



Ukraine Tobacco Industry Interference Index 2023

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Author/s:

Mr Andrii Skipalskyi, Andriy Skipalskyi, Public Health Expert, Chairman of the Advocacy Center «Life» (at writing), Mr Dmytro Kupyra, Executive Director of the Advocacy Center «Life», Mr Serhiy Mytkalyk, Executive Director of the NGO «Anti-Corruption Headquarters».

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Background and Introduction

New reality: war on Ukraine. The toll of the tobacco burden is enormous in Ukraine, and the public health gains in the last decade are being threatened by the war of the Russian Federation on Ukraine started on February 24, 2022. The full-scale Russian invasion, continuous missile attacks on the civilian infrastructure and ongoing hostilities pose unprecedented pressure on the health system and the infrastructure. The occupation of 20% of Ukraine left millions without proper healthcare, creating unbearable living conditions that caused enormous internal displacement and migration. Around 8 million people, mainly women and children, had to flee from Ukraine to EU countries, and about 5.4 million became internally displaced¹. WHO concluded that at least 9.6 million people might have mental health conditions after exposure to the horrors of fighting and hostilities². OCHA estimates that the number of people needing humanitarian aid and protection was nearly 18 million as of February 2023. This emergency created new realities and the reporting periods: a post-pandemic period of April 2021 – February 2022 and a wartime period - after February 24, 2022, and to March 2023.

Smoking prevalence. There is no available recent data on smoking/tobacco use prevalence comparable with GATS (2017)/GYTS (2017) surveys. The regular telephone survey (2000 respondents) results, published in June 2022, demonstrated an overall increase in daily smoking, from 23% in 2020 to 28% in 2022 (38% to 44% for men and 11% to 15% for women, respectively)³. This reflects the devastating effect the war in Ukraine started on population health, diminishing the positive impact of the tobacco control measures reported in the previous five years.

Legislation. During both the post-pandemic and wartime periods, Ukraine demonstrated progress in developing and implementing tobacco control legislative measures according to the WHO Framework Convention on Tobacco Control (WHO FCTC) to the possible extent. This process was driven by the EU Tobacco Product Directive (EU/2014/40) in 2021. Thus, the main achievement of the reporting period was the adoption of the comprehensive tobacco control legislation (Law of Ukraine No. 1978-IX)⁴. The new law introduces sizeable pictorial health warnings with annual rotation, bans the use of flavourings in cigarettes and e-liquids, establishes EU norms for nicotine content in both the cigarettes and e-liquids, bans all types of advertising and promotion for e-cigarettes and HTPs, and implements new reporting normative for the tobacco industry. The government stayed strong with the commitment to enforce the law by developing the bylaws and fixing the implementation dates. Hence the tobacco industry attacks to postpone these processes.

Taxation. Ukraine is implementing the 7-year tax increase plan by 2025, following the relevant EU directive and pursuing public health and fiscal goals. As reported in 2022, the total tobacco excise duties revenues to the State Budget increased in 2021 by 16%, reached UAH 63.5 billion, according to the State Treasury. Such revenues are UAH 8.8 billion more

¹ IOM (2023), Ukraine Crisis 2022-2023: 1 Year of Response, available at: https://ukraine.iom.int/sites/g/files/tmzbd11861/files/documents/2023-03/IOM_Ukraine_Regional_Response-1_Year_Special_Report%20%281%29.pdf.

² WHO (2022) Scaling-up mental health and psychosocial services in war-affected regions: best practices from Ukraine, available at: <https://www.who.int/news-room/feature-stories/detail/scaling-up-mental-health-and-psychosocial-services-in-war-affected-regions--best-practices-from-ukraine>.

³ KIIS (2022), Tobacco products use and attitudes to tobacco control measures, nationwide survey, available at: <https://center-life.org/wp-content/uploads/2022/06/Omnibus-2022.pdf>.

⁴ Parliament of Ukraine, Law of Ukraine "On amendments to some laws of Ukraine regarding public health protection from the harmful effects of tobacco", available at: <https://zakon.rada.gov.ua/laws/show/1978-20#Text>.

than what was collected in 2020 and exceeded the plan of the Ministry of Finance of Ukraine by UAH 1.6 billion⁵. Data for the 2022 fiscal year is unavailable.

Tobacco industry. The list of the largest tobacco companies in Ukraine in 2022 remained unchanged, comprising four transnational corporations with 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 as of 2020. There are also various national tobacco producers, numbered 24 companies⁶. The Ukrainian tobacco manufacturer Marvel International Tobacco Group (MITG),⁷ (also known as Vynnyky Tobacco Factory), follows the transnationals and might be considered the largest. Also, it is essential to consider the most significant tobacco products retail distributor – TEDIS Ukraine, when analysing the tobacco industry.

The data on the market situation is very fragmented and unclear because of wartime. For example, PMI estimated that the total market in Eastern Europe decreased by 4.4% to 358.0 billion units, primarily due to two factors: in Russia, the market is down by 3.6%, “mainly due to the impact of price increases” and in Ukraine, by 18.3%⁸.

Tobacco industry interference. In the post-pandemic period, the effects of the tobacco industry, its lobby and front groups were concentrated on two significant aspects: the taxation of the HTPs and the EU tobacco control draft law in the parliament.

For HTPs, the tobacco industry continued the attempts to decrease the taxation level and create a favourable taxation regime for this tobacco product. In 2021 the legislator, overcoming immense resistance from the tobacco lobby, set equal taxation rates for conventional cigarettes and HTPs (so-called “sticks”). Giving credit to the parliament, government, and NGOs, such attempts were dismissed.

Several parliamentarians and front groups have continued the campaign to slow down and block the legislation for the EU tobacco control draft law since 2019. Such attempts are described in the respective parts of this report and resulted in a delay and constant blockade of the draft law. Nevertheless, due to the principal position of the parliament health committee and its separate members, the draft law was favourably voted in the parliament on December 16, 2021, and signed by the president on January 11, 2022. The law preserved nearly all strong regulatory norms that even go beyond EU TPD in some respects.

The low profile of the tobacco industry lobbying activities characterises the wartime period. Two main tendencies were spotted to highlight here. The first is the attempt to postpone the implementation of the newly adopted tobacco control law, specifically for flavouring bans and new pictorial health warnings. The second was discrediting the current tobacco taxation policy by spreading the message about the “unprecedented level of the illicit tobacco trade”. So far, these attempts have been unsuccessful. Still, the risk of these attacks

⁵ NGO “Life” (2022), Income to the state budget from tobacco excise increased in 2021 thanks to an effective taxation policy, available at: <https://center-life.org/novyny/nadkhodzhenia-do-derzhbiudzhetu-vid-tiutiunovoho-aktyzu-u-2021-rotsi-zrosly-zavdiaky-efektyvnyy-politytsi-opodatkuvannia/> (Accessed: April 20, 2023).

⁶ UA.REGION, Business catalogue, <https://www.ua-region.com.ua/kved/12.00> (Accessed: April 20, 2023).

⁷ MARVEL International Tobacco Group, Available at: <http://marvel-itg.com>. (Accessed: April 20, 2023).

⁸ PMI, 2022 Annual Report, available at: https://www.pmi.com/resources/docs/default-source/investor_relation/pmi_2022_annualreport.pdf?sfvrsn=cb21d3b6_2 (Accessed: April 20, 2023).

will remain, particularly with high scrutiny of the state budget revenues due to the war impact and increased dependency on the remaining taxpayers.

It is crucial to highlight that professional and systemic promotion of the WHO FCTC Article 5.3 among the policymakers, supported by regular monitoring and exposure activities, even during wartime, has long-lasting effects and impact. In this regard, a consolidating role of the NGOs remains crucial.

TI Interference Index. This is Ukraine's **fourth report**, prepared by civil society organisations and national and international experts, in cooperation and with the support of the Global Center for Good Governance in Tobacco Control (GGTC). It continues to assess how the government, in its broad definition presented in Guidelines⁹, responds to the tobacco industry's tactics by using or avoiding the WHO FCTC Article 5.3 and its Guidelines¹⁰. The overall TI interference index score dropped from 64 to 51 points during the reporting period. This demonstrated considerable progress in the government's resilience to tobacco interference tactics. The upbeat assessment is also based on the improved tobacco control legislation that has become a breakthrough as ongoing challenges have occurred since 2015. Overall, TI activity that could be spotted through open channels and available sources has decreased since 2021. However, this is the impact of war. As the transparency of the government decreased due to security reasons at the beginning of 2022, we expect some of the TI activities to remain unspotted and missed.

This report uses the questionnaire developed by the Southeast Asia Tobacco Control Alliance (SEATCA).¹¹ 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 April 2021 to 31 March 2023.

⁹ 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.

¹⁰ 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, 2023).

¹¹ 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

I INDUSTRY PARTICIPATION IN POLICY DEVELOPMENT

The tobacco industry, its front and lobbying groups were focused on influencing different blocks of policies. In the post-pandemic period, the main policy focus remained on the HTP taxation and EU TPP draft legislation. As per the first, the tobacco industry restlessly had been trying to dismiss, diminishing the taxation policy that applied equal tax rates to HTPs and cigarettes. After the tax policy was applied in January 2021, TI consolidated its efforts to attack the legislation and bring down the tax rates. TI also has been continuing since 2019 to apply “effective” legislation spamming practice when various MPs register and then lobby for numerous amendments to the draft law and hampers the overall legislative process. Only on December 16, 2021, the draft law was favourably voted in the parliament and signed by the president on January 11, 2022. The law preserved nearly all strong regulatory norms as per Directive 2014/40/EU of the European Parliament (also known as Tobacco Products Directive (TPD)¹², which is part of Ukraine’s political and economic obligations under the Agreement of Association between Ukraine and the European Union)¹³.

In the wartime period, TI tried to postpone the implementation dates of the new law and also conducted attacks on the smoke-free norms for cafes, bars and restaurants. Some activities to “warn” the government of the unprecedented rates of illicit tobacco trade were spotted, but TI and its groups presented no reliable data or reports.

Third, the tobacco industry seemed to continue cooperating with the same front groups and MPs, reported in the previous TI Interference. The group of MPs that belong to the majority MPs’ fraction of the political party “Servant of the People” in the Parliament made promoting the tobacco control policies particularly difficult.

2 INDUSTRY CSR ACTIVITIES

The post-pandemic reporting period is characterised by continuous CRS-related activities of the tobacco industry, less focused on the Covid-19 pandemic-related matters but more on policy and new product promotion. Also, this period is characterised by a low profile of such activities, which might be partially explained by the tobacco control NGOs’ constant exposure to these front groups.

In the wartime period, though, TI promoted its support of the population by providing various supplies, equipment for shelters and medical equipment. These actions had the support of the local administration(s).

3 BENEFITS TO THE INDUSTRY

The government avoided providing financial preferences to the tobacco industry and even tightened some enforcement measures for tobacco taxation administration.

¹² 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).

¹³ Government of Ukraine, «Association Agreement between the European Union and Ukraine». Available at: <https://bit.ly/34cRw07>. (Accessed: May 20, 2023).

However, active attempts were made to create preferences for the tobacco product distributors and taxation preferences for specific products.

4 UNNECESSARY INTERACTION

The low level of disclosure of any interactions of the government/parliament representatives with the TI characterises the overall reporting period. Notably, in the wartime period, most government web recourses had access restrictions, and later low level of publications was observed. On one side, in wartime, any interactions with the government decreased substantially due to the emergency. In July 2022, the monitoring started spotting some of the industry's meetings with the stakeholders and lobbying activities. However, one cannot be sure that such interactions were limited or will not be re-established and used in future.

5 TRANSPARENCY

The transparency of the government decreased in wartime which is justified by the emergency. In 2023, most government institutions try to re-establish regular communications and increase transparency. At the same time, the government was less susceptible to any meaningful influence by TI as overall cooperation and policy discussion practice decreased. Based on the Law on Access to Public Information¹⁴, it was possible to receive many documents regarding the activity of the working groups, including protocols of the meetings and participant lists.

6 CONFLICT OF INTEREST

The conflict-of-interest issue is well regulated by the national legislation concerning public servants and lawmakers. The tobacco industry is prohibited from any contributions to political parties, and no violation cases of this provision were exposed. However, the implementation of these provisions lacks legal practice and remains weak.

7 PREVENTIVE MEASURES

No tobacco industry interference preventive measures were implemented by the government in the reporting period. There are enough legislative norms that request information and accountability reports on the content of tobacco products, licenses, pricing and taxation. However, according to the new tobacco control law, the government substantially increased the reporting requirements for the content and emissions of tobacco products, which is yet to be implemented. New regulations also require disclosing tobacco marketing data and information on novel products.

¹⁴ Parliament of Ukraine, Law of Ukraine «About access to public information». Available at: <https://zakon.rada.gov.ua/laws/show/2939-17#Text> . (Accessed: May 20, 2023).

RECOMMENDATIONS

1. In 2022-2023 Ukraine faced enormous security, political, economic, and demographic challenges caused by the war of the Russian Federation on Ukraine. In this reality, it is only possible to appeal to the decision of the Conference of the Parties to the WHO Framework Convention on Tobacco Control “Tobacco control in complex emergencies FCTC/COP8(20).” According to this document, COP called upon the Parties facing complex emergencies to continue to fulfil their obligations under the WHO FCTC to the extent possible, mainly “to continue the appropriate level of surveillance for tobacco control” and “to pay special attention to Article 5.3 of the WHO FCTC and related Guidelines”. COP also noted that “complex emergencies can lead to an increase in tobacco use, addiction and the risk of tobacco-related diseases.”
2. In 2023-2024 Ukraine will probably continue facing economic hardships. Thus, the primary lobbying efforts of the TI may be directed towards discrediting the tobacco taxation policies and impacting the new policy that should be put in place after 2024. Thus, it is recommended that the government pay special attention and support future decisions through evidence-based health economic research.
3. This report highlights that the impact of the tobacco industry may be diminished in wartime due to several factors (low access to officials and the meetings, martial law, consolidated priorities etc.). However, the government should not underestimate the TI interference goals to influence public health policy. Moreover, the TI is using wartime arguments (economic scrutiny, withdrawal of the investments) to keep the pressure and demand the postponement of any tobacco control legislation. It is recommended that the Members of Parliament and the government stay informed about this challenge and secure public health policies from TI’s negative impact.
4. The parliament and the government made considerable achievements in adopting the EU TPD into the national legislation in 2022. Serious consideration should be given to the apparent trials of the tobacco industry front groups to block the development, adoption, and implementation of the regulatory acts for this law. It is recommended that the government keep initial commitments and enforce the new regulations according to the law for public health priorities.
5. It is recommended that the government consider total ban TI CSR-related activities and investigate the ongoing ones. The tobacco industry continues its economic activities in the Russian Federation and thus is one of the key taxpayers to its state budget.
6. Ukraine should initiate the revision of the decision “Tobacco control in complex emergencies FCTC/COP8(20)” at COP11 in 2023 and seek the Parties’ advice on fulfilling its obligations under the current complex emergency.

Ukraine

Tobacco Industry Interference Index 2023

Results and Findings

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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 related to the tobacco industry in the actions taken to prevent and reduce the consumption of tobacco products and their harmful influence on the public health ¹⁵ . However, this provision remains declarative since there are 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 government ¹⁶ accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry or any entity or person working to further its interests. ¹⁷ in setting or implementing public health policies in relation to tobacco control ¹⁸ (Rec 3.4)			2			
<p>In the reporting period, experts observed decreased cooperation with the tobacco industry, negatively impacting policy development, adoption, and implementation. Though, several cases are still worth mentioning here.</p> <p>Case 1. On July 8, 2022, the Head of the Parliament Tax Committee met with Ukrtobacco and the tobacco companies to discuss various fiscal matters (meeting minutes are not disclosed). As a result of the meeting, the TI issued an official letter with their proposals for the policies that needed to be published through¹⁹.</p> <p>Case 2. Mr S. Sholomitskyi, former Head of the Secretariat of the Parliament Tax Committee, suspected of connections with the tobacco industry²⁰, was an assistant to MP Zablotskyi^{21, 22} (the party “Servant of the People”).</p>						
2. The government accepts, supports or endorses <u>policies or legislation drafted</u> by or in collaboration with the tobacco industry. (Rec 3.4)			2			

¹⁵ Parliament of Ukraine, 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 15, 2023).

¹⁶ 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.

¹⁷ The term, “tobacco industry’ includes those representing its interests or working to further its interests, including the State-owned tobacco industry.

¹⁸ “Offer of assistance” may include draft legislation, technical input, recommendations, oversees study tour

¹⁹ Official letter, Ukrtobacco <https://drive.google.com/file/d/1CiNLCCiYEai02mvsilbaMWC2vE2arVUA/view>

²⁰ Ukrinform: Transparency international identified the tobacco lobbyists by names <https://www.ukrinform.ua/rubric-society/2243182-transparency-poimennen-nazvala-tutunovi-lobi-v-ukraini.html>

²¹ Parliament of Ukraine (2021), Card of the People’s Deputy of Ukraine of the 9th convocation Zablotskyi Mar’yan Bohdanovych. Available at: <https://itd.rada.gov.ua/mps/info/page/21045> . (Accessed: May 23, 2023).

²² Apparatus of the Verkhovna Rada of Ukraine. Office for Citizen Appeals. Response to an information request., available at:

<https://drive.google.com/file/d/17lllrP352bD5bWV8ljo0CcuuDAD5P4Awj/view>

https://drive.google.com/file/d/17NdhhFnCFS_NURuLEDHcOG8WE4ROxfGZ/view

In this section, we presented cases related to the legislators' work, demonstrated by their adherence to the previous tactics to hamper the tobacco control legislation, decreasing the taxation rates and postponement of the legislation enforcement dates. None of the presented cases passed through or negatively impacted the public health policies in the reporting period, and more represent the overview of the attempts and tactics that may have an impact in future.

Tactic: attempt to decrease taxes for HTPs

In February 2021, MP D. Arakhmiya registered an amendment to draft law No. 4278²³, which provided for a reduction of tax level for HTP sticks by more than 30% from April 1, 2021,²⁴. Adopting the amendment would provide tax preferences for individual tobacco products and could have led to a decrease in revenues to the State Budget in 2021 by UAH 3 billion²⁵. The lawmaker publicly stated that he initiated the reduction of the excise duty for HTP products at the request of the tobacco corporation Philip Morris International. This fact confirms the tobacco industry's intervention and pressure to form a policy to protect people from smoking (price measures). The amendment was not supported in the law's final version and was dismissed by the tax committee after the policy discussions.

This position (to reduce taxes for HTPs) was also supported by a group of MPs²⁶. Still, finally, the discussion and the state revenues collections for the first two quarters demonstrated the effectiveness of this policy and dismissed the pro-industry arguments.

Tactic: attempt to return smoking to public places

In June 2022, MP Hryvko registered draft law No. 7597²⁷, which brings back the smoking of electronic cigarettes, HTPs and hookahs in the premises of cafes, bars and restaurants. The parliament health committee later dismissed the draft law, but this move demonstrates ongoing trials of MPs to discredit the tobacco control legislation, particularly – smoke-free norms.

In August 2022, MP I. Frees (Servant of the People faction) and MP O. Sanchenko (head of the youth wing of the Servant of the People party) had another trial to diminish the smoke-free norms by registering an amendment No. 20 to draft law No. 5616 ("On the Protection of Geographical Indications for Agricultural Products")²⁸. This act was against public health interests and the government's commitment to decreasing tobacco use. In violation of the law-making procedures, MPs tried to return smoking to the premises of restaurants (cafes,

²³ Parliament of Ukraine, Draft Law on Amendments to the Tax Code of Ukraine (regarding taxation of goods moved (forwarded) in international postal and express shipments), available at:

https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70268

²⁴ Liga.net, Blog "Due to Arakhmia's amendment, the budget will not receive 3 billion hryvnias", available at:

<https://blog.liga.net/user/smytkalyk/article/39257>

²⁵ Video recording of the Parliament Tax Committee meeting, available at:

<https://www.youtube.com/watch?v=440lOUf8vc&t=8238s>

²⁶ VoxUkraine, Tobacco amendments: who and how in the parliament proposes to simplify smoking in Ukraine, available at:

https://voxukraine.org/tyutyunovi-popravky-hto-ta-yak-u-parlamenti-proponuye-sprostoty-kurinnya-v-ukrayini/?fbclid=IwAR3ZZESG7HMiNHEotYIAr3XMcl3szcYLkZpTfnjN_QT_IYjv5L5b19zPhwo

²⁷ Parliament of Ukraine, Draft Law on Amendments to Clause 5 of Part Two of Article 13 of the Law of Ukraine "On Measures to Prevent and Reduce the Use of Tobacco Products and Their Harmful Effects on Public Health", available at:

<https://itd.rada.gov.ua/billInfo/Bills/Card/40125>

²⁸ Parliament of Ukraine, Draft Law on legal protection features of geographical indications for agricultural products and food products, protection of rights and application of quality schemes, including traditional guaranteed features for agricultural products and food products, available at:

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72136

bars), hotels and other public and workplaces²⁹. Such actions were probably deliberately hidden from the public and misled parliamentarians from other committees. In addition, MP I. Frees may have a conflict of interest in this case as his family owns a network of hospitality institutions (restaurants, bars etc)³⁰.

Tactic: legislative “spam” to hamper the tobacco control draft law

In the reporting period, MPs submitted numerous amendments to project No. 4358, which obviously aimed to weaken the regulations or spam the bill to hamper the voting process³¹. Some of these amendments proposed to exclude from the law several definitions, for example, what are "premises" and "devices for consuming tobacco products without burning them" (represented in Ukraine by the brands "glo" and "IQOS")³². The lack of clear definitions in the law would aim at creating loopholes for manufacturers, importers, and unscrupulous subjects of the restaurant industry.

In November 2021, MP Y. Kravchuk, at the Committee on Humanitarian and Information Policy, proposed to “align” draft law No. 4212 with draft law No. 4358³³. Draft law No. 4212 provided for the restoration of advertising of tobacco products in Ukraine and was used as a countermeasure to adopting the comprehensive anti-tobacco draft law No. 4358³⁴. At that time, the Committee on National Health, Medical Care and Health Insurance had already recommended the draft law for consideration in the second reading, which should have become the final vote in the parliament.

MP I. Poturaev, on behalf of the Committee on Humanitarian and Information Policy, initiated an appeal to the Committee on the National Health, Medical Care and Medical Insurance with the demand to send draft law No. 4358 for a repeated second reading and bring the norms of draft law No. 4358 into compliance with draft law No. 4212, which provides for the restoration of advertising of tobacco products in Ukraine³⁵.

Tactic: favourable sales and taxation regime for cigars

In November 2022, MP E. Petrunyak registered the draft law No. 8174 that provides for the restoration of by-stick sales of cigars and a change in the taxation regime for this tobacco product, which may lead to a decrease in excise revenues to the state budget³⁶. The bill also suggests postponing the entry into force of new tobacco control law No. 1978-

²⁹Prostir.ua, Tobacco amendment "let it be": which of the deputies is delaying the restoration of indoor smoking, available at:<https://www.prostir.ua/?news=tyutyunova-popravka-nehaj-tak-hto-z-deputativ-protyahuje-vidnovlennya-kurinnya-v-prymischennyah>

³⁰ AllaCarte Hotels and Restaurants, available at: <https://allacarte.com.ua/pravyta-umovy-merezhi-allacarte-hr>

³¹ Parliament of Ukraine, The Law "On Amendments to Certain Laws of Ukraine Regarding Public Health Protection from the Harmful Effects of Tobacco", available at: <https://www.rada.gov.ua/news/Novyny/217935.html>

³²VoxUkraine, “Tobacco amendments: who and how in the parliament proposes to simplify smoking in Ukraine”, available at:https://voxukraine.org/tyutyunovi-popravky-hto-ta-yak-u-parlamenti-proponuye-sprostyty-kurinnya-v-ukrayini/?fbclid=IwAR3ZZESG7HMiNHEotYIAr3XMcJ3szTYLkZpTfnjn_QT_IYjv5L5b19zPhwo

³³ Parliament of Ukraine, Draft Law on Amendments to Article 22 of the Law of Ukraine "On Advertising" Regarding Advertising of Electronic Cigarettes and Liquids Used in Electronic Cigarettes, available at: https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70166

³⁴ Parliament of Ukraine, TRANSCRIPT of the meeting of the Committee of the Verkhovna Rada of Ukraine on Humanitarian and Information Policy, November 9, 2021, available at: <http://kompkd.rada.gov.ua/uploads/documents/34238.pdf>

³⁵ Parliament of Ukraine, TRANSCRIPT of the meeting of the Committee of the Verkhovna Rada of Ukraine on Humanitarian and Information Policy, November 9, 2021, available at: <http://kompkd.rada.gov.ua/uploads/documents/34238.pdf>

³⁶ Parliament of Ukraine, Draft Law on Amendments to the Tax Code of Ukraine and some legislative acts of Ukraine on strengthening measures to control the circulation of excise goods, available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=75132

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<p>IX in part of introducing recent pictorial health warnings and requirements for e-cigarettes. In February 2023, this bill was included in the parliament's agenda for the spring session of 2023, increasing the risk of this bill being supported. Thus, it creates a significant policy concern and engages the parliament tax committee.</p> <p>Tactic: postponement of enforcement of newly adopted tobacco control law</p> <p>In November 2022, MP Kholodov registered the draft law No. 8174-I³⁷, which postpones the enforcement dates for specific provisions of the anti-tobacco law No. 1978 (On amendments to some laws of Ukraine regarding the protection of public health from the harmful effects of tobacco). The justification is fully connected to wartime and martial law in Ukraine and gives no exact dates for the enforcement. The MP called back the bill, but it demonstrated the opportunity for the tobacco industry to continue lobbying for no-new regulations during wartime in Ukraine and undermine the public health goals.</p>						
<p>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) 1 Never 5 Yes</p>		1				
<p>The law does not prohibit the government from interacting 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. In the reporting period, very few cases were spotted to demonstrate the TI influence in this indicator.</p> <p>Tactic: attempt to influence the active tobacco taxation policy.</p> <p>In April 2021, the Union of Ukrainian Entrepreneurs, EBA and AmCham urged the parliament to review the taxation system of tobacco products and HTPs, favouring a “gradual” increase in excise duty rates³⁸. The experts calculated the possible loss in state budget revenues of at least UAH 3 billion in 2021 alone.</p> <p>Tactic: opposing the comprehensive tobacco control bill No. 4358</p> <p>Union of Ukrainian Entrepreneurs (TI is part of this organisation) organised a round table discussion, where the representatives of two NGOs - “NORT” and “Ukrainian Analytical Center”, publicly urged the policymakers not to adopt anti-tobacco draft law No. 4358, developed for the implementation of the EU Directive 2014/40/EU³⁹. NOTR was spotted to act in favour of the tobacco industry in the previous TI Interference Index reports.</p>						

³⁷ Parliament of Ukraine, Draft Law on Amendments to the Tax Code of Ukraine and some legislative acts of Ukraine on strengthening measures to control the circulation of excise goods, available at:

<https://itd.rada.gov.ua/billInfo/Bills/Card/40861>

³⁸ Interfax Ukraine, Business called on the Verkhovna Rada to support a gradual increase in the excise duty on tobacco products, available at: <https://ua.interfax.com.ua/news/economic/730323.html>

³⁹ Ukrainian News, New legislative initiatives on the circulation of tobacco products can be disruptive for business, available at: <https://ukranews.com.ua/news/778517-novi-zakonodavchi-initsiatyvy-shhodo-obigu-tyutyunovyh-vyrobiv-mozhut-staty-rujnivnymy-dlya-biznesu>

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Tactic: promotion of an “alternative” bill that weakens the tobacco control norms											
<p>In November 2021, the tobacco industry association “Ukrtoituin” (Ukrtobacco) sent an official letter to the parliament committee on humanitarian policy to lobby for the adoption of the bill No. 4212 that had weaker norms for tobacco advertising and promotion than the draft law No. 4358⁴⁰.</p> <p>During wartime, Ukrtobacco continued its efforts and, in August 2022, issued an appeal to the Parliament of Ukraine with a proposal to postpone the enforcement dates for tobacco control Law No. 1978-IX. The association, on behalf of the tobacco industry, tried to defer for unidentified timing the ban on flavoured cigarettes, the introduction of graphic warnings on cigarette packs, and the ban on advertising of e-cigarettes. This move might have also negatively impacted the EU-Ukraine integration process, which was high on the political agenda. In the reporting period, these lobbying activities were unsuccessful but remain valid in bill No. 8174, registered in the Parliament, and included in the Parliament agenda⁴¹.</p>											
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) ⁴² (Rec 4.9 & 8.3) For non-COP year, follow the previous score of COP year. For non-Parties, apply a score of '0'							1				
The government did not nominate or allow representatives from the tobacco industry in the delegation to the COP or other subsidiary bodies in 2021-2022.											
INDICATOR 2: Industry CSR activities											
5. A. Government agencies or their officials endorse, support, form partnerships with or participates in activities of the tobacco industry described as “socially responsible” or “sustainable”. For example, environmental programs. (Rec 6.2)											
B. The government (its agencies and officials) receives CSR contributions ⁴³ (monetary or otherwise, including CSR contributions) from the tobacco industry or those working to further its interests during the pandemic. (Rec 6.4) <i>NOTE: exclude enforcement activities as this is covered in another question</i>							2				
<p>In the reporting period, the tobacco companies provided financial assistance to the humanitarian and health care sector through cooperation with the government on the local levels. Annual reports of tobacco transnationals are not publicly available through to check for other “CSR-tagged” cases.</p> <p>Tactic: using health rhetoric to promote tobacco products</p>											

⁴⁰ Ukrtobacco, Letter to Tax Committee, available at:

https://drive.google.com/file/d/1avrtjDjuuOwu1dsXHe_BiT1jic1mR9Mn/view

⁴¹ Ukrtobacco, Letter to Tax Committee, available at:

<https://drive.google.com/file/d/1CiNLCCiYEai02mvsilbaMWC2vE2arVUA/view>

⁴² Please annex a list since 2009 so that the respondent can quantify the frequency, <http://www.who.int/fctc/cop/en/>

⁴³ political, social financial, educations, community, technical expertise or training to counter smuggling or any other forms of contributions

One of the TI front groups – NGO “Healthy Initiatives” is headed by the former WHO technical staff, responsible to tobacco control on the regional level. This organisation and its leader camouflaged their messages under WHO messages and tried to deceive the public. The NGO (Foundation for a Smoke-Free World - FSFW) is funded by PMI. In May 2021, on the WHO World NO Tobacco Day, "Healthy Initiatives" promoted the narratives about switching to e-cigarettes as the smoking cessation method⁴⁴.

In May 2022, the NGO organized a press conference with the participation of the health professionals and Derek Yach, former head of SFSW, where the concept of "products with reduced harm" was directly promoted in Ukraine. The press release specifically emphasized the previous work in WHO of the participants, to build trust of the public.

Tactic: funding humanitarian projects while continuing working in RF and fund the aggressor state.

In January 2023 the charitable foundation “Balbek Buro” received funds from Philip Morris for the construction of temporary modular housing for displaced persons⁴⁵.

In December 2022 Philip Morris funded a project of special hubs – so called "Spheres of Light" autonomous tents with free internet, light and heating, to “sustain the resilience of the Ukrainian people” in Kyiv, Odesa and Lviv⁴⁶. In other words, the company draws an invisible parallel between the concept of "dignity" for Ukrainians and a tobacco brand that makes money from harmful addiction. Pechersk Rayon Administration published the post about this cooperation⁴⁷. In this post one MP A. Prutova supported the event and conducted an official opening ceremony.

Also, Philip Morris claimed to donate \$10 million for medical equipment and transport (in Invano-Frankivsk and Dnipropetrovsk oblasts)⁴⁸.

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 tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month) (Rec 7.1)			2			
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Background. Ukrainian legislation (Article 4 of Law № 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 emphasises “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.”

Tactic: postpone the enforcement of the public health measures using war as justification

⁴⁴NGO “Healthy Initiatives”, Quit Smoking or Die: What Ukraine Offers Smokers, available at: https://hi-ua.org/tpost/7h095a12z1-quit-smoking-or-die-what-ukraine-offers?fbclid=IwAR0qN96K8412-VQQuztldxCg76m7-EltpW-GjAu9m1IMhVz3dnH1_NfkywA

⁴⁵ Balbek Bureau, RE: UKRAINE HOUSING PILOT PROJECT, available at: <https://www.balbek.com/reukraine-pilot>

⁴⁶ IQOS.UA, <https://www.iqos.com.ua/uk/news-list/iqos-re-ukraine-housing>

⁴⁷Pechersk Rayon Administration, available at:

<https://www.facebook.com/pechersk.gov.ua/posts/pfbid02TNNaGBaovmrg5M6vcGFvHczQGinLdseNaEugXHWcXqnH61NJKqpyWLRwcnPitw8sl>

⁴⁸ DSNEWS.UA, Spheres of light, fast and housing. How Philip Morris helps Ukraine, available at:

<https://www.dsnews.ua/ukr/economics/sferi-svitla-shvidki-ta-zhitlo-yak-filip-morris-dopomagaye-ukrajini-27122022-471722>

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The draft law No. 8174, registered by MP E. Petrunyak (November 2022), promoted the position of the tobacco industry articulated in their open letters and aimed to postpone the entry into force of new tobacco control law No. 1978-IX in the part of the introduction of recent pictorial health warnings and requirements for e-cigarettes. The bill also provides for the restoration of by-stick sales of cigars and a change in the taxation regime for this tobacco product, which may lead to decreased excise revenues to the state budget. The bill poses the main threat now as it was accepted by the parliament and included in the agenda for the spring session 2023 ⁴⁹ .						
7. The government gives privileges, incentives, tax exemptions or benefits to the tobacco industry (Rec 7.3)				3		
<p>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.</p> <p>Tactic: weak legal support of the administrative fines on the tobacco industry</p> <p>According to the court decision in April 2021, the Antimonopoly Committee of Ukraine must return UAH 2.64 billion of UAH 2.86 billion, paid by several tobacco companies to the state budget as fines for violation of competition legislation - so called cartel collusion on the largest retail monopolist Tedis^{50,51}. In 2020 Philip Morris, JT, Imperial Tobacco, and British American Tobacco paid UAH 2.64 billion in fines while "Tedis" and Imperial Tobacco (Pryluky) did not pay the due of UAH 3.85 billion. This case was well described in the 2021 TI Interference Index. The expert assured that there was no doubt that the Tedis company was a monopolist due to a cartel collusion with market participants it continued to control the market share. However, AMCU prepared the legal case with mistakes, and management changes in AMCU negatively impacted the position in court. Some experts believe that there were reasons to assume that the AMCU intentionally made omissions in the case to be able to lose the case in the court and thus "make an agreement" with the participants of the cartel collusion.</p> <p>Tactic: Preferential sales regime during martial law</p> <p>The parliament adopted a set of legislation changes to support the national economy during wartime. Some of the amendments allowed the companies to trade tobacco products with EU marking and health warnings. From one side, this might be a positive step as the smokers were exposed to stronger health warnings. From another side, this provision allowed sales of HTPs that have only text warnings, and in a foreign language.</p>						

⁴⁹ Parliament of Ukraine, Draft Law on Amendments to the Tax Code of Ukraine and some legislative acts of Ukraine on strengthening measures to control the circulation of excise goods, available at:

<https://itd.rada.gov.ua/billInfo/Bills/Card/40751>

⁵⁰Nashi Groshi (2021), “AMCU returns 91% of the fines paid to the state budget last year to find factories”, available at: <https://nashigroshi.org/2021/04/27/91-splachenykh-torik-do-derzhbiudzhetu-shtrafiv-amku-povertaie-oshtrofovanyim-fabrykam/>

⁵¹ Nashi Groshi (2021), “The state budget "accordingly" for another 2.56 billion. AMCU returns fines for the cartel to tobacco companies”, available at: <https://nashigroshi.org/2021/11/01/derzhavnyy-biudzhet-skhudne-shche-na-2-56-mlrd-amku-povertaie-tiutiunovym-kompaniiam-shtrafy-za-kartel/>

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Even though the government believes this was to support the business operations, such legislation may be considered as certain preferences for the tobacco industry.

In September 2021 the association Ukr tobacco published an official letter to oppose the adoption of the bill No. 5600⁵² that included some fiscal measures such as the increase in excise taxes on tobacco and imposing forestalling measures.

Tactic: Illicit trade of duty-free cigarettes

Representatives of government and parliament are aware that one of the main sources of illicit trade in tobacco might be duty-free cigarettes. In November 2022, AmCham and Ukr tobacco conducted the presentation, that promoted the message that illicit trade forms 22% of the market, 12% of which consists duty-free cigarettes⁵³. High officials attended the event and were informed about the problem, but no legislation actions were proposed⁵⁴. Duty-free cigarette production remains one of the benefits for the tobacco industry to increase their sales illegally on the internal market. International travellers can bring duty free 200 cigarettes, or 50 cigars, or 250 grams of tobacco.

INDICATOR 4: Forms of Unnecessary Interaction

8. Top level government officials (such as President/ Prime Minister or Minister ⁵⁵) 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)				3		
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Tactic: imposing cooperation to “combat” illicit trade in tobacco

In November 2022, AmCham and Ukr tobacco conducted the presentation of the illicit tobacco products market research, conducted by the Kantar Ukraine company. The presentation promoted the message that illicit trade concludes 22% of the market which is unprecedentedly high⁵⁶. However, the research company provided neither methodology description nor the funding source of this research. It is believed though that the research was funded by the tobacco industry⁵⁷. The round table report listed high officials participating in the event, including high-level Members of Parliament and government⁵⁸.

Tactic: lobbying meetings with government representatives

⁵²Ukr tobacco, The "Ukrtyutyun" association openly appealed to the President of Ukraine, the Chairman of the Verkhovna Rada and the Prime Minister, available at: <https://ukrtyutyun.com/asotsiatsiya-ukrtyutyun-vidkryto-zvernulasya-do-prezydenta-ukrayiny-golovy-verhovnoyi-rady-ta-prem-ier-ministra/>

⁵³ UNIAN, “From each illegal pack of cigarettes, the budget receives 44 hryvnias”, available at: <https://www.unian.ua/economics/other/z-kozhnoji-nelegalnoji-pachki-sigaret-byudzhet-nedootrimuye-44-grivni-12034374.html>

⁵⁴ Association “Ukr tobacco”, Appeal of the "Ukrtyutyun" Association, available at: <https://ukrtyutyun.com/novyny/page/2/>

⁵⁵ Includes immediate members of the families of the high-level officials.

⁵⁶UNIAN, “From each illegal pack of cigarettes, the budget receives 44 hryvnias”, available at: <https://www.unian.ua/economics/other/z-kozhnoji-nelegalnoji-pachki-sigaret-byudzhet-nedootrimuye-44-grivni-12034374.html>

⁵⁷ PMI-IMPACT report (2022), available at: <https://www.pmi-impact.com/content/dam/pmi-impact/docs/2022-pmi-impact-report.pdf>

⁵⁸American Chamber of Commerce (2022), “The share of illegal circulation of tobacco products in Ukraine continues to grow, reaching a new maximum”, available at: <https://chamber.ua/ua/news/chastka-nelegalnoho-obihu-tiutiunovykh-vyrobiv-v-ukraini-prodovzhuie-zrostaty-dosiahnuvshy-novoho-maksymumu/>

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On July 8, 2022, the Head of the Parliament Tax Committee met with Ukr tobacco and the tobacco companies to discuss various fiscal matters (meeting minutes are not disclosed) ⁵⁹ .						
9. The government accepts assistance/ offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities) (Rec 4.3)			2			
The State Border Control Service is mentioned as a partner in the association “Ukr tobacco” project – “No Smuggling” ⁶⁰ . This information project about the illicit tobacco trade has no direct link to the close cooperation of TI and government institutions.						
10. The government accepts, supports, endorses, or enters into partnerships or non-binding agreements with the tobacco industry or any entity working to further its interests. (Rec 3.1) <i>NOTE: This must <u>not</u> involve CSR, enforcement activity, or tobacco control policy development since these are already covered in the previous questions.</i>		1				
No activities were spotted in the section in the reporting period.						
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		
<p>The legislation does not directly require the government to disclose meetings/ interactions with the tobacco industry publicly. The transparency of activities of the government representatives, policymakers 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 during the fulfilment by the subjects of the authorities of their duties under the current legislation, or which has 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”.</p> <p>This law, however, has no clear obligations for the government and state authorities to record the meetings with representatives of business entities and publicise announcements of such meetings. Such information might be received through separate requests for public information from the respected information holder as established by this law. The terms for the replies depend on the status of the applicant and vary from 5 days for mass media (journalists), ten days for MPs and 30 days for other requests. 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 and anti-corruption organisations.</p> <p>The enforcement system exists, and applicants may refer to courts in case the necessary information is not provided. For example, most of the documents presented in this report were received by the tobacco control NGOs through the mechanisms mentioned above.</p> <p>To conclude, it is hard to evaluate the level of public transparency of the tobacco industry meetings with government representatives, particularly in wartime. Consideration should</p>						

⁵⁹ Ukr tobacco, Letter to Tax Committee, available at: <https://drive.google.com/file/d/1CiNLCCiYEai02mvsilbaMWC2vE2arVUA/view>

⁶⁰ No contraband project, <https://www.nicontrabandi.org.ua/about>

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be given to the fact that many such meetings stay unreported. The overall conclusion is that the transparency of the government decreased in the reporting period.						
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			
<p>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 Ukraine⁶¹.</p> <p>The government, however, has no system for the disclosure or registration of tobacco affiliate organisations and individuals acting on behalf of the tobacco industry, including lobbyists. Generally, this reflects that national legislation specifically does not regulate lobbying activities.</p>						
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 Never 5 Yes		1				
<p>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”⁶² 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.</p> <p>The Law “On Political Parties in Ukraine”⁶³ also requires the public disclosure of financial contributions to political parties. No cases to disclose the violation of this legislative norm were spotted in the section in the reporting period.</p>						
14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General) (Rec 4.4)		1				
<p>According to Article 28 of the Law of Ukraine “On Principles of Prevention and Counteraction to Corruption”, 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.</p>						

⁶¹ The State Fiscal Service of Ukraine (2022). Available at: <https://bit.ly/3fHOsOH> . (Accessed: April 10, 2023).

⁶² Parliament of Ukraine, 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, 2023).

⁶³ 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, 2023).

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The public service employees, according to the Law of Ukraine "On Prevention of Corruption" ^{64, 65} 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 cases of government officials forming part of the tobacco industry were disclosed during the reporting period.						
15. <u>Current government officials</u> and relatives hold positions in the tobacco business including consultancy positions. (Rec 4.5, 4.8, 4.10)			2			
<p>Case 1. 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 officer^{66, 67} in 2021. This Committee is the crucial Parliament authority to develop and approve tobacco tax-related legislation. However, this information cannot be verified in 2023 as the registry remains closed to the public.</p> <p>Case 2. The author of the draft law no. 5616⁶⁸ that deliberately undermined the comprehensive ban on smoking and tobacco use indoors (cafes, bars and restaurants), MP Fries may have a conflict of interest in this case as his family owns a network of hospitality institutions^{69, 70}.</p>						
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)					4	
<p>The government system became less transparent in wartime, and for nearly six months, most government websites were closed to public access. These are understandable and justifiable measures, which did not allow for assessing this indicator.</p> <p>The legislation stayed unchanged: the government authorities, local authorities, and members of the Parliament their choice may publicize different types of information regarding 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. There is no system of announcements of such meetings, public access (except mass media) is limited, and in most cases, minutes and transcripts are kept private. At the same time,</p>						

⁶⁴ 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, 2023).

⁶⁵ Parliament of Ukraine, Law of Ukraine "On Prevention of Corruption", available at: <https://zakon.rada.gov.ua/laws/show/1700-18>

⁶⁶ National Anti-Corruption Bureau of Ukraine (2021), *Universal State Register of Declarations*. Available at: <https://bit.ly/3fHOGW3>. (Accessed: April 15, 2023).

⁶⁷ TobaccoTactics (2021), "The policy of taxation of tobacco products", available at: <https://tobaccotactics.tobaccocontrol.org.ua/politika-opodatkuvannya-tyutyunovih-virobiv/>

⁶⁸ Parliament of Ukraine, Draft Law on legal protection features of geographical indications for agricultural products and food products, protection of rights and application of quality schemes, including traditional guaranteed features for agricultural products and food products, available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72136

⁶⁹ AllaCarte Hotels and Restaurants, available at: <https://allacarte.com.ua/pravyla-ta-umovy-merezhi-allacarte-hr>

⁷⁰ The Anti-Corruption Headquarters "MP Fries is Lobbying for the Return of Smoking in Unstitutions. His Family Owns a Chain of Restaurants" available at: <https://shtab.net/en/news/view/nardep-fris-lobiyue-povernennya-kurinnya-v-zakladi/>

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<p>the parliament remains more transparent, and many committee meetings are accessible online – by invitation.</p> <p>Information about some government representatives' meetings with the public, business, etc., is disclosed as the record of the agenda, attendees, minutes, and outcomes and could be accessed by special requests. The law on Access to Public Information fully applies to the interactions between the government and the tobacco industry.</p> <p>However, the government's transparency decreased during the reporting period, and many such meetings may still need to be reported.</p>						
<p>17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry. (Rec 4.2); <i>1 for whole of government code; 2 for Yes but partial if only MOH</i></p>			3			
<p>No policy in place prescribes explicitly the standards with which public officials should comply in their dealings with the tobacco industry. The Ethical Code for public servants and local authorities⁷¹ does not explicitly cover interactions with the tobacco industry but generally regulates business interactions.</p> <p>The WHO FCTC Article 5.3 and its implementation guidelines recommend that the Parties “avoid conflicts of interest for government officials and employees” (recommendation No. 4). Anti-corruption legislation could potentially safeguard the implementation of this recommendation. Thus, Article 1 of the law “On Corruption Prevention”⁷² 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 they perform 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.</p> <p>This law refers to all types of government servants and officials, members of Parliament, members of judiciary systems, and even to non-governmental workers in the sphere of anti-corruption. This provision could provide a vital prevention mechanism for the government and public officials.</p> <p>In the reporting period, no progress was observed in implementing a code of conduct for public officials or prescribing the standards to comply with in their dealings with the tobacco industry.</p>						
<p>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)</p>			3			

⁷¹ NADS (2021), Ethical code for public servants and local authorities, available at: <https://nads.gov.ua/news/etichnij-kodeks-derzhavnih-sluzhbovciv-ta-posadovih-osib-miscevogo-samovryaduvannya>

⁷² 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 31.03.2023).

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<p>The Ukrainian legislation was substantially improved regarding reporting requirements for the tobacco industry and fully aligned with the EU TDP regulations.</p> <p>New requirements for the substances, ingredients and emissions are set by the tobacco control law No. 2899 in Article 11 and include all types of tobacco products (excluding HTPs) and e-liquids for e-cigarettes. The law specifies what information should be provided by tobacco manufacturers/importers and what information should be publicly available. As of March 2023, MOH was still developing the bylaws to enforce these provisions. However, the process is prolonged; it needs more cooperation between various authorities and may be problematic in current realities. By law, the government should have (read–create) a different online reporting platform, as Ukraine cannot access the EU one. This puts an extra financial and operational burden on the government.</p> <p>Implementing these requirements needs to be addressed as old norms are outdated and new ones are not adopted. MoH does not regularly publish lists of tobacco products and tobacco smoke substances. 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.</p>						
<p>19. The government has a program / system/ plan to consistently⁷³ raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines. (Rec 1.1, 1.2)</p>				3		
<p>No activities were spotted in support of this criteria. At the same time, government official demonstrated high level of the awareness about the limitations to cooperate with TI, and some progress could be reported here.</p>						
<p>20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives. (3.4)</p>			2			
<p>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 could be better monitored and stronger. Based on the information provided in the above sections, the tobacco industry was spotted breaking these rules, and the government stayed passive in implementing the WHO FCTC Article 5.3 and its Guidelines measures. The situation remains stable for this index.</p>						
TOTAL SCORE				51		

⁷³ 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.

1. Annex A: Sources of Information

	TOP TOBACCO COMPANIES/ DISTRIBUTORS	MARKET SHARE⁷⁴	BRANDS	SOURCE
1	Philip Morris Ukraine	~28%		https://www.pmi.com
2	British American Tobacco Ukraine	~24%		http://www.bat.ua/
3	Japan Tobacco International Company Ukraine	~22%		https://www.jti.com
4	Imperial Tobacco Ukraine	~18%		http://imperial-tobacco.com.ua/
5	Lviv/Vynnykivska Tobacco Factory (Marvel International Tobacco Group)	~6%		https://marvel-itg.com/abouts
6	Tedis Ukraine (largest whole sale distributor)			https://tedis.ua/ua/

	TOP MEDIA/ NEWSPAPERS and INTERNET MEDIA⁷⁵	URL
1	Uriadovyi Currier (Parliament weekly)	https://ukurier.gov.ua
2	UNIAN	https://www.unian.ua/
3	Interfax Ukraine	https://ua.interfax.com.ua/
4	VoxUkraine	https://voxukraine.org/o
5	Ukrainian News	https://ukranews.com/u
6	Liga.Net	https://project.liga.net
7	Nashi Groshi	https://nashigroshi.org/
8	Ukrainska Pravda	https://www.pravda.com.ua/
9	NGO « Life »	https://zolota-kosa.center-life.org/
10		

	MAIN TOBACCO INDUSTRY ALLIES/ FRONT GROUPS	TYPE (FRONT GROUP, LOBBY GROUP, INDIVIDUAL)	SOURCE
1	The Association of Tobacco Products Manufactures “Ukrtobacco”	Association of manufactures	http://ukrtyutyun.com
2	The American Chamber of Commerce in Ukraine	Business association	https://chamber.ua/ua/
3	The European Business Association	Business association	https://eba.com.ua/members/
4	The Union of Ukrainian Entrepreneurs	Business association	https://sup.org.ua/uk

⁷⁴ Data available from pre-war time (2021)

⁷⁵ Referred in this Index.