

## **Clarification of interpretation of article 5.3 WHO Framework Convention**

### **Introduction**

The "*WHO Framework Convention on Tobacco Control*" from the World Health Organization (hereinafter referred to as the WHO FCTC) was drawn up in 2003 and took effect in the Netherlands on 27 April 2005. The goal of the WHO FCTC is to protect current and future generations from the destructive health effects and social, environmental and economic effects of smoking and exposure to tobacco smoke described in the convention. This aim of the convention is to provide a framework for measures to discourage smoking, to be implemented by the parties to the convention at international, national and regional level to reduce tobacco use and exposure to tobacco smoke permanently and substantially. The importance of tobacco control policy is clear.

The Netherlands ratified this convention over ten years ago, and serious steps have since then been taken to anchor the stipulations of this convention in government policy. An important article that recognizes the influence of the tobacco industry is Article 5, Clause 3 of the WHO Framework Convention on Tobacco Control. The Dutch government also recognizes this influence, and in recent decades has taken the necessary steps to comply with this article. The aim of this document is to further clarify the interpretation of Article 5, Clause 3 of the WHO FCTC. In accordance with this, the Dutch government will exercise great restraint in its contact with the tobacco industry to prevent the tobacco industry from being able to influence tobacco policy.

The tobacco industry is also taken to include organizations and individuals where and insofar as they represent the tobacco industry or lobby on behalf of the tobacco industry.

The document has been drawn up under the responsibility of the Ministry of Health, Welfare and Sport and the Ministry of Finance. These ministries have the most contact with the tobacco industry. However, this clarification of the interpretation of Article 5.3 of the WHO FCTC applies to all government policy.

### **Principles**

- In its contact with the tobacco industry – in comparison with its contact with other branch organizations – the (central) government will show restraint.
- The policy of the Ministry of Health, Welfare and Sport and the Ministry of Finance is aimed at discouraging tobacco consumption, particularly among youths. The Ministry of Finance is responsible for levying and collecting excise duty on tobacco.
- For the Ministry of Health, Welfare and Sport, contact with the tobacco industry will focus on technical aspects related to the implementation of adopted policy or adopted regulations, including public consultation within the framework of new legislation. This contact does not take place regularly, but only when deemed necessary.
- For the Ministry of Finance, it can sometimes be necessary to consult with the industry, for example concerning the levying and collecting of excise duty, technical aspects related to the implementation of laws and legislation, or the effects of certain measures on a factory or industry sector. In relation to its responsibility for levying and collecting taxes, the Ministry of Finance is in permanent contact with all manner of branch organizations in almost all areas of taxation.
- Over time, contact between the Ministry of Finance and the tobacco industry has become more streamlined. Whereas discussions were previously held at various points of the year and with various parties, discussions are now held with the entire tobacco industry once a year.
- It has been decided to hold consultations once a year (if necessary); this concerns a platform where all sorts of technical aspects related to implementation can be discussed. Such aspects could include: the annually adjusted tariff codes, the issuing of new excise stamps, the annual revision of the WAP (= Weighted Average Price) and amendments or possible transitional arrangements concerning the implementation of new laws and legislation.

- Since May 2014 the Ministry of Finance has further reassessed its policy. As a result, it has decided to make transparency and objectivity its priorities; a restrained style of communication with the tobacco industry forms part of that reassessment.

### **Further interpretation of Article 5.3 of the WHO Framework Convention**

The Ministry of Health, Welfare and Sport and the Ministry of Finance will demonstrate restraint in their contact with the tobacco industry, in compliance with Article 5, Clause 3 of the WHO Framework Convention on Tobacco Control. Transparency and objectivity are priorities in all forms of contact between the government and tobacco industry.

Additional measures for the implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (short term)

- The Ministry of Health, Welfare and Sport will send a letter to all other ministries, provinces and local authorities to inform them of the following:
  - the harmfulness and addictiveness of tobacco products;
  - unnecessary contacts with the tobacco industry are at odds with Article 5, Clause 3 of the WHO Framework Convention on Tobacco Control;
  - contacts with the tobacco industry should therefore be limited to technical aspects of implementation;
  - the nature and scale of the lobby techniques deployed by the tobacco industry and known to the government;
  - the principle that reports of permissible consultation with the tobacco industry be made public on the websites of the government and other ministries, and local authorities are called on to do likewise with other written documents, such as emails and correspondence with the tobacco industry (in compliance with the Freedom of Information Act);
  - collaboration with the tobacco lobby in publicity campaigns aimed at combatting smoking, and in other public events or activities covered by the term corporate social responsibility, is contrary to Article 5.3 WHO FCTC;
  - the tobacco industry must not enjoy preferential treatment.

The letter calls on local authorities to communicate this information to their officials and implementation bodies. This communication will be sent to other ministries, provinces and local authorities and repeated periodically.

The following measures will be taken within half a year.

- The Ministry of Health, Welfare and Sport will create a central point on the government website where:
  - information and advice can be obtained regarding how to deal with the tobacco industry;
  - information is provided concerning the damage and addictiveness of tobacco products;
  - information is provided concerning current publicity campaigns to discourage the use of tobacco products;
  - reports of permissible consultation with the tobacco industry will be made public, and the Ministry of Health, Welfare and Sport and the Ministry of Finance will also make public other written documents, such as emails and correspondence with the tobacco industry (in compliance with the Freedom of Information Act);
  - the document before you, entitled 'Clarification of interpretation of Article 5.3 of the WHO FCTC', will be made public.
- The Ministry of Health, Welfare and Sport will draw up an internal protocol concerning acceptable contact with the tobacco industry, which will be distributed to other ministries and government bodies. They will be informed that this protocol should be complied with in all contact with the tobacco industry. The protocol will be published on the central point on the government website.
- The Ministry of Finance will invite the Youth Smoking Prevention Foundation for a meeting to discuss the vision of the Youth Smoking Prevention Foundation. This meeting will take place annually if so desired.
- The Ministry of Health, Welfare and Sport will maintain contact with the Youth Smoking Prevention Foundation concerning the most effective way to prevent youths from starting to smoke, such as the NIX Campaign.