



Brussels, 17 January 2013

To: José Manuel Barroso, President of the European Commission

**Cc: Margaret Chan, Director-General of the World Health Organisation
Tonio Borg, Commissioner for Health and Consumer Policy
Catherine Day, Secretary-General of the European Commission
Paola Testori Coggi, Director-General of DG SANCO**

Re: Failure of the European Commission to properly implement Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC)

Dear Commission President Barroso,

We are writing to you on behalf of civil society, public health and tobacco control groups to express our concerns about the failure of the European Commission to properly implement Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC).

As you know, the EU and its member States have all ratified the FCTC. The EU is a signatory to the convention which entered into force almost eight years ago. As a Party to the FCTC, the EU institutions have an obligation to take steps to protect its policy-making and law making from the vested interests of the tobacco industry. The scandal surrounding the resignation of Mr. Dalli, and recent questions related to the re-appointment of Mr. Petite to the Ad Hoc Ethical Committee, has highlighted the importance of effectively regulating the relations between EU institutions and the tobacco industry.

The implementation guidelines of Article 5.3 of the FCTC state 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.”*ⁱ The guidelines urge governments to raise awareness among government officials about the risks of tobacco industry interference and the need to safeguard public health policy. *“Parties should ensure that any interaction with the tobacco industry on matters related to tobacco control or public health is accountable and transparent,”*ⁱⁱ and *“Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.”*ⁱⁱⁱ These measures are necessary due to the continued activities of

the tobacco industry aimed at undermining tobacco control efforts – in many cases successfully – and the fact that, unlike other consumer products, there are no safe ways of using tobacco products. This has led governments and international agencies, most recently reaffirmed at the United Nations General Assembly in 2011,^{iv} to conclude that there is an irreconcilable conflict between the tobacco industry's interests and public health policy interests.^v

It has recently come to our attention that over the past months, European Commission officials have had meetings with tobacco industry lobbyists that were not disclosed online, despite the obligation for transparency.^{vi} This became clear from the European Commission's response to questions from MEPs and from documents released under 1049/2001 requests. Some of the meetings are with officials from the Commission's consumer and health department (DG SANCO), but no less problematic are the undisclosed meetings involving officials from the European Commission Secretariat-General and members of your cabinet.

Since 2011, as part of implementing FCTC Article 5.3, DG SANCO lists the meetings it has with tobacco industry representatives and publishes the minutes of these meetings online. We welcome this commitment to further transparency of the decision-making process. However, your cabinet, the Secretariat-General and other Commission departments currently do not follow this example and fail to provide transparency around meetings with tobacco industry lobbyists and those working to further the tobacco industry's interests.

During a midday press briefing to journalists last week, the Commission's spokesperson argued that releasing documents under 1049/2001 requests was sufficient to fulfil WHO transparency obligations. We would beg to differ; this reactive and restrictive approach is neither sufficient nor compatible with the FCTC Article 5.3 guidelines. Rather than the Commission ensuring that the information is openly available to the public, it places the burden on the public to act in response to scandals, by requesting access to relevant documents. We urge you to ensure that the European Commission as a whole follows DG SANCO's example and introduces pro-active transparency around its contacts with tobacco lobbyists.

We are concerned that the Commission's current rules and procedures are not sufficient to ensure transparency, objectivity and probity when interacting with tobacco industry interests. In addition to the obligation to ensure transparency around meetings with tobacco industry representatives, many other parts of the FCTC Article 5.3 guidelines appear not to be implemented. Your action is needed on the following points:

- Avoiding the perception of partnership with the tobacco industry

The Commission should avoid cooperation with the tobacco industry and those working to further its interests, including public affairs consultancies that work for tobacco industry clients.^{vii}

- Implementing a code of conduct on relations with the tobacco industry

Despite the obligations under recommendation (4) of the Article 5.3 guidelines,^{viii} the Commission has not initiated a separate code for relations with the tobacco industry and neither the Code of Conduct for Commissioners nor the Staff Regulations mention the tobacco industry. The Commission should update its current ethics rules for Commissioners and officials, to prescribe the standards with which they should comply in their dealings with

the tobacco industry. These rules must include that persons employed by the tobacco industry or any entity working to further its interests should be banned from membership of committees and advisory groups that set or implement tobacco control or public health policy.

- Ensuring registration and disclosure of tobacco industry lobbyists (Transparency Register)

The voluntary nature of the EU's Transparency register means that many tobacco lobbies remain unregistered.^{ix} Registration should become mandatory for all lobbyists employed by tobacco industry entities, affiliated organisations or any entity working to further tobacco industry interests (and in fact for lobbyists from other industry sectors too).

We call upon you to act to ensure that the Commission fulfils its UN obligations and implements the FCTC's Article 5.3. This, among other things, requires changes to the Code of Conduct for Commissioners, the Staff Regulations and the Transparency Register.

Yours sincerely,

Koen Roovers, Alliance for Lobby Transparency and Ethics Regulation (ALTER-EU)
John Stewart, Corporate Accountability International
Monika Kosinska, European Public Health Alliance (EPHA)
Florence Berteletti Kemp, Smoke-Free Partnership

- i See: http://www.who.int/fctc/protocol/guidelines/adopted/article_5_3/en/index.html
- ii Principle (1) of the Article 5.3 guidelines
- iii Recommendation (2) of the guidelines
- iv See: http://www.who.int/nmh/events/un_ncd_summit2011/political_declaration_en.pdf
- v *ibid.* See Principle 1, p2.
- vi "The Commission's shabby implementation of UN rules for tobacco lobbying", Corporate Europe Observatory, December 2012. See: <http://corporateeurope.org/news/commission-shabby-implementation-un-rules-tobacco-lobbying>
- vii The Corporate Europe Observatory report mentions that the lobby consultancy example of Luther Pendragon not only lobbies for tobacco industry clients against the EU adoption of plain packaging rules for cigarettes, but also has contracts with the European Commission and lists the Commission as a client on its website. According to recommendation (2) of the FCTC Article 5.3 guidelines, the European Commission should "ensure that" interactions with the tobacco industry, in setting and implementing public health policies with respect to tobacco control, are "carried out [...] 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."
- viii Mandating 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.
- ix Reetsma, ECITA and Pottinger are among the many tobacco industry companies, lobby groups, PR firms or law firms that are known to be lobbying the EU institutions on tobacco, but have not registered. See: "Mapping the tobacco lobby in Brussels: a smoky business", Corporate Europe Observatory, November 2012. See: <http://corporateeurope.org/publications/mapping-tobacco-lobby-brussels-smoky-business>