



Comments on the Draft guidelines for implementation of Article 5.3 of the Convention on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry (Document FCTC/COP/3/5)

**Third session of the Conference of the Parties to the
WHO Framework Convention on Tobacco Control
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Draft Guidelines text	FCA recommended text	Comments
<p>INTRODUCTION</p> <p>1. World Health Assembly resolution WHA54.18 on transparency in tobacco control process, citing the findings of the Committee of Experts on Tobacco Industry Documents, states that “the tobacco industry has operated for years with the expressed intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic.”</p> <p>2. The Preamble of the WHO Framework Convention on Tobacco Control indicates that Parties¹ “need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts”. Further, Article 5.3 of the Convention requires that “in setting and implementing their public health policies with respect to tobacco control, Parties should act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with the national law.” The Conference of the Parties in decision FCTC/COP2(14) established a working group to elaborate guidelines for implementation of Article 5.3.</p>	<p>INTRODUCTION</p> <p>1. The Preamble of the WHO Framework Convention on Tobacco Control indicates <i>states</i> that Parties “need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts”. Further, Article 5.3 of the Convention requires that “in setting and implementing their public health policies with respect to tobacco control, Parties should act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with the national law.” The Conference of the Parties in decision FCTC/COP2(14) established a working group to elaborate guidelines for implementation of Article 5.3.</p> <p>2. World Health Assembly resolution WHA54.18 on transparency in tobacco control process, citing the findings of the Committee of Experts on Tobacco Industry Documents, states that “the tobacco industry has operated for years with the expressed intention of subverting the role of governments and of WHO in implementing public health policies to combat the tobacco epidemic.”</p>	<p>In ordering the introduction to guidelines for implementation of Article 5.3, FCA considers that the paragraph referring to the relevant provisions of the Convention should precede that relating to WHA Resolution 54.18.</p> <p>FCA notes that the Convention directly states – rather than merely indicates – that Parties need to be alert to tobacco industry efforts.</p> <p>FCA does not consider it necessary to define ‘Parties’, as the term is commonly understood and is not defined in the guidelines for implementation of Article 8 or any of the other draft guidelines. FCA considers that the footnote should be deleted.</p>

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<p>Purpose, scope and applicability</p> <p>3. Use of the guidelines for Article 5.3 will have an overarching impact on countries' tobacco control policies and on implementation of the Convention, because the guidelines recognize that tobacco industry interference, including that from the state-owned tobacco industry, cuts across a number of tobacco control policy areas, as stated in the Preamble of the Convention, articles referring to specific tobacco control policies and the Rules of Procedure of the WHO Framework Convention on Tobacco Control.</p>	<p>Purpose, scope and applicability</p> <p>3. Use of the guidelines for Article 5.3 will have an overarching impact on countries' <i>Parties'</i> tobacco control policies and on implementation of the Convention, because the guidelines recognize that tobacco industry interference, including that from the state-owned tobacco industry, cuts across a number of tobacco control policy areas, as stated <i>recognized</i> in the Preamble of the Convention, articles referring to specific tobacco control policies and the Rules of Procedure of the WHO Framework Convention on Tobacco Control.</p>	<p>FCA considers that the word 'countries' should be amended to 'Parties'.</p> <p>FCA recommends that the words 'the guidelines recognize that' be deleted – it is because tobacco industry interference cuts across a number of tobacco control policy areas that the guidelines will have an overarching impact, not because the guidelines recognize that it cuts across a number of areas.</p> <p>FCA recommends that the word 'stated' be amended to 'recognized', as the cross-cutting nature of tobacco industry interference is recognized in each of the places cited, but not always explicitly stated.</p>
<p>4. The purpose of these guidelines is to ensure that efforts to protect tobacco control from commercial and other vested interests of the tobacco industry are comprehensive and effective. Parties should implement measures in all branches of government that may have an interest in, or the capacity to, affect public health policies with respect to tobacco control.</p> <p>5. The aim of these guidelines is to assist Parties¹ in meeting their legal obligations under Article 5.3 of the Framework Convention. The guidelines draw on the best available scientific evidence and the experience of Parties in addressing tobacco industry interference.</p>	<p><i>4. The purpose of these guidelines is to assist Parties in meeting their legal obligations under Article 5.3 of the Convention. They aim to provide assistance to Parties in implementing comprehensive and effective measures to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. They draw on the best available evidence and the experience of Parties in addressing tobacco industry interference.</i></p>	<p>FCA recommends that paragraphs 4 and 5, which deal with the purpose or aim of the guidelines, be consolidated into one clear paragraph.</p> <p>FCA considers that the second sentence of paragraph 4 would seem to more properly belong in paragraph 6 of the draft guidelines.</p> <p>FCA considers that footnote 1 in paragraph 5 erroneously implies that regional integration organizations may not be Parties to the Convention, and should be deleted.</p>

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<p>6. The guidelines apply to setting and implementing Parties' public health policies with respect to tobacco control. They also apply to persons, bodies or entities that contribute to, or could contribute to, the formulation, implementation, administration or enforcement of those policies.</p> <p>7. The guidelines are applicable to government officials, representatives and employees of any national, state, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party and to any person acting on their behalf. Any government branch (executive, legislative and judiciary) responsible for setting and implementing tobacco control policies and for protecting those policies against tobacco industry interests should be accountable.</p>	<p><i>5. The guidelines apply to setting and implementing Parties' public health policies with respect to tobacco control. Parties should implement measures in all branches of government that may have an interest in, or the capacity to affect, public health policies with respect to tobacco control. The guidelines are applicable to all persons, bodies or entities that are involved in, or contribute to, the formulation, implementation, administration or enforcement of these policies, including government officials, representatives and employees of any national, state, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party and to any person acting on their behalf. Any government branch (executive, legislative and judiciary) responsible for setting and/or implementing tobacco control policies should be accountable for protecting those policies against tobacco industry interests.</i></p>	<p>FCA recommends that paragraphs 6 and 7, which deal with the applicability of the guidelines, be consolidated into one clear paragraph (which, if FCA's recommendation with respect to paragraphs 4 and 5 were accepted, would become paragraph 5). As noted above, this paragraph should also include the second sentence of paragraph 4 of the draft guidelines.</p>

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<p>8. The broad array of strategies and tactics used by the tobacco industry to interfere with the setting and implementing of tobacco control measures, such as those that Parties to the Convention are recommended to implement, is documented by a vast body of evidence. The measures recommended in these guidelines aim at protecting against unlawful or unethical interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.</p>	<p>6. The broad array of strategies and tactics used by the tobacco industry to interfere with setting and implementing tobacco control measures, such as those that Parties to the Convention are recommended <i>required</i> to implement, is documented by a vast body of evidence. The measures recommended in these guidelines aim at protecting against unlawful or unethical interference not only by the tobacco industry but also, as appropriate, by organizations and individuals that work to further the interests of the tobacco industry.</p>	<p>FCA considers that the word ‘recommended’ in paragraph 8 of the draft guidelines should be amended to ‘required’, as the measures referred to are legally required to be implemented by Parties to the Convention. FCA considers that it would be inappropriate for guidelines for implementation of the Convention to suggest that Parties are merely ‘recommended’ to implement measures that they are in fact legally bound to implement.</p> <p>FCA considers that the words ‘unlawful or unethical’ – which may suggest that there are some forms of tobacco industry interference that are ethical and/or lawful and that may be allowed – should be deleted. Article 5.3 requires Parties to protect their tobacco control policies from <i>any</i> tobacco industry interference. The use of the potentially limiting terms ‘unlawful or unethical’ in guidelines for implementation of Article 5.3 is inappropriate, particularly given the unethical nature of the tobacco industry’s business. All industry interference is unethical, and all industry interference is covered by the requirement to protect under Article 5.3.</p>
<p>9. While the measures recommended in these guidelines should be applied by Parties as broadly as necessary, in order best to achieve the objectives of Article 5.3, Parties are strongly encouraged to implement measures beyond those recommended in these guidelines when adapting them to their specific circumstances.</p>	<p>7. While the measures recommended in these guidelines should be applied by Parties as broadly as necessary, in order best to achieve the objectives of Article 5.3, Parties are strongly encouraged to implement measures beyond those recommended in these guidelines when adapting them to their specific circumstances.</p>	<p>FCA suggests no changes to paragraph 9 of the draft guidelines.</p>

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<p>GUIDING PRINCIPLES</p> <p>Principle 1: Tobacco products are legal but lethal.</p> <p>10. In this sense, the tobacco industry is specific and unique. It produces and promotes a product that has been proven scientifically to be addictive, to cause disease and death and to give rise to a variety of social ills, including increased poverty. Consequently, there is a fundamental conflict between the tobacco industry’s interests and public health policy. As this conflict of interest is irreconcilable, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.</p>	<p>GUIDING PRINCIPLES</p> <p>Principle 1: Tobacco products are legal but lethal. There is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy.</p> <p>8. In this sense, The tobacco industry is specific and unique. It produces and promotes a product that has been proven scientifically to be addictive, to cause <i>death</i>, disease, and death <i>disability</i> and to give rise to a variety of social ills, including increased poverty. Consequently, there is a the fundamental conflict between the tobacco industry’s interests and public health policy. As this conflict of interest is irreconcilable, <i>requiring</i> Parties to should protect the formulation <i>setting</i> and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.</p>	<p>FCA considers that guiding principle 1 should clearly acknowledge the conflict between the tobacco industry’s interests and public health policy, as reflected in the text below the ‘guiding principle’. FCA considers that this is an extremely important change to make to the draft guidelines. Principle 1 is the first section after the introductory section and needs to convey strongly and clearly that there is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy. The fact that tobacco products are legally available for sale to adults in most Parties’ jurisdictions is not relevant to this conflict, and should not be mentioned in the guiding principles.</p> <p>FCA suggests minor language changes to paragraph 10 of the draft guidelines to reflect the suggested change in Principle 1, and to ensure consistency with the language of the Convention.</p>
<p>Principle 2: Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.</p> <p>11. Parties should ensure that any engagement with the tobacco industry on matters related to tobacco control or public health is accountable and transparent.</p>	<p>Principle 2: Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.</p> <p>9. Parties should ensure that <i>accountability and transparency in</i> any engagement with the tobacco industry on matters related to tobacco control or public health is accountable and transparent.</p>	<p>FCA recommends a minor change to the wording of paragraph 11 of the draft guidelines to improve the grammatical structure of the sentence.</p>

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<p>Principle 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.</p> <p>12. The tobacco industry should be required to provide Parties with information for effective implementation of these guidelines.</p>	<p>Principle 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.</p> <p><i>10. To ensure effective implementation of these guidelines, the tobacco industry should be required to provide Parties with a wide range of information on its activities relevant to the objective of the Convention for effective implementation of these guidelines.</i></p>	<p>FCA considers that paragraph 12 of the draft guidelines could be misread as recommending that Parties require the industry to provide information for implementation of the guidelines – rather than to provide information that Parties need in order to be able to implement the guidelines effectively. FCA recommends additional wording to clarify this paragraph, consistent with Articles 12(c) and 20.4(c) of the Convention, and with the recommendations that follow under Recommendation 5.</p>
<p>Principle 4: Because their products are lethal, tobacco companies should not be granted incentives to establish or run their businesses.</p> <p>13. Any privileged treatment of these companies would be in conflict with tobacco control policy.</p>	<p>Principle 4: Because their products are lethal, tobacco industry entities companies should not be granted incentives to establish or run their businesses.</p> <p><i>11. Granting any incentives, privileges or benefits to tobacco industry entities treatment of these companies would be in conflict with tobacco control policy.</i></p>	<p>FCA considers that, for consistency with the language of Article 5.3, and to ensure that the recommendations are sufficiently broad to assist Parties in protecting their public health policies with respect to tobacco control from all tobacco industry interests, the guidelines should refer to ‘tobacco industry entities’, rather than to ‘tobacco companies’, ‘tobacco businesses’, or ‘tobacco business entities’.</p> <p>FCA notes that Principle 4 of the draft guidelines recommends against the granting of <i>any</i> incentives to tobacco companies – this is broader than ‘privileged’ treatment. FCA’s recommended amendment to paragraph 13 is consistent with the wording of both Principle 4 and Recommendation 7.1 of the draft guidelines.</p>

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<p>RECOMMENDATIONS</p> <p>14. The following important activities are essential for addressing tobacco industry interference in public health policies:</p> <p>(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.</p> <p>(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.</p> <p>(3) Reject partnerships and non-binding or non-enforceable agreements and partnerships with the tobacco industry.</p> <p>(4) Avoid conflicts of interest for government officials and employees.</p> <p>(5) Require that information collected from the tobacco industry be transparent and accurate.</p> <p>(6) Denormalize and regulate activities described as “corporate social responsibility” by the tobacco industry.</p> <p>(7) Do not give privileged treatment to tobacco companies.</p> <p>(8) Treat State-owned tobacco companies in the same way as any other tobacco industry.</p>	<p>RECOMMENDATIONS</p> <p>12. The following important activities are essential for addressing tobacco industry interference in <i>protecting public health policies with respect to tobacco control from the commercial and other vested interests of the tobacco industry:</i></p> <p>(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.</p> <p>(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.</p> <p>(3) Reject partnerships and non-binding or non-enforceable agreements and partnerships with the tobacco industry <i>and tobacco industry voluntary codes of conduct.</i></p> <p>(4) Avoid conflicts of interest for government <i>institutions</i>, officials, and employees.</p> <p>(5) Require that information collected from the tobacco industry be transparent <i>to provide comprehensive and accurate information about its activities.</i></p> <p>(6) Denormalize and regulate any tobacco industry activities described as “corporate social responsibility” by the tobacco industry <i>activities not banned or not yet banned under Article 13 (Tobacco advertising, promotion and sponsorship).</i></p> <p>(7) Do not give <i>incentives, privileges or benefits</i> privileged treatment to tobacco industry <i>entities</i> companies.</p> <p>(8) Treat State-owned tobacco <i>industry entities</i> companies in the same way as any other tobacco industry <i>entity</i>.</p>	<p>FCA considers the 8 recommendations listed in paragraph 14 of the draft guidelines to be critically important to the effectiveness of guidelines for implementation of Article 5.3. As suggested and explained below (where each recommendation appears in the text of the draft guidelines), FCA considers that the recommendations should be amended in a number of important respects.</p> <p>FCA suggests that, to reflect the wording of Article 5.3, the words ‘addressing tobacco industry interference in public health policies’ be replaced with the words ‘protecting public health policies with respect to tobacco control from the commercial and other vested interests of the tobacco industry’.</p>

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<p>Agreed measures for protecting public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry are listed below. Parties are encouraged to implement measures beyond those provided for by these guidelines, and nothing in these guidelines shall prevent a Party from imposing stricter requirements that are consistent with these recommendations.</p>	<p>Agreed measures for protecting public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry are listed below. Parties are encouraged to implement measures beyond those listed below provided for by these guidelines, and nothing in these guidelines shall prevent a Party from imposing stricter requirements that are consistent with these recommendations.</p>	<p>FCA considers that the suggested wording is more concise and consistent with the legal status of guidelines. As Parties' legal obligations derive from Article 5.3 itself, not from guidelines for its implementation, it would not be possible for the guidelines to 'prevent a Party from imposing stricter requirements'. FCA notes that the point made in this paragraph is already made in paragraph 9 of the draft guidelines, which states: 'Parties are strongly encouraged to implement measures beyond those recommended in these guidelines when adapting them to their specific circumstances'. FCA considers that if this point is to be made again here, the text should simply state: 'Parties are encouraged to implement measures beyond those listed below'.</p>
<p>(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.</p> <p>15. All branches of government and the public need knowledge and awareness about past and present interference by the tobacco industry in setting and implementing public health policies with respect to tobacco control.¹ Such interference requires specific action for successful implementation of the whole Framework Convention.</p>	<p>(1) Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.</p> <p>13. All branches of government and the public need knowledge and awareness about past and present interference by the tobacco industry in setting and implementing public health policies with respect to tobacco control.¹ Such interference requires specific action for successful implementation of the whole Framework Convention.</p>	<p>FCA suggests no changes to paragraph 15 of the draft guidelines.</p>

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<p><i>Recommendations</i></p> <p>1.1 Parties should, in consideration of Article 12 of the Framework Convention, inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.</p> <p>1.2 Parties should in addition raise awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.</p>	<p><i>Recommendations</i></p> <p>1.1 Parties should, in consideration of Article 12 of the Framework Convention, inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.</p> <p>1.2 Parties should in addition raise awareness about the tobacco industry’s practice of using individuals, front groups and affiliated organizations to act, openly or covertly, on their behalf or to take action to further the interests of the tobacco industry.</p>	<p>FCA suggests no changes to Recommendations 1.1 and 1.2 of the draft guidelines.</p>

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<p>(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.</p> <p>16. To prevent interference with public health policies with respect to tobacco control, governments should interact with the tobacco industry only when necessary, in line with the principle of good governance or as mandated by legal and administrative means within the jurisdiction, provided that these are consistent with Article 5.3 of the Convention.</p>	<p>(2) Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.</p> <p><i>14. To prevent interference with public health policies with respect to tobacco control, governments should interact with the tobacco industry only when, and to the extent, strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products, in line with the principle of good governance or as mandated by legal and administrative means within the jurisdiction, provided that these are consistent with Article 5.3 of the Convention.</i></p>	<p>FCA considers that paragraph 16 of the draft guidelines does not provide the clear guidance that Parties need on limiting their interactions with the tobacco industry, which is a critical aspect of effective implementation of Article 5.3. FCA recommends that this paragraph be clarified and strengthened and the reference to ‘good governance’ deleted. The term ‘good governance’ is both vague and potentially limiting of the important recommendation that ‘governments should interact with the tobacco industry only when necessary’. ‘Good governance’ means different things in different places and contexts, meaning that it cannot provide clear guidance to Parties, and often connotes active participation of ‘stakeholders’ in policy development and implementation. While active ‘stakeholder’ participation is appropriate in many contexts, it is not appropriate when dealing with the tobacco industry, due to the fundamental and irreconcilable conflict of interest recognized in paragraph 10 of the draft guidelines.</p>

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<p>17. Any interaction with the tobacco industry should serve as a means for exchange of information, but should occur in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from, or on account of, such interaction.</p>	<p>15. Any <i>necessary</i> interaction with the tobacco industry should serve as a means for exchange of information, but <i>should be carried out by Parties</i> occur in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from, or on account of, such interaction. <i>In the event that the tobacco industry engages in any conduct that may create such a perception, Parties should act to prevent or correct the perception.</i></p>	<p>FCA recommends that the words ‘should serve as a means for exchange of information’ be deleted from paragraph 17 of the draft guidelines to reinforce the important recommendation that ‘governments should interact with the tobacco industry only when necessary’ (and, as noted above, it should be clear that this refers only to circumstances in which interaction is necessary to enable governments to effectively regulate the tobacco industry and tobacco products). Paragraph 17 should not introduce additional wording relating to when and why interactions may occur, but should deal with the second critical aspect of Recommendation 2 – ensuring transparency of any interactions that may be necessary.</p> <p>FCA considers that paragraph 17 should include an additional sentence specifically addressing circumstances in which the tobacco industry seeks to use an interaction with government to create a perception of partnership or cooperation.</p>

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<p><i>Recommendations</i></p> <p>2.1 All branches of government should ensure that clear rules for transparency are applied in their interactions with the tobacco industry. The interactions should be made accessible to the public in accordance with established transparency rules or, if there are no such rules, on request.</p> <p>2.2 The involvement of the tobacco industry in setting and implementing public health policies with respect to tobacco control should be limited and should strictly comply with existing good governance rules or, in their absence, should only occur by means of public consultation, thus ensuring complete transparency.</p> <p>2.3 Parties should apply existing, strict governance rules systematically or, in their absence, establish specific rules for meetings with the tobacco industry, including third party-mediated meetings, to be implemented by all branches of government.</p> <p>2.4 Parties should not participate in meetings or functions initiated or funded by the tobacco industry.</p>	<p><i>Recommendations</i></p> <p><i>2.1 Parties should interact with the tobacco industry only when, and to the extent, strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.</i></p> <p><i>2.2 Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently. Wherever possible, interactions should be conducted in public, such as through public hearings. Where this is not possible, public notice of interactions should be given, records should be kept of the interactions, and these records should be disclosed to the public in a timely manner.</i></p>	<p>FCA considers that Recommendations 2.1-2.4 of the draft guidelines should be consolidated into two clear recommendations on the two critical elements of Recommendation 2: 1) limiting interactions with the tobacco industry to only those necessary; and 2) ensuring the transparency of any necessary interactions.</p> <p>FCA does not consider that Recommendations 2.1-2.4 provide the clear guidance that Parties need in this area. The references to ‘existing good governance rules’, ‘existing, strict governance rules’, and ‘established transparency rules’ are vague and potentially limiting.</p>

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<p>(3) Reject partnerships and non-binding or non-enforceable agreements and partnerships with the tobacco industry.</p> <p>18. The tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies, given that its interests are in direct conflict with the goals of public health.</p>	<p>(3) Reject partnerships and non-binding or non-enforceable agreements and partnerships with the tobacco industry and tobacco industry voluntary codes of conduct.</p> <p>16. The tobacco industry should not be a partner in any initiative linked to setting or implementing public health policies, given that its interests are in direct conflict with the goals of public health.</p>	<p>FCA considers that the second reference to ‘partnerships’ in Recommendation 3 of the draft guidelines is redundant and should be deleted.</p> <p>FCA considers that Recommendation 3 should be amended to include the important recommendation in Recommendation 3.3 that Parties should prohibit ‘any voluntary code of conduct’.</p>
<p>Recommendations</p> <p>3.1 Parties should establish policies that prohibit partnerships or non-enforceable or non-binding agreements and partnerships as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.</p>	<p>Recommendations</p> <p>3.1 Parties should establish policies that prohibit partnerships or and non-enforceable or non-binding agreements and partnerships as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests.</p>	<p>As above, FCA considers that the second reference to ‘partnerships’ is redundant and should be deleted.</p> <p>FCA considers that the reference to ‘any voluntary arrangement with the tobacco industry’ should be deleted. It is not clear what this adds to the text of Recommendation 3.1 of the draft guidelines, which already covers ‘partnerships’ and ‘agreements’, and it may be confusing. For example, ‘voluntary arrangement’ could be understood to extend to enforceable agreements such as may be made in settlement of litigation – which, though binding, are agreed voluntarily – which in some cases allow governments to achieve outcomes that cannot be achieved, or would be more difficult to achieve, through other kinds of regulation.</p>

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<p>3.2 Parties should prohibit the tobacco industry from participating in or performing youth, public education or any initiatives that are directly or indirectly related to tobacco control.</p>	<p>3.2 Parties should prohibit the tobacco industry from <i>organizing, sponsoring</i>, participating in or performing youth, public education or any <i>similar activities, except where legally required to do so, including by order of a court</i> initiatives that are directly or indirectly related to tobacco control.</p>	<p>FCA considers that the words ‘organizing, sponsoring’ should be added to ensure that Recommendation 3.2 of the draft guidelines clearly applies to all kinds of industry involvement in youth, public education or similar activities.</p> <p>FCA considers that the words ‘any initiatives that are directly or indirectly related to tobacco control’ may be unintentionally overbroad. For example, they could be read as recommending that the tobacco industry be prohibited from complying with health warning requirements, or with requirements to prevent illicit trade in its products. Including unintentionally broad language is likely to adversely affect implementation of this important recommendation.</p>
<p>3.3 Parties should prohibit the acceptance of any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.</p> <p>3.4 Parties should prohibit acceptance of any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.</p>	<p>3.3 Parties should <i>not accept</i> prohibit the acceptance of any voluntary code of conduct or instrument drafted by the tobacco industry that is offered as a substitute for legally enforceable tobacco control measures.</p> <p>3.4 Parties should <i>not accept</i> prohibit acceptance of any offer for assistance or proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.</p>	<p>FCA considers that the words ‘prohibit acceptance of’ in Recommendations 3.3 and 3.4 of the draft guidelines should be replaced with the words ‘not accept’, as these recommendations refer to what governments themselves should not do, not what they should prohibit others from doing.</p> <p>FCA considers that the words ‘drafted by the tobacco industry that is offered’ in Recommendation 3.3 should be deleted as Parties should not accept <i>any</i> voluntary code of conduct or instrument as a substitute for legally enforceable tobacco control measures, whether or not drafted or offered by the tobacco industry.</p>

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<p>(4) Avoid conflicts of interest for government officials and employees.</p> <p>19. The involvement of organizations or individuals with commercial or vested interests in the tobacco industry in public health policies with respect to tobacco control is most likely to have a negative effect. Clear rules regarding conflicts of interest for government officials and employees working in tobacco control are important means for protecting such policies from interference by the tobacco industry.</p>	<p>(4) Avoid conflicts of interest for government institutions, officials, and employees.</p> <p>17. The involvement of organizations or individuals with commercial or vested interests in the tobacco industry in public health policies with respect to tobacco control <i>creates a conflict of interest</i> is most likely to have a negative effect. Clear rules regarding conflicts of interest for government <i>institutions</i>, officials and employees working in tobacco control are important means for protecting such policies from interference by the commercial and other vested interests of the tobacco industry.</p>	<p>As recognized in paragraph 20 of the draft guidelines, it is important to avoid conflicts of interest for government institutions – which may occur without any individual government official or employee having a personal conflict of interest. FCA considers that this should be clearly recognized in Recommendation 4 and in paragraph 19 of the draft guidelines.</p> <p>FCA considers that the first sentence of paragraph 19 should be strengthened by the replacement of the words ‘is most likely to have a negative effect’ with the words ‘creates a conflict of interest’, which reflects the critical point and leads better into the following sentence.</p> <p>FCA considers that, to reflect the wording of Article 5.3, the words ‘interference by’ should be replaced with the words ‘the commercial and other vested interests of’.</p>
<p>20. Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the United Nations General Assembly Code of Conduct for Public Officials and by several governmental and regional economic integration organizations.</p>	<p>18. Payments, gifts and <i>services and benefits</i>, monetary or in-kind, and research <i>and other</i> funding from offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal <i>and institutional</i> interests to influence official responsibilities, as recognized in the United Nations General Assembly Code of Conduct for Public Officials and by several governmental and regional economic integration organizations.</p>	<p>FCA considers that minor changes should be made to paragraph 20 of the draft guidelines to strengthen the paragraph and ensure consistency with the previous paragraph and the following recommendations.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>Recommendations</p> <p>4.1 Parties should mandate a policy on the disclosure and management of conflicts of interest that applies to all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors.</p> <p>4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.</p> <p>4.3 Parties should not award contracts for setting and implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies.</p>	<p>Recommendations</p> <p>4.1 Parties should mandate a policy on the disclosure and management of conflicts of interest that applies to all persons involved in setting and/or implementing public health policies with respect to tobacco control, including government officials, employees, consultants and contractors.</p> <p>4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.</p> <p>4.3 Parties should not award contracts for setting and/or implementing public health policies with respect to tobacco control to candidates or tenderers who have conflicts of interest <i>that conflict with the objectives of such established tobacco control policies. Parties should require candidates or tenderers to declare any such conflicting interests.</i></p>	<p>FCA considers that the word ‘and’ should be replaced with the words ‘and/or’, as both the ‘setting’ and ‘implementing’ of public health policies with respect to tobacco control are required to be protected under Article 5.3.</p> <p>FCA considers that the important recommendation made in Recommendation 4.3 of the draft guidelines should not be limited to persons who have conflicts of interest with ‘<i>established</i> tobacco control policies’, and should be amended to clearly apply to any persons who have interests that conflict with the <i>objectives</i> of public health policies with respect to tobacco control.</p> <p>FCA considers that, to facilitate implementation of the recommendation that contracts for setting and/or implementing public health policies with respect to tobacco control not be awarded to candidates or tenderers who have conflicts of interest, a recommendation should be added that Parties require such persons to declare any conflicts of interest.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>4.4 Parties should require public office holders who have or have had a role in setting and implementing public health policies with respect to tobacco control to inform their institutions about any intention to engage in an occupational activity with any tobacco business entity, whether gainful or not, within a specified period of time after leaving service. The institution should retain the right to either forbid acceptance of an occupational activity with any tobacco business entity or give its approval subject to any conditions it might deem necessary. This recommendation should also operate in the opposite direction.</p>	<p>4.4 Parties should require public office holders who have or have had a role in setting and/or implementing public health policies with respect to tobacco control to inform their institutions about any intention to engage in an occupational activity with any tobacco business-industry entity, whether gainful or not, within a specified period of time after leaving service. The institution should retain the right to forbid acceptance of an occupational activity with any tobacco business-industry entity or give its approval subject to any conditions it might deem necessary. This recommendation should also operate in the opposite direction.</p> <p><i>4.5 Parties should require applicants for positions in public office relating to setting and/or implementing public health policies with respect to tobacco control to inform them of any previous occupational activity with any tobacco industry entity, whether gainful or not. Parties should not appoint to any position relating to setting and/or implementing public health policies with respect to tobacco control a person who has engaged in an occupational activity with any tobacco industry entity in the preceding five years.</i></p>	<p>FCA considers that the sentence ‘This recommendation should also operate in the opposite direction’ in Recommendation 4.4 should be deleted and replaced with a separate, additional recommendation.</p> <p>Recommendation 4.4 addresses Parties’ requirements with respect to public office holders leaving a position in which they have had a role in setting and/or implementing public health policies with respect to tobacco control and intending to engage in an occupational activity with a tobacco business entity. FCA understands ‘the opposite direction’ to refer to circumstances in which a person who has been engaged in an occupational activity with a tobacco business entity intends to take up a position within government related to setting and/or implementing public health policies with respect to tobacco control. Read literally, the current wording would recommend that a person intending to move from the tobacco industry to government should inform the <i>tobacco industry</i> of his or her intention, with the tobacco industry having the opportunity to forbid the intended move or impose conditions on the intended move. This is clearly not the intention of the recommendation.</p> <p>FCA considers that the inclusion of the suggested additional recommendation will effectively guide Parties in dealing with circumstances in which tobacco industry employees seek positions within government related to setting and/or implementing public health policies with respect to tobacco control.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>4.5 Parties should require governments and their officials to declare and divest themselves of interests in tobacco business holdings.</p>	<p>4.6 Parties should require government <i>institutions and bodies</i> and their officials <i>and employees</i> to declare and divest themselves of <i>any commercial</i> interests in <i>the tobacco industry-business holdings</i>.</p>	<p>For completeness and grammatical correctness, FCA suggests minor changes to Recommendation 4.5 of the draft guidelines (which, if the additional recommendation above were included, would become Recommendation 4.6).</p>
<p>4.6 Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements tobacco control or public health policy.</p>	<p>4.7 Parties should not allow any person employed by the tobacco industry or any entity working to further its interests to be a member of any government body, committee or advisory group that sets or implements, <i>or advises on</i>, tobacco control or public health policy.</p>	<p>As an advisory group does not ordinarily ‘set or implement’ policy, FCA considers that it is necessary to include the phrase ‘or advises on’ in Recommendation 4.6 of the draft guidelines.</p>
<p>4.7 Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.</p>	<p>4.8 Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.</p>	<p>FCA does not suggest any changes to Recommendation 4.7 of the draft guidelines.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>4.8 Parties should not allow any official or employee of government or of any semi/quasigovernmental body to accept payments, gifts or services, monetary or in-kind, from the tobacco industry.</p>	<p>4.9 Parties should not allow any official or employee of governmental or of any semi/quasigovernmental <i>institution or body, or any official or employee of such an institution or body,</i> to accept <i>any direct or indirect</i> payments, gifts, or services <i>or any other contributions,</i> monetary or in-kind, from the tobacco industry <i>or any entity working to further its interests, except for legally mandated payments such as taxes, licensing fees or penalties.</i></p>	<p>FCA considers that Recommendation 4.8 of the draft guidelines, which applies to the acceptance of payments, gifts or services from the tobacco industry by governmental or quasi-governmental officials or employees, should also apply to contributions to governmental or quasi-governmental institutions themselves, with exceptions for legally mandated payments such as taxes, licensing fees and penalties.</p> <p>FCA considers that the words ‘direct or indirect’ and ‘or any entity working to further its interests’ should be added to ensure that the recommendation covers indirect means of providing and accepting payments, gifts, services or other contributions. FCA notes that the expression ‘any entity working to further its interests’ is also used in Recommendations 4.7 and 4.9 of the draft guidelines.</p>
<p>4.9 Parties should ban, when constitutionally permissible, contributions from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns. When this is not constitutionally permissible, full disclosure of such contributions should be required.</p>	<p>4.10 Parties should ban, when constitutionally permissible, contributions <i>of any kind</i> from the tobacco industry or any entity working to further its interests to political parties, candidates or campaigns. When this is not constitutionally permissible, full disclosure of such contributions should be required.</p>	<p>FCA considers that the words ‘of any kind’ should be added to ensure that Recommendation 4.9 of the draft guidelines clearly applies to all of the many kinds of contributions which may be made by the tobacco industry to political parties, candidates or campaigns.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>(5) Require that information collected from the tobacco industry be transparent and accurate.</p> <p>21. To take effective measures preventing interference of the tobacco industry with public health policies, Parties need information about its activities and practices, thus ensuring that the industry operates in a transparent manner. Article 12 of the Convention requires Parties to promote public access to such information in accordance with national law.</p> <p>22. Article 20.4 of the Convention requires, inter alia, Parties to promote and facilitate exchanges of information about tobacco industry practices and the cultivation of tobacco. In accordance with Article 20.4(c), each Party should endeavour to cooperate with competent international organizations to establish progressively and maintain a global system to regularly collect and disseminate information on tobacco production and manufacture and activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.</p>	<p>5) Require that information collected from the tobacco industry be transparent to provide comprehensive and accurate information about its activities.</p> <p>19. To take effective measures preventing interference of the tobacco industry with public health policies, Parties need information about its activities and practices, thus ensuring that the industry operates in a transparent manner. Article 12 of the Convention requires Parties to promote public access to such information in accordance with national law.</p> <p>20. Article 20.4 of the Convention requires, inter alia, Parties to promote and facilitate exchanges of information about tobacco industry practices and the cultivation of tobacco. In accordance with Article 20.4(c), each Party should shall endeavour to cooperate with competent international organizations to establish progressively and maintain a global system to regularly collect and disseminate information on tobacco production and manufacture and activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.</p>	<p>FCA considers that Recommendation 5 of the draft guidelines requires clarification. As currently drafted, it recommends that Parties ensure that any information they collect from the tobacco industry is accurate, rather than that they collect comprehensive information on the tobacco industry's activities, and require of the tobacco industry that that information be accurate.</p> <p>FCA recommends that, for consistency with Article 20.4 of the Convention, the word 'should' in the second sentence of paragraph 22 of the draft guidelines be replaced with the word 'shall'.</p>
<p>5.1 Parties should introduce and supply measures to ensure that all operations and activities of the tobacco industry are transparent.</p>	<p>5.1 Parties should introduce and supply implement measures to ensure that all operations and activities of the tobacco industry are transparent.</p>	<p>FCA notes that the word 'supply' appears to have been included in Recommendation 5.1 of the draft guidelines by typographical error. FCA considers that the single, broader term 'implement' should be used, rather than the words 'introduce and apply'.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>5.2 Parties should require the tobacco industry and those working to further its interests 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 not prohibited or not yet prohibited under Article 13.</p>	<p>5.2 Parties should require the tobacco industry and those working to further its interests to periodically submit information on:</p> <ul style="list-style-type: none"> - tobacco production, manufacture, <i>revenue and market share</i>; - marketing expenditures, revenues and any other activity, including lobbyists and lobbying firms hired, including persons and entities engaged directly or indirectly to undertake any activity to influence public health policy related to tobacco control, and expenditures on these activities; - <i>membership in trade associations or other entities engaged in lobbying or advocacy, and resources provided to such entities;</i> - philanthropy, and political contributions and all other activities not banned prohibited or not yet banned prohibited <i>under Article 13;</i> - <i>any other promotional activities not banned or not yet banned under Article 13, and expenditures on any such activities;</i> - <i>conferences, seminars, workshops, and similar forums organized or supported in whole or in part, and expenditures on any such activities;</i> - <i>scientific, economic, survey or other research, or similar activities supported in whole or in part, and expenditures on any such activities; and</i> - <i>publications and other materials produced, commissioned, or supported in whole or in part, and expenditures on any such materials.</i> 	<p>FCA agrees that requiring the tobacco industry to report on its activities is critical to enable Parties to counter the industry’s attempts to undermine tobacco control policies, as recognized in paragraph 21 of the draft guidelines. However, FCA considers that the list in Recommendation 5.2 of matters on which the tobacco industry should be required to report is not sufficiently broad to allow Parties to achieve this objective.</p>
<p>5.3 Parties should require rules for the disclosure or registration of tobacco business entities, affiliated organizations and individuals acting on their behalf, including lobbyists.</p>	<p>5.3 Parties should require rules for the disclosure or registration of tobacco business <i>industry business</i> entities, affiliated organizations and individuals acting on their behalf, including lobbyists.</p>	<p>FCA considers that as currently drafted, Recommendation 5.3 may be misconstrued as recommending that the tobacco industry develop rules for disclosure or registration, rather than that Parties require disclosure or registration.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>5.4 Parties should impose mandatory penalties on the tobacco industry in case of the provision of false or misleading information in accordance with national law.</p>	<p>5.4 Parties should, <i>in accordance with national law</i>, impose mandatory <i>provide for the imposition of effective criminal, civil and/or administrative penalties on the tobacco industry in case of the provision of false or misleading information in accordance with national law.</i></p>	<p>FCA considers that the important point to be made in Recommendation 5.4 is that effective penalties be applicable, and imposed where necessary. FCA notes that some Parties are unlikely to have systems that provide for <i>mandatory</i> punishment.</p> <p>FCA recommends that the words ‘in accordance with national law’ be moved to follow ‘Parties should’, as, read literally, the draft recommendation suggests that ‘the provision of false or misleading information’ is ‘in accordance with national law’.</p>
<p>5.5 Parties should adopt and implement effective legislative, executive, administrative and other measures to ensure public access, in accordance with Article 12(c) of the Framework Convention, to a wide range of information on tobacco industry activities as relevant to the objectives of the Convention, such as in a public repository.</p>	<p>5.5 Parties should adopt and implement effective legislative, executive, administrative and other measures to ensure <i>promote</i> public access, in accordance with Article 12(c) of the Framework Convention, to a wide range of information on tobacco industry activities as relevant to the objectives of the Convention, such as <i>on a website or in a public repository, and/or by making information available upon request.</i></p>	<p>FCA considers that meaningful access to information requires that information be available by means other than visiting a public repository.</p> <p>FCA recommends that, for consistency with Article 12 of the Convention, the word ‘ensure’ in Recommendation 5.5 of the draft guidelines be replaced with the word ‘<i>promote</i>’.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>(6) Denormalize and regulate activities described as “corporate social responsibility” by the tobacco industry.</p>	<p>(6) Denormalize and regulate any tobacco industry activities described as “corporate social responsibility” by the tobacco industry activities not banned or not yet banned under Article 13 (Tobacco advertising, promotion and sponsorship).</p>	<p>The draft guidelines recognize in paragraph 23 that tobacco industry ‘corporate social responsibility’ is ‘a marketing as well as public relations strategy that falls within the Convention’s definition of advertising, promotion and sponsorship’. The draft guidelines on Article 13 (Tobacco advertising, promotion and sponsorship) contain recommendations on ‘corporate social responsibility’ in the context of Parties’ specific and clearly stated obligation under Article 13 to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship (unless prevented from doing so by their constitution or constitutional principles, in which case the obligation is to apply restrictions on all tobacco advertising, promotion and sponsorship). FCA considers that it is important that guidelines on Article 5.3 reflect the content of Article 13 and guidelines on Article 13, and explicitly acknowledge that any tobacco industry ‘corporate social responsibility activities’ that take place have not been banned, or not yet been banned, under Article 13.</p> <p>FCA considers that the wording ‘described as “corporate social responsibility” by the tobacco industry’ suggests that it is only when the tobacco industry describes activities as ‘corporate social responsibility’ activities that Parties should implement measures in relation to these activities. FCA considers that the recommendation to denormalize tobacco industry ‘corporate social responsibility’ activities should apply regardless of whether these activities are described as such by the tobacco industry.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>23. The tobacco industry conducts corporate social responsibility activities to distance its image from the lethal nature of the product it produces and sells or to interfere with the setting and implementation of public health policies. Corporate social responsibility by the tobacco industry, aiming at the promotion of tobacco consumption, is a marketing as well as public relations strategy that falls within the Convention’s definition of advertising, promotion and sponsorship.</p> <p>24. The corporate social responsibility of the tobacco industry is, according to WHO, an inherent contradiction, as industry’s core functions are in conflict with the goals of public health policies with respect to tobacco control.</p>	<p>21. The tobacco industry conducts corporate social responsibility activities to distance its image from the lethal nature of the product it produces and sells, or and to interfere with the setting and implementation of public health policies. “Corporate social responsibility” by the tobacco industry, <i>having the aiming, effect or likely effect of at the promotion of tobacco consumption products or tobacco use directly or indirectly</i>, is a marketing as well as public relations strategy that falls within the Convention’s definitions of advertising, promotion and sponsorship.</p> <p>22. The “corporate social responsibility” of the tobacco industry is, according to WHO, an inherent contradiction, as industry’s core functions are in conflict with the goals of public health policies with respect to tobacco control.</p>	<p>FCA suggests that, as paragraph 23 of the draft guidelines acknowledges that tobacco industry “corporate social responsibility” is a matter falling within the definitions of ‘tobacco advertising and promotion’ and ‘tobacco sponsorship’ in Article 1 of the Convention, it should better reflect the inclusive wording of those definitions. “Corporate social responsibility” activities fall within the Convention’s definitions of advertising, promotion and sponsorship where their ‘aim, effect or likely effect’ is to ‘promot[e] a tobacco product or tobacco use either directly or indirectly’ – not only where they are ‘aiming at the promotion of tobacco consumption’.</p> <p>FCA considers that the words ‘corporate social responsibility’ should appear in quotation marks to underline that, while designed to create the appearance of social responsibility, the true purpose of such activities is to promote the tobacco industry and its products.</p>

Draft Guidelines text	FCA recommended text	Comments
<p><i>Recommendations</i></p> <p>6.1 Parties should ensure that all branches of government and the public are informed and made aware of the true purpose and scope of corporate social responsibility activities performed by the tobacco industry.</p> <p>6.2 Parties should not endorse, support, form partnerships with or participate in corporate social responsibility activities of the tobacco industry.</p> <p>6.3 Parties should not allow public disclosure of corporate social responsibility activities or of the expenditures made for these activities by the tobacco industry or by any other person acting on its behalf, except in accordance with legal requirements to report on such expenditures, such as in annual reports.</p>	<p><i>Recommendations</i></p> <p>6.1 Parties should ensure that all branches of government and the public are informed and made aware of the true purpose and scope of “corporate social responsibility” activities <i>not banned or not yet banned under Article 13 that are performed</i> undertaken by the tobacco industry.</p> <p>6.2 Parties should not endorse, support, form partnerships with or participate in any “corporate social responsibility activities” of the tobacco industry <i>that are not banned or not yet banned under Article 13</i>.</p> <p>6.3 Parties should not allow public disclosure <i>by the tobacco industry or by any other person acting on its behalf</i> of any tobacco industry “corporate social responsibility” activities <i>not banned or not yet banned under Article 13</i>, or of the expenditures made for these activities by the tobacco industry or by any other person acting on its behalf, except in accordance with legal requirements to report on such expenditures, such as in annual reports.</p>	<p>As above, FCA considers that the words ‘corporate social responsibility should appear in quotation marks, and that the words ‘not banned or not yet banned under Article 13’ should be added to ensure that the recommendations better reflect the content of Article 13 and the draft guidelines for implementation of Article 13.</p> <p>In Recommendation 6.3, FCA considers that the words ‘by the tobacco industry or by any other person acting on its behalf’ should be moved to directly follow the words ‘public disclosure’. FCA considers that this suggested amendment will improve the clarity and grammatical structure of the recommendation. As currently worded, the recommendation may be misread as applying to any public disclosure by <i>any</i> person of tobacco industry ‘corporate social responsibility activities’, rather than to public disclosure by the <i>tobacco industry</i> or any other person acting on its behalf.</p>
<p>6.4 Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements.</p>	<p>6.4 Parties should not allow acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for <i>contributions made pursuant</i> compensations due to legal settlements, or <i>otherwise</i> mandated by law, or <i>made pursuant to</i> legally binding and enforceable agreements.</p>	<p>FCA suggests minor changes to ensure that Recommendation 6.4 clearly sets out the very limited circumstances in which – in light of all the recommendations under Recommendation 6 of the draft guidelines, and Article 13 and the draft guidelines for its implementation – acceptance of contributions from the tobacco industry should be permissible.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>(7) Do not give privileged treatment to tobacco companies.</p>	<p>(7) Do not give incentives, privileges or benefits privileged treatment to tobacco industry entities companies.</p>	<p>FCA considers that the words ‘privileged treatment’ in Recommendation 7 of the draft guidelines should be replaced with the broader wording (‘incentives, privileges or benefits’) used in Recommendation 7.1. FCA notes that this broader wording is more consistent with guiding Principle 4: ‘Because their products are lethal, tobacco companies should not be granted incentives to establish or run their businesses.’</p>
<p>25. Some governments encourage investments by tobacco companies, even to the extent of subsidizing them with financial incentives, such as providing partial or complete exemption from taxes otherwise mandated by law.</p> <p>26. Without prejudice to their sovereign right to determine and establish their economic, financial and taxation policies, Parties should respect their commitments for tobacco control.</p>	<p>23. Some governments encourage investments by tobacco industry entities companies, even to the extent of subsidizing them with financial incentives, such as providing partial or complete exemption from taxes otherwise mandated by law.</p> <p>24. Without prejudice to their sovereign right to determine and establish their economic, financial and taxation policies, Parties should respect their commitments for tobacco control.</p>	<p>As above, FCA recommends that the words ‘tobacco companies’ in paragraph 25 of the draft guidelines be replaced with the words ‘tobacco industry entities.’</p>
<p><i>Recommendations</i></p> <p>7.1 Parties should not grant incentives, privileges or benefits to tobacco companies to establish or run their businesses.</p>	<p><i>Recommendations</i></p> <p>7.1 Parties should not grant incentives, privileges or benefits to tobacco industry entities companies to establish or run their businesses.</p>	<p>As above, FCA recommends that the words ‘tobacco companies’ in Recommendation 7.1 of the draft guidelines be replaced with the words ‘tobacco industry entities.’</p>

Draft Guidelines text	FCA recommended text	Comments
<p>7.2 Parties should adopt policies to prevent governments from investing in the tobacco industry and related ventures or from providing any special tax exemption to tobacco companies.</p>	<p>7.2 Parties should adopt policies to prevent governments from investing <i>not investing</i> in the tobacco industry and-or related ventures or from providing any special tax exemption to tobacco <i>industry entities</i>-companies.</p>	<p>FCA recommends deleting the term ‘special’ in relation to tax exemptions, as it may imply that incentives may be provided to the tobacco industry provided they are not granted only to the tobacco industry. FCA considers that, as recommended in Recommendation 7.1 and reflected in guiding Principle 4 of the draft guidelines, no incentives at all should be granted to the tobacco industry, regardless of whether similar incentives are granted to others.</p> <p>FCA also recommends minor changes to improve the wording of Recommendation 7.2. FCA considers that the wording ‘Parties should adopt policies to prevent governments ...’ could lead to confusion, as Parties are governments.</p>
<p>(8) Treat State-owned tobacco companies in the same way as any other tobacco industry.</p>	<p>(8) Treat State-owned tobacco <i>industry entities</i> companies in the same way as any other tobacco industry <i>entity</i>.</p>	<p>FCA suggests a minor grammatical change to Recommendation 8 of the draft guidelines, and, as above, recommends that the words ‘tobacco companies’ be replaced with the words ‘tobacco industry entities.’</p>
<p>27. Tobacco businesses can be government-owned, non-government-owned or a combination thereof. These guidelines apply to all tobacco businesses, regardless of their ownership.</p>	<p>25. Tobacco <i>industry entities</i> businesses can be government-owned, non-government-owned or a combination thereof. These guidelines apply to all tobacco <i>industry entities</i>-businesses, regardless of their ownership.</p>	<p>As above, FCA recommends that the words ‘tobacco businesses’ in paragraph 27 of the draft guidelines be replaced with the words ‘tobacco industry entities.’</p>

Draft Guidelines text	FCA recommended text	Comments
<p>Recommendations</p> <p>8.1 Parties should ensure that State-owned tobacco companies are treated in the same way as any other member of the tobacco industry in respect of setting and implementing tobacco control policy.</p>	<p>Recommendations</p> <p>8.1 Parties should ensure that <i>tobacco control policies are protected from commercial or other vested interests of State-owned tobacco industry entities</i> companies are treated in the same way as <i>they are protected from commercial or other vested interests of privately owned tobacco industry entities</i> any other member of the tobacco industry in respect of setting and implementing tobacco control policy.</p>	<p>FCA considers that Recommendation 8.1 of the draft guidelines requires clarification, as suggested.</p>
<p>8.2 Parties should ensure that the setting and implementing of tobacco control policy are separated from overseeing or managing a tobacco business.</p>	<p>8.2 Parties should ensure that the setting and implementing of tobacco control policy are <i>separated from overseeing functions and personnel involved in operating or managing a State-owned tobacco business</i> industry entity <i>are completely separate from the functions and personnel involved in setting and/or implementing tobacco control policy.</i></p>	<p>FCA considers that Recommendation 8.2 of the draft guidelines requires clarification, as suggested.</p>
<p>8.3 Parties should not allow transfer of personnel within a period of three years between employment in a State-owned tobacco company and any department of the government responsible for setting and implementing public health policies with respect to tobacco control.</p>	<p>8.3 Parties should not allow transfer of personnel within a period of three years between employment in a State-owned tobacco company <i>industry entity</i> and any department of the government responsible for setting and/or implementing public health policies with respect to tobacco control.</p>	<p>As above, FCA considers that the word ‘and’ in Recommendation 8.3 of the draft guidelines should be replaced with the words ‘and/or’, and that the words ‘tobacco company’ should be replaced with the words ‘tobacco industry entity’.</p>
<p>8.4 Parties should ensure that representatives of State-owned tobacco companies do not form part of delegations to any meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.</p>	<p>8.4 Parties should ensure that representatives of State-owned tobacco companies <i>industry entities</i> do not form part of delegations to any meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.</p>	<p>As above, FCA recommends that the words ‘tobacco companies’ in Recommendation 8.4 of the draft guidelines be replaced with the words ‘tobacco industry entities’.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>ENFORCEMENT AND MONITORING</p> <p>Enforcement</p> <p>28. Parties should put in place enforcement mechanisms or, to the extent possible, use existing enforcement mechanisms, to meet their obligations under Article 5.3 of the Convention and these guidelines.</p>	<p>ENFORCEMENT AND MONITORING</p> <p>Enforcement</p> <p>26. Parties should put in place enforcement mechanisms or, to the extent possible, use existing enforcement mechanisms, to meet their obligations under Article 5.3 of the Convention and these guidelines. <i>Parties should introduce and apply criminal, civil and/or administrative sanctions that are effective, proportionate and dissuasive to support their laws and regulations implementing Article 5.3.</i></p>	<p>FCA considers that the words ‘and these guidelines’ should be deleted, as Parties’ obligations derive from Article 5.3 itself, rather than from guidelines for its implementation.</p> <p>FCA considers that it is important that the guidelines include a recommendation on the introduction and application of effective, proportionate and dissuasive sanctions.</p>
<p>Monitoring implementation of Article 5.3 of the Framework Convention and of these guidelines</p> <p>29. Monitoring implementation of Article 5.3 of the Convention and of these guidelines is essential for ensuring the introduction and implementation of efficient tobacco control policies. This should also involve monitoring the tobacco industry, for which existing models and resources should be used, such as the database on tobacco industry monitoring of the WHO Tobacco Free Initiative.</p>	<p>Monitoring implementation of Article 5.3 of the Framework Convention and of these guidelines</p> <p>27. Monitoring implementation of Article 5.3 of the Convention <i>in accordance with</i> and of these guidelines is essential for ensuring the introduction <i>setting</i> and implementation of efficient <i>effective</i> tobacco control policies. This should also involve monitoring the tobacco industry, for which existing models and resources should be used, such as the database on tobacco industry monitoring of the WHO Tobacco Free Initiative.</p>	<p>FCA considers that the guidelines should recommend that implementation of Article 5.3 be monitored in accordance with the guidelines, rather than that implementation of Article 5.3 should be monitored, <i>and</i> implementation of the guidelines should be monitored.</p> <p>FCA suggests that, to reflect the wording of Article 5.3, the word ‘introduction’ should be replaced with the word ‘setting’.</p> <p>FCA considers that ‘effective’ is a more appropriate word than ‘efficient’.</p>
<p>30. Nongovernmental organizations and other members of civil society not affiliated with the tobacco industry could play an essential role in monitoring the activities of the tobacco industry.</p>	<p>28. Nongovernmental organizations and other members of civil society not affiliated with the tobacco industry could <i>should be encouraged to</i> play an essential role in monitoring the activities of the tobacco industry.</p>	<p>FCA considers that the suggested wording better reflects the important role that civil society should play in monitoring the activities of the tobacco industry.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>31. Codes of conduct or staff regulations for all branches of governments should include a “whistleblower function”, with adequate protection of whistleblowers. In addition, Parties should be encouraged to use and enforce mechanisms to ensure compliance with these guidelines, such as the possibility of bringing an action to court and to use complaint procedures, such as an ombudsman system.</p>	<p>29. Codes of conduct or staff regulations for all branches of governments should include a “whistleblower function”, with adequate protection of whistleblowers. In addition, Parties should be encouraged to use and enforce mechanisms to ensure compliance with these guidelines <i>involve the public in monitoring and enforcement, such as by enabling members of the public to the possibility of bringing an actions to court and to use complaint procedures, such as an ombudsman system.</i></p>	<p>FCA considers that paragraph 31 of the draft guidelines requires clarification, as suggested. FCA understands the intention of this paragraph to be to add specific recommendations to the more general recommendation in paragraph 28 relating to the use of enforcement mechanisms, and to the preceding paragraphs dealing with monitoring activities.</p>

Draft Guidelines text	FCA recommended text	Comments
<p>International collaboration and updating and revision of the guidelines</p> <p>32. International cooperation is essential for making progress in preventing interference by the tobacco industry with the formulation of public health policies on tobacco control. Article 20.4 of the Convention provides the basis for collecting and exchanging knowledge and experience with respect to tobacco industry practices, taking into account and addressing the special needs of developing country Parties and Parties with economies in transition.</p> <p>33. Efforts have already been made to coordinate the collection and dissemination of national and international experience with regard to the strategies and tactics used by the tobacco industry and to monitoring tobacco industry activities. Parties would benefit from sharing legal and strategic expertise for countering tobacco industry strategies. Article 21.4 of the Convention provides that information exchange should be subject to national laws regarding confidentiality and privacy.</p>	<p>International collaboration and updating and revision of the guidelines</p> <p>30. International cooperation is essential for making progress in preventing interference by the tobacco industry with the formulation <i>setting and implementing</i> of public health policies on tobacco control. Article 20.4 of the Convention provides the basis for collecting and exchanging knowledge and experience with respect to tobacco industry practices, taking into account and addressing the special needs of developing country Parties and Parties with economies in transition.</p> <p>31. Efforts have already been made to coordinate the collection and dissemination of national and international experience with regard to the strategies and tactics used by the tobacco industry and to monitoring tobacco industry activities. Parties would benefit from sharing legal and strategic expertise for countering tobacco industry strategies. Article 21.4 of the Convention provides that information exchange should be subject to national laws regarding confidentiality and privacy.</p>	<p>FCA recommends that, to reflect the wording of Article 5.3, the word ‘formulation’ in paragraph 32 of the draft guidelines be replaced with the words ‘setting and implementing’.</p>

Draft Guidelines text	FCA recommended text	Comments
<p><i>Recommendations</i></p> <p>1. As the strategies and tactics used by the tobacco industry evolve constantly, these guidelines should be reviewed and revised periodically to ensure that they continue to provide effective guidance to Parties on protecting their public health policies on tobacco control from tobacco industry interference.</p> <p>2. Parties reporting via the existing reporting instrument of the Framework Convention should provide information on tobacco production and manufacture and the activities of the tobacco industry that affect the Convention or national tobacco control activities. To facilitate this exchange, the Convention Secretariat should ensure that the principal provisions of these guidelines are reflected in the next phases of the reporting instrument, which the Conference of the Parties will gradually adopt for use by Parties.</p> <p>3. In view of the paramount importance of preventing tobacco industry interference in any public health policy with respect to tobacco control, the Conference of the Parties may consider, if necessary, elaborating a protocol to Article 5.3 of the Convention.</p>	<p><i>Recommendations</i></p> <p>1. As the strategies and tactics used by the tobacco industry evolve constantly, these guidelines should be reviewed and revised periodically to ensure that they continue to provide effective guidance to Parties on protecting their public health policies on tobacco control from tobacco industry interference.</p> <p>2. Parties reporting via the existing reporting instrument of the Framework Convention should provide information on tobacco production and manufacture and the activities of the tobacco industry that affect the Convention or national tobacco control activities. To facilitate this exchange, the Convention Secretariat should ensure that the principal provisions of these guidelines are reflected in the next phases of the reporting instrument, which the Conference of the Parties will gradually adopt for use by Parties.</p> <p>3. In view of the paramount importance of preventing tobacco industry interference in any public health policy with respect to tobacco control, the Conference of the Parties may consider, if necessary, elaborating a protocol to Article 5.3 of the Convention.</p>	<p>FCA agrees with the statement in paragraph 32 of the draft guidelines that ‘[i]nternational cooperation is essential for making progress in preventing interference by the tobacco industry’. FCA also agrees with the recommendations that the guidelines be reviewed and revised periodically as the strategies and tactics used by the tobacco industry evolve, and that the Convention’s reporting instrument be revised to facilitate the collection and exchange of information relating to the activities of the tobacco industry.</p> <p>FCA considers that proactive measures will be required to actively monitor tobacco industry activities, facilitate international cooperation, and allow for the guidelines to be reviewed as necessary. FCA recommends that the Secretariat be asked to perform an ongoing information collection and dissemination role (beyond simply receiving Parties’ reports and disseminating the information provided in these reports), and that a standing expert group be established and mandated to provide regular reports and recommendations to the Conference of the Parties, through the Secretariat, on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. FCA considers that the COP should adopt these recommendations in its decision adopting guidelines for implementation of Article 5.3 (rather than in the guidelines themselves).</p>