

Ukraine

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Summary of Findings

1. Industry participation in policy development

The tobacco industry, their front groups and lobbying groups were focused on influencing three blocks of policies. First, primarily through fueling 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 strategy and tactics stayed the same as in 2015 – 2019 and included registering numerous weak “alternative bills,” requesting additional consultations to “reach consensus,” creating working groups, re-registering the bills, and thus wasting time. Second, the tobacco industry actively tried to undermine the tobacco products taxation policy, including taxation of heated tobacco products (HTPs) and cigarillos. The industry intensified misleading messages in media about the “increased level of illicit tobacco trade,” including the projected increasing illicit market of HTPs due to the increased taxes. Third, the tobacco industry seemed to consolidate its front-line 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 favor of the industry. This group of MPs belong to the majority political fraction of the Parliament “Servant of the People” that has made the work to protect the tobacco control policies particularly difficult.

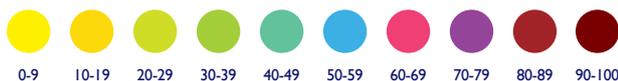
2. Industry CSR activities

The reporting period is characterized by intensified publicly disclosed corporate social responsibility (CSR) activities of the tobacco industry using 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 as was the provision of medical equipment and personal protective equipment (PPE) to the government institutions and communal hospitals. These cases were publicly promoted by officials at the local level while were rejected by the Ministry of Health (MOH) and the Office of the President of Ukraine. Tobacco companies continued supporting some local projects in cities where their production facilities are located. Also, based on Philip Morris International (PMI)’s annual report, this tobacco transnational continued providing funds as social CSR activities to several Ukrainian NGOs, spotted in previous report.

3. Benefits to the industry

The government avoided providing any financial preferences to the tobacco industry and substantially increased tax rates for novel tobacco products at the beginning of 2020. Alignment of the tax rates on HTPs with traditional tobacco products (cigarettes) also became a global breakthrough and best practice. However, active attempts were made to create some preferences for the tobacco product wholesalers. Thus, some MPs, who are said to be connected with the tobacco retail business, tried to lobby for favorable amendments to regulate the tobacco retail prices. Also, the government adopted an unprecedented decision to identify “national tobacco retailer.” Even though this decision had not been made operational since September 2020 due to MPs’ collective appeal to the Constitutional Court, 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 the 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”) and by this excluded these products from the regulations on tobacco control legislation (in other words, smoke-free and tobacco advertising, promotion and sponsorships [TAPS] policies will not be applicable to HTPs). Also, the Committee excluded the term “tobacco products” from the tobacco control law No. 2889, that created further difficulties for the tobacco control policy implementation, regardless the scope of the regulations. Even though, 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 Mineconomy and on the proposed assistance from the tobacco industry in combating smuggling and illicit trade. Also, the government continued discussing with the tobacco industry the introduction of the Track and Tracing mechanism. The 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 shameful agreement was reached under the coordination of the key lawmakers of the President's political party.

5. Transparency

No substantial changes were identified in regard to the government transparency for these matters. However, general consideration should be given that during the 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 Information, it was possible to receive many documents regarding the activity of the working group under the Memorandum, including protocols of the meeting and participants list.

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 conflicts of interest are often revealed by the journalists' investigations but follow up measures by enforcement agencies leave 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 World Health Organization (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 the tobacco products are basic and yet poorly implemented. Also, tobacco marketing and novel products information is not available and not requested by law.



Several cases of financial support from tobacco companies were identified such as the provision of medical equipment and personal protective equipment to government institutions and community hospitals.



Recommendations

1. In 2021, Ukraine became among the first cohort of countries that impose equally high taxation on both conventional cigarettes and HTPs. It is recommended to secure such a policy that will favorably impact both state budget revenue and public health goals.
2. This report as well as two previous reports highlight that the tobacco industry interference remains the key obstacle for passage of the comprehensive tobacco control bill that closes loopholes in smoke-free, advertising and sponsorship ban and health warning legislation. Thus, the influence of the tobacco industry on decision-makers remains high and results in absence of the substantial progress in 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 the tobacco industry's negative impact.
3. The Parliament and the government have already made attempts to implement EUTPD 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 EUTPD implementation. It is recommended though to introduce EUTPD 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 HTPs should be regulated as conventional cigarettes in terms of smoke-free spaces, TAPS and pictorial-health warnings legislation provisions. It is recommended to the decision-makers to stay alerted to the misleading and manipulative messages of the tobacco industry about "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 Framework Convention on Tobacco Control (FCTC) and its Guidelines.
6. Considerations should be given to implement the best practices for the WHO FCTC Article 5.3 Guidelines, and set the obligations to publicly disclose any results of the meetings and interactions of the government and Parliament representatives with 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 its officials when dealing specifically with tobacco industry.