



**ENSP**

European Network for  
Smoking and Tobacco Prevention

Brussels, 15 December 2015

## **OPEN LETTER**

**To: All stakeholders / decision makers involved in tobacco control in EU Member States**

**Re: Implementation of the EU Tobacco Products Directive 2014/40/EU (TPD) in respect of the WHO-FCTC Art 5.3**

Dear Sir/Madam,

We are writing to you on behalf of the European Network for Smoking and Tobacco Prevention (ENSP), its members and partner tobacco control groups to invoke Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC), in the planning process for your national implementation of the EU Tobacco Products Directive 2014/40/EU (TPD), which will come into force on 20 May 2016.

As you know, the EU and its Member States have all ratified the FCTC. As a signatory to the convention and as Parties to the FCTC, EU institutions have an obligation to take steps to protect their policy and law making from the commercial interests of the tobacco industry, especially at this critical time of transposition of the TPD into national legislations. .

Tobacco remains the leading cause of preventable death around the world and in Europe, killing over 650.000 Europeans every year. Compared to the rest of the world, the WHO European Region has one of the highest proportions of deaths attributable to tobacco. Tobacco control efforts have been advancing globally, including the adoption and entry into force of the FCTC. With these tools, governments are putting a dent in the tobacco industry's ability to spread this preventable epidemic through comprehensive tobacco control legislations.

Recently, and to use the words of Dr Margaret Chan, Director of the W.H.O., "the tobacco industry, has changed its face and its tactics. The wolf is no longer in sheep's clothing, and its teeth are bared."

"Countries wishing to protect their citizens through larger pictorial warnings on packages or by introducing plain packaging are being intimidated by tobacco industry threats of lengthy and costly litigation (...) If they fight you strongly, it means you have hit them where it hurts", said Dr Chan about the tobacco industry's strategy at the last World Conference on Tobacco or Health.

EU Member States are not alone in facing the tobacco industry's bullying tactics. The industry has been challenging governments in Australia, Uruguay, and the United States for implementing policies aimed at protecting the public from the deadly effects of smoking. Its attacks against legitimate public health measures are a clear attempt to intimidate countries from pursuing effective policies. However, in December 2015, after a four-year court case, the Australian Government won a major international legal battle against Philip Morris over its plain packaging legislation.

ENSP is therefore urging EU Member States governments to recognise, while preparing for the implementation of TPD, its obligations under the FCTC and its articles 5.3, which stipulates that public health policies should be prioritised over the Industry's commercial interests, including the following principles:

1. There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests.
2. Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.
3. Parties should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent.
4. Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses

"The tobacco industry is aggressively and vigorously working to decrease the drive for regulatory control, waiting for any opportunity to interfere. But countries, large or small, should refuse to be intimidated and stand up to the industry's bullying strategies" said Dr Francisco Rodríguez Lozano, President of ENSP.

Additionally to the eight recommended activities for addressing tobacco industry interference in public health policies in Article 5.3, the last Conference of the Parties to the FCTC decided in October 2014 to urge Parties to:

1. Strengthen their implementation of Article 5.3 and intensify collaborative action to address tobacco industry efforts internationally; and
2. Raise awareness and adopt measures to implement Article 5.3 and its implementing Guidelines among all parts of government including diplomatic missions.

We call upon you to act to ensure that when working on the transposition of TPD into national laws, your government fulfils its UN obligations and implements the FCTC's Article 5.3. We ask you and your government to set an example in the European region by refusing to give in to these underhanded tactics and stand strong against the tobacco industry.

Yours faithfully,

**Cornel Radu-Loghin**, Secretary General (ENSP)  
**Dominick Nguyen**, Health Policy and Communication Manager (ENSP)  
**On Behalf of all ENSP members and partners**