP6K8I> . (Accessed: April 10, 2021).

44 NGO LIFE (2021) Protocols of the meeting of the work group to implement the government memo with tobacco business on transparent, predictable regulation for development of tobacco sector. Available at: <https://bit.ly/2QUa3eE> (Accessed: April 10, 2021).

4. The meeting on July 10, 2020, that planned to discuss, among other issues the introduction of criminal liability for the illicit tobacco trade. However, Ms Svitlana Panaiotidi, Deputy Minister of Mineconomy and the facilitator of the Working Group declared to the media that she could not conduct the meeting and they failed to discuss any issue. She complained about some MPs who “interfered” in the discussion⁴⁵.

Nevertheless, the tobacco industry in most cases led the discussion and tried to use this platform in their favour, particularly undermining government taxation policy, HTP taxation and trying to lead the Track&Tracing dialogue. Further activity of the Working Group remains unknown, though.

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)⁴⁶ (Rec 4.9 & 8.3) – 1.

The government did not nominate or allow the representatives from the tobacco industry in the delegation to the COP or other subsidiary bodies in 2020.

INDICATOR 2: Industry CSR activities.

5.A. The government agencies or their officials endorses, supports, forms partnerships with or participates in so-called CSR activities organized by the tobacco industry. (Rec 6.2)

5.B. The government (its agencies and officials) receives contributions⁴⁷ (monetary or otherwise) from the tobacco industry (including so-called CSR contributions). (Rec 6.4) – 4.

In 2020, exploiting the COVID-19 pandemic, the tobacco companies provided financial assistance to the health care sector through cooperation with the government on national and local levels. However, when annual reports of tobacco transnationals are published, more cases of “CSR-tagged” events and projects will become evident.

CASE N°1.

On April 7, 2020, Imperial Tobacco together with the Holiivskyi district state administration in Kyiv handed over a lung ventilator worth UAH 550,000 (nearly USD 20,000) to the Kyiv city hospital N°10. This hospital is located in the Holiivskyi district of the capital — where the Imperial Tobacco factory is located. The tobacco producer

45 EUROPEAN TRUTH (10.07.2020) The Ministry of Economy reported a disruption of work on a memorandum with tobacco companies. Available at: <https://www.epravda.com.ua/news/2020/07/10/662840/>. (Accessed: April 10, 2021).

46 Please annex a list since 2009 so that the respondent can quantify the frequency, WHO Framework Convention on Tobacco Control, Parties to the WHO Framework Convention on Tobacco Control (2020), <http://www.who.int/fctc/cop/en/>. (Accessed: April 10, 2021).

47 Political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions.

claimed that “assistance to the local community is one of the main directions of the company’s social responsibility strategy”⁴⁸. Acting Head of the Holosiivskyi district state administration in Kyiv Serhiy Sadova expressed his gratitude to the company for its assistance in purchasing the equipment: “the state, business and society unite in the fight against the spread of COVID 19 and to counter the threatening epidemic”.

CASE N°2.

PMI (Ukraine) donated UAH 10 million (nearly USD 365,000) to the charity fund “Health for All” to “help fighting coronavirus”. According to the head of the charity Sergei Shevchuk, “they were keeping in constant contact with the Ministry of Health and Office of the President to allocate funds as efficiently as possible. According to preliminary estimates, a significant part will be spent on the purchase of personal protective equipment for doctors”⁴⁹. However, both MoH and the Office of the President rejected the receipt of any funding from this charity or the tobacco industry. The Health for All charity spent the PMI money purchasing personal protective equipment (PPE) and donated it to the State Border Service of Ukraine, based on media reports⁵⁰. Also, the charity provided a donation in form of PPE to the National Police of Kharkiv oblast that is highlighted on the official website of the local administration⁵¹. Charity fund “Health for All” regularly received donations from PMI for CSR-related activities.

CASE N°3.

In April 2020, the Deputy Head of the Monastyrskyi rayon council (one of the first rayons in Ternopil oblast struck by a coronavirus at the beginning of April 2020) reported on his Facebook that they managed to reach out to the PMI office in Geneva with support and cooperation of “native from Ternopil” who engaged other “Ternopil native – the Deputy Minister of Foreign Affairs”. The state official reported that due to this high-level assistance PMI is getting ready a humanitarian cargo to cover their needs in medical equipment and PPE. There is no information though whether this cargo ever reached Monastyrskyi rayon. This information though was published in local news⁵².

CASE N°4.

In April 2020, JTI Ukraine provided charitable assistance to the communal hospital in Kremenchuk (two lung ventilators, equipped with accessories, monitor and oxygen concentrator). Local news reported that this equipment would be used to combat the Covid-19 pandemic⁵³. By the way, the JTI factory is located in this city.

48 Imperial Tobacco Ukraine (09.04.2020) Imperial Tobacco helped hospital in Kyiv. Available at: <https://bit.ly/3vlyz7B>. (Accessed: April 10, 2021).

49 US-Ukraine Business Council (06.04.2020) Morgan Williams: More Ukrainian businesses help fight COVID-19. Available at: <https://bit.ly/3oLzrQ0>. (Accessed: April 10, 2021).

50 SLIDSTVO INFO (05.06.2020) IQOS quarantine: how Philip Morris gives money to fight covid-19, at the same time activating smoking advertising. Available at: <https://bit.ly/3wvfHTx>. (Accessed: April 10, 2021).

51 Kharkiv City Council, «Health for all» (2020). Available at: khroda.gov.ua/news/11114 (Accessed: April 10, 2021).

52 UKRAINIAN REPORTER (01.04.2020) Philip Morris is preparing to send humanitarian aid to patients in Ternopil region. Available at: <https://bit.ly/3bOWNPK>. (Accessed: April 10, 2021).

53 Kremenchug Online (29.04.2020) JTI Ukraine purchases new medical equipment for infection department of Kremenchugska hospital. Available at: <https://bit.ly/3wxSboO>. (Accessed: April 10, 2021).

INDICATOR 3: Benefits to the Tobacco Industry.

6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of other tobacco control laws. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1) – 4.

BACKGROUND.

Ukrainian legislation (Article 4 of Law N° 2899 On Measures of Prevention and Reduction of Use of Tobacco Products and Their Harmful Influence on Population Health) protects the government from any requirements of the tobacco industry for granting financial and other preferences and emphasizes, “the priority of health policy in comparison with the financial, tax and corporate interests of economic entities whose activities are related to the tobacco industry.”

In 2020, the government and the Parliament of Ukraine accommodated requests of the tobacco industry both for a longer time frame for implementation and postponement of the tobacco control law. However, these requests have not been presented officially from the tobacco industry but lobbied by their front groups of partners.

CASE N°1.

For example, MP Petrunyak a member of the Parliament Tax Committee initiated an amendment to bills No.1210/1209⁵⁴, which postponed for 6 months (until 01.01.2021) the introduction of a tax on liquids for electronic cigarettes, and increasing duty taxes on cigarillos and HTPs (sticks for IQOS and GLO devices) to the level of cigarettes (300%)⁵⁵. According to the Minister of Finance, due to this amendment, the state budget did not receive an additional UAH 1.5 billion in revenues in 2020⁵⁶. MP Petrunyak was also the co-author of the alternative bill No. 2813-2⁵⁷ and co-author of the bill No.2719-1⁵⁸ that were aimed at creating additional barriers for the comprehensive anti-tobacco bill No.2813, that among the other EU TPD provisions, intended to ban advertising, smoking in public

54 Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Tax Administration, Elimination of Technical and Logical Inconsistencies in Tax Legislation. Available at: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66518. (Accessed: April 10, 2021). Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to Certain Legislative Acts of Ukraine Concerning Improvement of Tax Administration, Elimination of Technical and Logical Inconsistencies in Tax Legislation. Available at: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66518. (Accessed: April 10, 2021).

55 NGO Centre for Democracy and Rule of Law (17.12.2020) MPs and government servants receive an anti-award “Golden Spit 2020” for tobacco lobbyism. Available at: <https://cedem.org.ua/news/antypremiya-zolota-kosa/>. (Accessed: April 10, 2021).

56 The Committee on Taxation, Finances and Customs Policy (2021) The records of the meeting (p. 18). Available at: (<http://komfinbank.rada.gov.ua/uploads/documents/32865.pdf> (the recording of the Financial Committee meeting, p. 18). (Accessed: April 10, 2021).

57 Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to Some Laws of Ukraine on Public Health Protection from Harmful Tobacco Exposure. Available at: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68152. (Accessed: April 10, 2021).

58 Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to Certain Legislative Acts of Ukraine on Alignment of Ukrainian Legislation with the Requirements of Directive 2014/40 / EC of the European Parliament and of the Council of 3 April 2014 on Regulation of the Production and Circulation of Tobacco and Electronic Cigarettes. Available at: <https://bit.ly/2Su06VK>. (Accessed: April 10, 2021).

places and sales of IQOS and GLO tobacco products and smoking devices to minors in Ukraine. Also, MP Petrunyak's bill did not prohibit the smoking of HTPs in public places (schools, hospitals, kindergartens, universities, playgrounds, public transport and other places of use) and kept an advertising display of tobacco products, e-cigarettes, HTPs at points of sale (shops, kiosks, supermarkets).

CASE N°2.

Another MP Zablotskyi, a member of the Parliament Tax Committee also demonstrated his support and promotion of favourable legislative provisions for the tobacco industry. The lawmaker initiated and registered bills No.2813-2, 2719-1 which were aimed at creating additional barriers for the comprehensive anti-tobacco bill No.2813 and thus served the interests of the tobacco industry. MP Zablotskyi was also the author of bill No.3044a, which returns the tax rate calculation approach for HTP by weight (and not by sticks), and thus would have reduced the tax rate proposed in law No.466, that had already been enforced by that time.

Generally, as stated before, the comprehensive tobacco control bill No. 2813 was hampered by four alternative bills that made its first hearing impossible. Such an approach is called “legislative spam” and was widely used by the tobacco industry representatives before. In this case, even though not all the MPs that registered alternative bills might have been connected to the tobacco industry, regardless of their activity undermined any progress in tobacco control towards the implementation of EU TPD in 2020. Aside from the above-mentioned bill No. 2813-2, the other bills were No. 2813-1 (MP Chorny), No. 2813-3 (MP Yurchenko), and No. 2813-4 (MP Pavlovskyi). Also, another bill No. 2719 (MP Klympush-Tsensadze)⁵⁹ served the purpose of hampering bill No. 2813.

CASE N°3.

The same story was repeated in November 2020 when the new consolidated version of the tobacco control draft law was registered under the new number No. 4358⁶⁰. Regardless, several MPs again repeated the legislative spam practice and four alternative bills were registered, in particular: bill No. 4358-1 (MP Zablotskyi, MP Petruniak, MP Kovalyov), bill No. 4358-2 (MP Shynkarenko), bill No. 4358-3 (MP Galaichuk), bill No. 4358-5 (MP Zablotskyi, MP Petruniak). Two MPs – Zablotskyi and Petruniak – registered two bills! Thus, legislation blockade instruments were utilized by the pro-tobacco industry MPs to create difficulties for the passage of the legislation and promote pro-industry positions.

As a result of these actions, we see that the Parliament sometimes supports a longer time frame for implementation or postponement of the legislation that is referred to as

59 Verkhovna Rada of Ukraine (2021) Draft Law on Amendments to Certain Legislative Acts of Ukraine on Adaptation of the Legislation of Ukraine to the Requirements of the Directive of the European Parliament and of the Council 2014/40 / EU of 3 April 2014 on Approximation of Laws, By-Laws and Administrative Regulations of Member States and the sale of tobacco products and related products and repealing Directive 2001/37 / EC. Available at: <https://bit.ly/3wv5iqN> (Accessed: April 22, 2021).

60 Verkhovna Rada of Ukraine (2021) Draft Law on Amendments to Some Laws of Ukraine on Public Health Protection from Harmful Tobacco Exposure. Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70397. (Accessed: April 10, 2021).

the tobacco control or even postpone its consideration endlessly. Such situations are moderated by the MPs who, by their actions demonstrate furthering the interests of the tobacco industry.

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry (Rec 7.3) – 4.

BACKGROUND.

According to Article 10 of the Law of Ukraine No.2899 “On Measures of Prevention and Reduction of Use of Tobacco Products and Their Harmful Influence on People’s Health,” it is prohibited to support manufacturing (import) of tobacco and tobacco products for sales in the customs area of Ukraine in the form of public financing, provision of financial aid, financial guarantees, grants, subsidies, subsidized loans from the funds of the National Budget of Ukraine and local budgets to respective economic entities.

CASE N°1.

On September 9, 2020, the CMU adopted the Decree⁶¹ “National operator on the tobacco product market” that “will provide logistical and informational services for the market and the state”. The document was developed jointly by the Ministry of Finance and Mineconomics. It is also known that the development and promotion of the document was largely the responsibility of the Deputy Minister of Economics S. Panaiotidi, also known as the head of the Working Group on the Memorandum. By the way, she received one of the tobacco interferences anti-award (“Golden Brake”) regularly conducted by the activists of NGO “Life”⁶², NGO “Anti-corruption Headquarter”, NGO “CEDEM” and others. This government decision created unprecedented favourable conditions for the largest tobacco retail monopoly “Tedis Ukraine” that controls, on different estimations from 60 to 80% of the tobacco retail market. By granting any tobacco product distributor a special status of the “national operator” the government offers a privileged position and freezes the monopoly status of the company. The Decree was widely criticized and later was challenged by a group of 46 MPs in the Constitutional Court (allegations continued in 2021). This decision also created obstacles for the legal challenges issued by the AMCU against the monopoly created by “Tedis Ukraine”. This decision also undermined the efforts of the AMCU to further investigate the probable cartel conspiracy agreement of the tobacco producers and giant retailer “Tedis Ukraine”, and impose fines. On March 17, 2021, the AMCU decided to impose the fine in the case of violation of the legislation on protection of economic competition of “Tedis Ukraine”. The decision said, “the company had not fully complied with the AMCU’s decision and was fined UAH 274,227,220 for this violation in 2016”⁶³. The tobacco industry started challenging the AMCU decision in national and international courts.

61 Cabinet of Ministers of Ukraine (09.09.2020) The government supported the proposal of the Ministry of Economy to establish a National Operator in the tobacco market. Available at: <https://bit.ly/2Ss1fg9> . (Accessed: April 10, 2021).

62 NGO LIFE (17.12.2020) MPs and government servants received an anti-award «Golden scythe - 2020» for tobacco lobbyism. Available at: <https://bit.ly/3udbMt2> . (Accessed: April 10, 2021)

63 Anti-Monopoly Committee of Ukraine (17.03.2021) AMCU fined TEDIS UKRAINE LLC UAH 274 million for incomplete implementation of the Committee’s decision. Available at: bit.ly/3wyWAYW . (Accessed: April 10, 2021)

CASE N°2.

MP Kovalyov, a member of the Parliament Tax Committee initiated the bills that with high probability would have created some benefits for the tobacco industry. Among these bills were: No. 3016-1⁶⁴ (18.02.2020), No. 2501⁶⁵ (27.11.2019), No. 2502⁶⁶ (27.11.2019), No. 2503⁶⁷ (27.11.2019) However, the bills were not supported by Parliament in 2020. The bills were registered, supposedly in the interests of the tobacco industry as part of their “price wars” with the representatives of distributors. Bill No. 3016-1 also provided possibilities for forestalling. Other bills include shifting the retail excise tax to the level of producers and increasing licensing requirements for tobacco distributors. In addition to the context of the struggle for economic interests between the participants in the tobacco supply chain, the transfer of local excise duty to the level of tobacco producers is used by tobacco companies as an argument for the government’s refusal to further increase excise tax.

CASE N°3.

Certain benefits were given to the tobacco industry, particularly for the HTPs producers by the Parliament through the adoption of bill No.3628 (Law No.1019). The bill was finalized by the Parliament Committee on Finance, Tax and Customs Policy that supported the definition of HTPs as “tobacco-containing products” (not “tobacco products”). This definition excluded HTPs from the tobacco control legislation framework that is applicable only for the “tobacco products” so far. In other words, HTPs continued having regulatory exceptions and avoid enforcement of smoke-free and TAPS legislation on them. Also, the adopted definition for HTP devices may be perceived tobacco consumption with them is less harmful, that is the hidden marketing stimulus. Also, the Committee excluded the term “tobacco products” from the tobacco control law No. 2889, which created further difficulties for the tobacco control policy implementation, regardless of the scope of the regulations. Even though, the law enforcement date was postponed by 1,5 years, supporting the current vacuum in HTPs regulations.

CASE N°4.

The Parliament Committee on Finance, Tax and Customs Policy supported amendment No. 175 to bill No. 4065 that was aimed at cancel the minimum specific excise rates for cigarillos. The experts believe that this provision could have created a favourable tax regime (reduced tax) for cheap cigarillos produced by the Vynnyky Tobacco Factory. However, the Parliament did not support this amendment.

64 Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to the Tax Code of Ukraine (on improving the mechanism of excise tax collection in the sale of tobacco products). Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=68173. (Accessed: April 10, 2021).

65 Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to Certain Legislative Acts of Ukraine (on Improving the Mechanism of Excise Tax Collection in the Sale of Tobacco Products). Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=67483. (Accessed: May 23, 2021).

66 Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to the Tax Code of Ukraine (on Improving the Excise Tax Collection Mechanism in the Sale of Tobacco Products). Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=67483. (Accessed: May 23, 2021).

67 Verkhovna Rada of Ukraine (2021), Draft Law on Amendments to the Budget Code of Ukraine (on improving the mechanism of excise tax collection in the sale of tobacco products). Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=67484. (Accessed: April 10, 2021).

INDICATOR 4: Forms of Unnecessary Interaction взаємодії.

8. Top-level government officials (such as President/ Prime Minister or Minister⁶⁸) 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) – 4.

CASE N°1.

In October 2020, the media informed that the head of the PMI, Andree Kalantsopoulos, was arriving in Ukraine to meet with the President of Ukraine V. Zelenskyi to “discuss the possibility to postpone increase of the taxes for IQOS”⁶⁹. An official response from the President’s Office to one of the journalists requests neither proved nor discarded these suspicions, mentioning that they had no information about all meetings of the President of Ukraine⁷⁰. This period, however, coincided with the beginning of the campaign headed by the Head of the President Fraction in the Parliament “Servant of the People” to undermine the approved taxation plan for HTPs for 2021, and to lower tax rates for HTPs and cigarillos in 2021. The legislative attempts are being made on the highest Parliament level to decrease taxes for HTPs sticks by 33%.

CASE N°2.

On February 11, 2020, the Security Service of Ukraine (SSU) conducted a high-level meeting with the MPs, Minister of Finance, Minister of Internal Offers, Deputy Minister of Economics, Association “Ukrutiun” and “representatives of the business environment”⁷¹. The head of the SSU informed about the illicit trade growth to 7% of the market, which was not supported by any publicly available substantial or trusted reports, or surveys. Based on the meeting results, Association “Ukrutiun” prepared a letter with various supporting clauses for SSU initiatives, primarily on the criminalization of the illicit trade, but also suggested support and cooperation on the revision of the retail tax administration procedures and the implementation of the Trace&Tracking system, based on the WHO FCTC ITP and EU TPD⁷². This document was made publicly available through the NGO official document request.

68 Includes immediate members of the families of the high-level officials.

69 FOCUS (28.10.2020) Philip Morris CEO Andre Kalanopoulos arrives for a meeting with Vladimir Zelensky to postpone raising excise taxes on IQOS. Available at: <https://bit.ly/3hR5ahx>. (Accessed: April 22, 2021).

70 Natalia Sokolenko Face Book page (18.04.2021). Available at: <https://bit.ly/3fFMui4> (Accessed: April 22, 2021).

71 Ukrinform, «The head of the Security Service of Ukraine Ivan Bakanov called on the heads of law enforcement agencies, tax and customs services to introduce joint mechanisms to combat smuggling and the illegal market of tobacco products» (2020). Available at: <https://bit.ly/3fHaK3a>. (Accessed: April 22, 2021).

72 Access to truth, Letter to the Minister of Trade, Economic development, and Agriculture of Ukraine Milovanov Timothy (2020). Available at: <https://bit.ly/3wofZeW>. (Accessed: May 20, 2021).



Photo: State Security Service.

CASE N°3.

In December 2020 – March 2021, the Head of the Parliament majority fraction “Servant of the People”, MP Arakhamia was promoting legislative amendments to decrease the taxation level for HTPs mentioning some agreement with the tobacco companies⁷³. In argumentation of his position, MP Arakhamia told the journalists about some “guarantee letter” received from the tobacco producers where they promised to pay a sufficient amount of taxes in advance in case their proposal to decrease taxes will be supported. Thus a key legislator from the majority faction in parliament publicly confirmed meeting with the tobacco industry and engaging in certain arrangements with them. In addition, the people’s deputy acted in a certain way beyond his authority, as taxation policy has always been the prerogative of the CMU, in particular the Ministry of Finance of Ukraine, which has opposed any tax reductions.

9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforce smoke-free policies or no sales to minors. (Including monetary contribution for these activities) (Rec 4.3) – 4.

73 BUKVY (16.12.2020) Arakhamiya invites colleagues to enter into an agreement with tobacco producers. Available at: <https://bit.ly/2RDamee> . (Accessed: April 18, 2021).

CASE N°1.

On March 11, 2020, Mineconomy held one of the meetings of the Work Group on the implementation of the Memorandum with the tobacco producers. The official government website⁷⁴ informs that representatives of the Security Service of Ukraine (SSU), the AMCU, MPs and tobacco producers discussed the establishment of the commercial policies of additional mechanisms to control the work with unscrupulous counterparties. The Adviser to the Head of the SSU noted the readiness to cooperate, among the others, with tobacco manufacturers “to combat unscrupulous contractors, to avoid tax evasion, smuggling, counterfeiting and illicit trafficking in tobacco products”. AMCU said they were working on the draft commercial policies in “dialogue with tobacco producers”.

CASE N°2.

On August 19, 2020 the Head of the State Border Service of Ukraine (SBS) Serhiy Deyneko conducted the meeting with representatives of Philip Morris Ukraine and JTI to “discuss possibilities for furthering cooperation to combat illicit tobacco trade”⁷⁵.



BS website: State Border Service of Ukraine meets with representatives of Philip Morris Ukraine

CASE N°3.

On June 29, 2020, the Parliament weekly “Uryadovyi Currier” informed that the Head of the State Taxation Service of Ukraine (STS) “begins the cooperation with legal tobacco manufactures to strengthen measures to fight illicit tobacco trade”⁷⁶.

74 Ministry of the Development of Economy, Trade and Agriculture of Ukraine (11.03.2020), The Ministry of Economy discussed the issues of working with unscrupulous contractors in the tobacco market. Available at: <https://bit.ly/3hUWQNA> . (Accessed: April 10, 2021).

75 The State Border Service of Ukraine (19.08.2020) The State Border Service is stepping up cooperation in combating the illicit trafficking of tobacco products. Available at: <https://bit.ly/3fJnsyn> . (Accessed: April 10, 2021).

76 URIADOVYI CURRIER (26.06.2020) The State Tax Service involves tobacco companies in the fight against tobacco trafficking. Available at: <https://bit.ly/34eV41P> . (Accessed: April 10, 2021).

CASE N°4.

In the article published under the support of JTI (November 4, 2021), the acting head of the State Fiscal Service of Ukraine (SFS) was cited as claiming the benefits of their cooperation with the cigarette producers, as they help to destroy the confiscated cigarettes while “before these cigarettes might appear on the illicit market”⁷⁷. There is no logical background for the statement why cooperation with JTI at this stage will curb the illicit market by such actions, as tobacco companies have always participated in special commissions to destroy confiscated tobacco products. Indeed, in December 2019 the CMU adopted a special Decree on the new order to destroy the confiscated tobacco products through independent providers⁷⁸. However, this is not clear how the participation of JTI would make this process more effective.

CASE N°5.

The State Service of Ukraine for Food Safety and Consumer Protection (SSUFSCP), which is the key tobacco control policies enforcement agency (non-price measures), regularly uses the expert assistance of NGO “All-Ukrainian Advertising Coalition”⁷⁹ (the Coalition) to verify public complaints on tobacco advertising ban violations. At the same time, Philip Morris Ukraine is among the members of this NGO, and such assistance may have signs of a conflict of interest. Coalition members are mainly from the business sector and may have an interest in easing regulations on tobacco advertising bans, as they may receive funds from indirect tobacco advertising and advertising of e-cigarettes and HNB smoking devices. The State Service of Ukraine on Food Safety and Consumer Protection relies on the findings of this NGO and uses them in its official responses to complaints from the public about tobacco advertising.

CASE N°6.

On October 21, 2020, Serhiy Solodchenko, the Head of the SFS and the Head of the State Border Service of Ukraine (SBS) Serhiy Deyneko held a joint press conference with representatives of JTI Ukraine on the topic «Cigarette smuggling in Ukraine is growing for several years in a row and causing great damage to the economy. How the government and business are solving this problem»⁸⁰. During the press conference was presented the project «No to Smuggling!»⁸¹ was initiated by JTI with the support of SFS and SBS.

77 LIGA.NET (04.11.2020) United for legality. Three methods to combat cigarette smuggling. Available at: <https://project.liga.net/projects/kontrabanda-sigaret-borotba/>. (Accessed: April 10, 2021).

78 Cabinet of Ministers of Ukraine (11.12.2019) Denis Malyska: A new procedure for the destruction of confiscated excisable goods has been established. Available at: <https://bit.ly/3ujhkSO>. (Accessed: April 10, 2021).

79 All-Ukrainian Advertising Coalition (2021). Available at: <https://vrk.org.ua/contacts.html>. (Accessed: April 10, 2021).

80 Interfax.com. (21.10.2020) «Cigarette smuggling in Ukraine is growing for several years in a row and causing great damage to the economy. How the government and business are solving this problem.» Available at <https://ua.interfax.com.ua/news/press-announcement/695546.html>. (Accessed: May 23, 2021).

81 Nicontrabandi, «No to smuggling» is a project of JTI Ukraine with support of SFSU and SBGSU. Available at: <https://www.nicontrabandi.org.ua/>. (Accessed: May 23, 2021).

10. The government accepts, supports endorses, or enters into partnerships or agreements with the tobacco industry. (Rec 3.1) NOTE: This must not involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions. – 3.

CASE N°1.

On October 06, 2020, the SFS published a news release with the key message that coincides with the title of the interview of the Head of SFS in one of the online economic news websites⁸² that reads: “Head of SFS: this year we confiscated 94% more counterfeited cigarettes than last year”. This interview was prepared as part of the “special project” with the media (paid content), sponsored by JTI. Regardless of this fact, SFS reposts the message and the article on its official website. However, the title of the article is manipulative as in its interview Mr Solodchenko did not say this. Also, even the counterfeited cigarettes were mentioned in the interview, this had not been noted as the most significant problem. Moreover, no facts were presented about the manufactures of the counterfeited cigarettes. So, it is possible to conclude that SFS was in some partnership agreement with JTI.

CASE N°2.

On January 29, 2020, the Mineconomics signed Order No.101⁸³ on the establishment of a working group on the implementation of the provisions of the Memorandum (further – Memorandum) to ensure stability in the tobacco market and support a competitive environment for all its participants, between the CMU and tobacco companies. On January 28, 2020, the first meeting of the working group on the implementation of the Memorandum took place. The official government website informs about the participants of the Working Group headed by Deputy Minister Ms Panaiotidi. Among them are MPs, representatives of the Ministry of Economics, the Ministry of Finance, the Antimonopoly Committee of Ukraine and the State Tax Service of Ukraine, representatives of tobacco producers and distributors, as well as NGOs. Association “Ukrtyutyun” presented the new schedule of the annual increase of the minimum duty tax that undermines the existing annual tax increase plan. It is said that the working group agreed to prepare proposals to changing the schedule of excise tax increases, and submit them for the consideration of the Ministry of Finance of Ukraine⁸⁴. Even though the taxation rate was not changed as of March 30, 2021, such a position is used by the tobacco industry to continue lobbying for their cause.

82 Economic truth, «Chairman of the State Fiscal Service: This year we seized 94% more counterfeit cigarettes than in the past» (2020). Available at: <https://bit.ly/3ukZ2Aq>. (Accessed: May 20, 2021).

83 LIGA.ZAKON (30.01.2020) The Mineconomy Order No. 101 (29.01.2020) On the establishment of a working group to implement the provisions of the Memorandum of Intent to ensure stability in the tobacco market and maintain a competitive environment for all its participants between the Cabinet of Ministers of Ukraine and the tobacco industry. Available at: <https://ips.ligazakon.net/document/ME200054>. (Accessed: April 10, 2021).

84 Ministry of the Development of Economy, Trade and Agriculture of Ukraine (28.01.2020), The working group on the functioning of the tobacco industry initiates a

INDICATOR 5: Transparency.

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) – 3.

The legislation does not directly require the government to publicly disclose meetings/ interactions with the tobacco industry. The transparency of activities of the government representatives, policy-makers and local authorities is regulated by the law “On Access to Public Information”. According to Article 1 of this law “Public information is the information, recorded or documented by any means and at any drivers, which was received or created in the course of the fulfilment by the subjects of the authorities of their duties under the current legislation, or which is in the possession of the subjects of authority, and other administrators of public information, determined by this Law. Public information is open, except in cases established by this law”.

This law, however, has no clear obligations for the government and state authorities to record the meetings with representatives of business entities and/or publicize announcements of such meetings. Such information might be received through separate requests for public information from the respected information holder in the manner established by this law. The response time depends on the status of the complainant and varies from 5 to 10 days. This law remains one of the key instruments for receiving various internal information and data from the authorities of different levels for advocacy and research groups as well as for anti-corruption organizations. The enforcement system exists and applicants may refer to courts in case the necessary information is not provided. For example, most of the documents on the Memorandum and the Working Group were received by the tobacco control NGOs through the above-mentioned mechanisms.

To conclude, it is hard to evaluate the level of public transparency of the meetings of the tobacco industry with the government representatives. However, consideration should be given to the fact that many such meetings stay unreported.

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) – 3.

The law requires official registration of the tobacco manufacturers, and the license holders for the wholesale and retail distribution, export and import operations, and this data is open to the public. The official registry of the manufacturers and distributors of tobacco products is regularly updated and published by the State Fiscal Service of Ukraine⁸⁵.

The government, however, has no system for the disclosure or registration of tobacco affiliate organizations and individuals acting on behalf of the tobacco industry including

85 The State Fiscal Service of Ukraine (2021). Available at: <https://bit.ly/3fHOsOH> . (Accessed: April 10, 2021).

lobbyists. Generally, this reflects that national legislation specifically does not regulate lobbying activities.

INDICATOR 6: Conflict of Interest.

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) – 1.

The Law of Ukraine No.2899 “On Measures of Prevention and Reduction of Use of Tobacco Products and Their Harmful Influence on People’s Health”⁸⁶ prohibits all forms of financial or other support by the tobacco industry to events, activities, individuals, or groups, including political parties or politicians, sportsmen or sports teams, artists or artist groups, and educational institutions of any form of ownership. The law also prohibits the tobacco industry to provide financial support to informational campaigns or events for the public, including youth prevention programs. These prohibitions apply regardless of whether the financial contribution or support is publicized.

The law “Political Parties in Ukraine”⁸⁷ also requires the public disclosure of financial contributions to the political parties. While this legislation provision is effective in preventing any support of the tobacco manufacturers to political parties, in reality, TI may be involved in supporting politicians on the national and local levels. For example, the lawyer of Vynnyky Tobacco Factory became a member of the Lviv city council in November 2020 (No.19 in the list of political party “European Solidarity”)⁸⁸.

14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4) – 1.

According to Article 28 of the Law of Ukraine “On Principles of Prevention and Counteraction to Corruption”⁸⁹, civil servants in respect of whom a conflict of interest has been confirmed must be dismissed within 3 days, or measures must be taken to resolve the conflict of interest. During the reporting period, no examples of dismissal of civil servants due to conflict of interest were found.

The public service employees, according to the Law of Ukraine «On Principles of Prevention and Counteraction to Corruption» are restricted by law to occupy any position in the organizations or companies that they coordinated, cooperated with or oversight when performing their public service functions during one year after the resignation. No

86 Law of Ukraine “On measures to prevent and reduce the use of tobacco products and their harmful effects on public health”. Available at: <https://zakon.rada.gov.ua/laws/show/2899-15#Text> . (Accessed: April 22, 2021).

87 Verkhovna Rada of Ukraine (2021), law “Political Parties in Ukraine”. Available at: <https://zakon.rada.gov.ua/laws/show/2365-14#Text> . (Accessed: April 10, 2021).

88 PORTAL.LVIV.UA (03.11.2020) Who are the new Lviv City Council Members? Available at: <https://bit.ly/3unRa13> . (Accessed: May 20, 2021).

89 Department of Justice, «ANTI-CORRUPTION RESTRICTIONS ON PERSONS WHO HAVE STOPPED ACTIVITIES RELATED TO THE PERFORMANCE OF STATE OR LOCAL GOVERNMENT FUNCTIONS». Available at: https://minjust.gov.ua/m/str_38636 . (Accessed: May 20, 2021).

cases of government officials forming part of the tobacco industry were disclosed during the reporting period.

15. Current government officials and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10) – 3.

CASE N°1.

As previously reported, MP Kholodov, a member of the Parliament Committee on Finance, Tax and Customs Policy by his law-making activity demonstrated his adherence to the tobacco industry interests⁹⁰. He also hired Ms L. Vasylenko as his MP's assistant, who, based on the journalist's investigation, became the owner of a large tobacco product retailer⁹¹.

CASE N°2.

The wife of the staff member (public servant) of the Parliament office on the position of technical consultant at the Parliament Committee on Finance, Tax and Customs Policy Mr V. Yushchenko, according to his annual tax declaration was employed at the JTI office as the government relation officer⁹². This Committee is the key Parliament authority to develop and approve any tobacco tax-related legislation.

INDICATOR 7: Preventive Measures.

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) – 5.

The government authorities, local authorities and members of the Parliament on their choice may publicize different types of information in regards to their interactions with private sectors, including the meetings and events with tobacco companies and their front groups as news feeds or for public relations purposes. At the same time, there is no system of announcements of such meetings, public access (except mass media) is limited and in most cases, neither minutes nor transcripts are made publicly available. At the same time, all meetings of the parliamentary committees were possible to view online and receive the minutes and transcripts through additional requests.

As for official meetings of the Cabinet of Ministers where tobacco industry front groups may be present and make interventions, the transcripts of such meetings are not publicly available. However, the decisions of such meetings, if any, may be formalized as publicly available protocols. At the same time, the content of such meetings and as well as the documents of the tobacco industry stay beyond public monitoring.

90 RADIO SVOBODA (13.05.2019) «Schemes» proved that the deputy Kholodov is still connected with tobacco business and lobbied in Rada the interests». Available at: <https://bit.ly/3fkVdr0> . (Accessed: April 10, 2021).

91 RADIO SVOBODA (26.09.2019) Medvedchuk's godfather from «Servant of the People» took his wife's business partner as deputy assistants. Available at: <https://bit.ly/3ff66KO> . (Accessed: April 10, 2021).

92 National Anti-Corruption Bureau of Ukraine (2021), Universal State Register of Declarations. Available at: <https://bit.ly/3fHOGW3> . (Accessed: April 15, 2021).

Information about some of the meetings that the government representatives have with the public, business, etc. is disclosed as the record of the agenda, attendees, minutes, outcomes. However, there is no specific policy, procedure, rule related to disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives. However, the Law on Access to Public Information is fully applicable to the interactions of the government and the tobacco industry.

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) – 4.

There is no policy in place that specifically prescribes the standards with which public officials should comply in their dealings with the tobacco industry. The Ethical code for public servants and local authorities⁹³ also does not specifically cover interactions with the tobacco industry, and rather regulates interactions with business generally.

The WHO FCTC Article 5.3 and its implementation guidelines recommend to the Parties to “avoid conflicts of interest for government officials and employees” (recommendation No. 4). In recent years Ukraine improved its anti-corruption legislation and some new provisions could safeguard the implementation of this recommendation. Thus, Article 1 of the law “On Corruption Prevention”⁹⁴ has definitions of the conflict of interests as a potential conflict of interest — the presence of a person’s private interest in the sphere in which he/she performs its official or representative powers, which may affect the objectivity or impartiality of its decisions or the commission or non-execution of actions in the exercise of these powers; private interest - any property or non-property interest of a person, including due to personal, family, friends or other non-governmental relationships with individuals or legal entities, including those arising from membership or activity in public, political, religious or other organizations.

This law is referred to all types of government servants and officials, members of Parliament, members of judiciary systems, and even to workers of non-governmental in the sphere of anti-corruption. However, there are no precedents when the government or state officials were officially accused of having a conflict of interest in regards to private interests with connections to the tobacco industry. This provision could provide an important prevention mechanism for the government and public officials.

Cases of conflict of interests were present in the Parliament when MPs were affiliated with promoting the interests of some business or were connected to it in some ways. Such cases were disclosed among the MPs though the law enforcement mechanisms are weak.

93 NADS (2021), Ethical code for public servants and local authorities <https://nads.gov.ua/news/etichnij-kodeks-derzhavnih-sluzhbovciv-ta-posadovih-osib-miscevogo-samovryaduvannya>

94 Verkhovna Rada of Ukraine (2021), Law of Ukraine on corruption prevention with recent changes. Available at: <http://zakon.rada.gov.ua/laws/show/1700-18> . (Accessed on 31.03.2021).

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) – 4.

Ukrainian legislation sets various requirements for the tobacco industry in regards to information and data sharing. Requirements for the substances, ingredients and emissions are set by the tobacco control law No. 2899 in Article 11, that specifies that MoH should publish annually the lists of substances and components of tobacco products and tobacco smoke that are harmful to human health, as well as inform the population through the media about harmful substances and ingredients of tobacco products and tobacco smoke. Additionally, manufacturer or importer of tobacco products on request of MoH, is obliged in the order established by the CMU, provide information on the content of substances harmful to human health: nicotine, tar and other harmful substances and ingredients contained in tobacco products and tobacco smoke.

In reality implementation of these requirements is neglected. MoH does not regularly publish the lists of substances of tobacco products and tobacco smoke. There is also no information available on whether MOH requested manufacturers or importers of tobacco products to share information about the substances harmful to human health contained in their products.

Another law “On state regulation of manufacturing and circulation of alcohol and tobacco products” in Article 9-1 set clear obligations for the manufacturers to submit annually to the central state executive body in the sphere of sanitary and epidemiology well-being of the population (shared responsibility of MoH and the State Service of Ukraine for Food Safety and Consumer Protection) the following information:

- a list of ingredients added to tobacco separately for each brand name of tobacco products;
- a summary list of ingredients added to tobacco for all brand name of tobacco products;
- a comprehensive list of ingredients used in non-tobacco components of tobacco products.

This law also obliges the manufacturers of tobacco products to inform the government (State Fiscal Service) about available manufacturing machines that should be registered in the Unified Register of Equipment⁹⁵. To summarize, the following information is collected and publicized by the authorities with various regularity (aside from fiscal reporting):

- tobacco product production, export and import volumes;
- revenues from the tobacco taxes (part of the State Budget monitoring data);
- product price index including the tobacco products;

⁹⁵ The State Fiscal Service of Ukraine, «Register of issued, suspended, revoked licenses for the right of retail trade in alcoholic beverages and tobacco products» (2021). Available at: <https://bit.ly/3fHOsOH> . (Accessed: April 10, 2021).

- maximum retail prices by companies and by brands;
- tobacco production and distribution license holders;
- tobacco production equipment;
- information about seizures of illicit tobacco products.

The following information is known to be collected but not publicized:

- sales volumes;
- substances and emissions of tobacco products and tobacco smoke;
- new types of tobacco products that are launched on the market.

There are obvious gaps in both information collection and obligations to make this information publicly accessible. The tobacco industry does not provide information on the marketing of tobacco such as incentives given to the retailers, promoters, marketing spending on tobacco displays at the points of sale. The tobacco industry is not obliged to report expenditures on lobbying.

19. The government has a program / system/ plan to consistently⁹⁶ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2) – 4.

No activities were spotted in support of this criteria.

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) – 2.

The law prohibits all forms of financial or other support by the tobacco industry to events, activities, individuals, or groups, including political parties or politicians, sportsmen or sports teams, artists or artist groups, and educational institutions of any form of ownership. The law also prohibits the tobacco industry from providing financial support to informational campaigns or events for the public, including youth prevention programs. These prohibitions apply regardless of whether the financial contribution or support is publicized. However, the enforcement measures of these provisions are poorly monitored and weak. Based on the information provided in the above sections, the tobacco industry was spotted breaking these rules, and the government stays passive in the implementation of the WHO FCTC Article 5.3 and its Guidelines measures.

TOTAL: 64.

96 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.

Annex A: sources of information

TOBACCO INDUSTRY ACTIVITY

LOCAL TOBACCO COMPANIES

Top 5 Tobacco Companies/ distributors	Market Share and Brands	Source
Philip Morris Ukraine	~28% of market share	https://www.pmi.com/markets/ukraine/uk/about-us
British American Tobacco Ukraine	~24% of market share	http://www.bat.ua
Japan Tobacco International Company Ukraine.	~22% of market share	https://www.jti.com/europe/ukraine
Imperial Tobacco Ukraine	~18% of market share	http://imperial-tobacco.com.ua
Lviv/Vynnykivska Tobacco Factory (Marvel International Tobacco Group)	~6% of market share Brands: Marvel, Compliment, Lifa, LS, Strong, Kyiv	https://marvel-itg.com/about
Tedis Ukraine	Largest wholesale distributor that, by various sources controls from 60% to 80% of the market.	https://tedis.ua/ua

TOBACCO INDUSTRY FRONT GROUPS

Top 5 Tobacco Industry Representative	Type (Front Group/ Affiliate/ Individual)	URL
The Association of Tobacco Products Manufactures “Ukrtiutiun”	Association (Front Group)	http://ukrtyutyun.com
The American Chamber of Commerce in Ukraine	Association (Front Group)	https://chamber.ua/ua
The European Business Association	Association (Front Group)	https://eba.com.ua/members
The Union of Ukrainian Entrepreneurs	Association (Front Group)	https://sup.org.ua/uk
MP Zablotskyi, MP Petruniak and MP Kovalyov	Individual	https://center-life.org/zolota-kosa-2020/

NEWS SOURCES

Top 5 Newspaper/Dailies	Type (Print/Online)	URL
Official website of the Parliament of Ukraine	Online	https://zakon.rada.gov.ua
Official website of the Cabinet of Ministers of Ukraine	Online	https://www.kmu.gov.ua
Official websites of the Ministries, State Services and Agencies of Ukraine	Online	http://sfs.gov.ua/priymalnya-gromadyan https://www.me.gov.ua https://amcu.gov.ua https://dpsu.gov.ua
Ukrainian Truth and its projects	Online	https://www.epravda.com.ua/news/2020/07/10/662840
Liga.Net and its project	Online	https://project.liga.net
Radio Svoboda	Online	https://www.radiosvoboda.org
Focus	Print and online	https://focus.ua/
Bukvy	Online	https://bykvu.com/ua/bukvy
Ukrainian Weekly	Print and online	https://tyzhden.ua/Politics/240707
Uriadovyi Currier (Parliament weekly)	Print and online	https://ukurier.gov.ua

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