



Tobacco Europe Statement Article 5.3¹

The Framework Convention on Tobacco Control (FCTC, entry into force in 2005) is the first treaty negotiated under the auspices of World Health Organisation (WHO) developing a regulatory strategy to reduce tobacco use and exposure to tobacco smoke.

The Article 5.3 of the Treaty requires that *“in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”*.

In 2008, the Conference of the Parties (COP) to the FCTC collectively adopted guidelines setting out 4 non-binding principles and 8 non-binding recommendations to support the implementation of article 5.3². Among these 4 non-binding principles, one principle specifically addresses relations with the Tobacco Industry representatives and clearly states interactions shall be *“accountable and transparent”*.

The two sub-recommendations made for this principle request the *“necessary interactions”* to be *“conducted transparently”* but **do not mandate or suggest the exclusion of the industry at any stage.**

More importantly, article 5.3 and its related principles seek to protect public health policies exclusively, and do not encompass other policies fields dealing with the Tobacco Industry. In this instance, no marginalization can be justified under Article 5.3 for dossiers unrelated to public health policies such as environmental, customs or financial dossiers.

All in all, Tobacco Europe believes that FCTC Article 5.3 provides an opportunity to improve transparency, inclusivity, and the integrity of a decision-making process – especially in conjunction with the EU and OECD principles of Better Regulation.

Tobacco Europe and its members are legitimate, transparent and accountable stakeholders in European regulatory debates. The tobacco industry is a legal and integral partner of the EU institutions when it comes to tobacco-related legislation in the EU and rightly expects to be part of the decision-making process, as any other stakeholder.

¹ Approved on 12/04/24

² <https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3>

Importantly, this was further highlighted by the EU Court of Justice recently (February 2022), when delivering a judgement in the [case C- 160/20](#) on the methods to measure the emission levels in which it clearly stressed that **Article 5(3) of the FCTC does not prohibit all tobacco industry involvement in tobacco control policymaking but seeks to prevent tobacco control policies from being influenced by tobacco industry interests³.**

^{3 1} Abstract of the ECJ judgement:

- 58 Article 5(3) of the FCTC provides that, in setting and implementing their public health policies with respect to tobacco control, the parties to that convention are to act to protect these policies from interests of the tobacco industry in accordance with national law.
- 59 It is clear from the very wording of that provision that it does not prohibit all participation of the tobacco industry in the establishment and implementation of rules on tobacco control but is intended solely to prevent the tobacco control policies of the parties to the convention from being influenced by that industry's interests.