



Tobacco lobbyists all fired up ahead of key vote

With a crucial European Parliament ENVI committee vote on new tobacco legislation taking place later this week, this new report sheds some light on the extent and scope of tobacco lobbying in the Parliament. The tobacco industry has a long record of manipulation and disinformation, which has resulted in a UN law intended to minimise interactions between the tobacco industry and public-health policy makers, as well as to ensure their transparency – the WHO's Framework Convention on Tobacco Control (FCTC). But the lobby battle going on around the EU's new Tobacco Products Directive shows considerable activity from traditional tobacco lobbyists and electronic cigarette firms, as well as from NGOs working on public health. Members of the European Parliament (MEPs) report free e-cigarettes delivered to their letter boxes; unsolicited tobacco lobbyists turning up in their offices; numerous invitations to drinks, dinners and cocktail events; targeted social media and email campaigns coordinated by tobacco companies; indirect lobbying through small retailers, anti-counterfeiting firms and farmers' groups; and, allegations of industry-sourced amendments.

On 10 and 11 July, the European Parliament's environment, health and food safety committee (ENVI) votes on the 1,360 amendments that MEPs have tabled to the Commission's proposal for a new Tobacco Products Directive. The European Commission's proposal includes graphic photos and text warnings to cover 75% of the front and back of cigarette packs, restrictions on the sale of slim cigarettes, menthol and flavoured cigarettes and electronic cigarettes, and the regulation of Internet sales. New EU health Commissioner Tonio Borg says the ambition of the new Tobacco Products Directive is to make *"tobacco products and smoking less attractive and thus discourage tobacco initiation among young people"*.¹ Commissioner Borg has publicly stated that legislation should be in force by 2016 at the latest, and that means getting it adopted before the current European Parliament's term expires in summer 2014.

With the Tobacco Products Directive now in the hands of the European Parliament and European Council, this report offers a curtain-raiser on the intensity of tobacco lobbying towards MEPs whose support could help change the game. This report documents the experiences of some MEPs, their assistants, and political advisers, who have testified that the tobacco and electronic cigarette lobby are becoming more aggressive as the voting approaches. It comes just weeks after the European Parliament's committee on legal affairs and committee on trade, voted to weaken the tobacco law on key points that are remarkably in line with tobacco industry wishes. This gives the clearest sign yet that the strategically targeted tobacco industry lobbying of the Parliament is having effect. As MEPs in the ENVI committee, the lead committee on the tobacco law, prepare to vote this week, CEO wafts a breeze through the smoky conduct of one of the dirtiest industries in lobbying history.

Tobacco lobby targets European Parliament

A previous investigation by CEO found around 97 full time tobacco lobbyists working in Brussels, with an annual lobbying budget of around €5.3 million.² These estimates were based on entries in

1 http://europa.eu/rapid/press-release_IP-12-1391_en.htm

2 <http://corporateeurope.org/publications/mapping-tobacco-lobby-brussels-smoky-business>

the EU's voluntary lobby register - which is, by its nature, incomplete and partly inaccurate³ – and so are almost certainly underestimates. For this new report, we called and emailed dozens of MEPs, their assistants, political advisers and campaign groups during June 2013, in order to get a picture of the scale of tobacco lobbying in the run up to the European Parliament vote. (See Annex 1)

Karl-Heinz Florenz MEP from the European People's Party (EPP) described how he had received numerous emails, letters, position papers and phone calls on the Tobacco Products Directive. He sent CEO a list of all the tobacco and electronic cigarette industry organisations who had contacted him in the last six months. This list shows that nearly 40 different tobacco industry actors, from individual companies and industry federations to lobby consultancies representing tobacco companies have contacted him in the last half year. (See Annex 2)

Various MEPs and assistants from different parties have confirmed a picture of heavy lobbying, particularly since last Autumn, with emails coming in multiple times a week and meeting requests cited from various tobacco companies and public affairs consultants representing them, from several different countries. One political advisor, on the topic of the tobacco lobby, said: *"On a scale of 1 to 10, they're 11... They're lobbying us to death"*.



Lots of tobacco lobby contacts... when UN law says there shouldn't be

The United Nation's World Health Organisation (WHO)'s 2005 Framework Convention on Tobacco Control (FCTC) is premised on the basic fact that there is an irreconcilable difference between the interests of the tobacco industry (producing and selling as much of a substance as possible, in order to maximise profit) and that of public health regulators (reducing the consumption of that same substance as much as possible, in order to minimise cancers and other negative health impacts). This piece of international law (to which the EU, and all member states, is a signatory) not only requires transparency around all contacts between public health policy-makers and the tobacco industry but requires that they are avoided and limited only to contacts that are strictly necessary to regulate the industry.⁴ Or put another way, as the Smoke Free Partnership's Florence Bertelletti Kemp does, *"If you want to resolve malaria, you're not going to include the mosquito."*

Thus, MEPs, as with all policy-makers involved in legislating on public health, should– as a matter of law - be having as few contacts with the tobacco industry as is strictly necessary to regulate them, and all interactions that do take place should be fully transparent. This is an industry unique in having international law that governs contacts between that industry and the people charged with regulating it, and this is because close ties between them have been shown to be so harmful in the past. Aggressive and deceptive lobbying and willful disinformation by the tobacco industry has been globally documented for over half a century.

3 For more details on the shortcomings of the EU's voluntary approach to lobby transparency, and the current review of the register, see the ALTER-EU report 'Rescue the Register! How to make EU lobby transparency credible and reliable', http://www.alter-eu.org/sites/default/files/documents/Rescue_the_Register_report_20June2013.pdf

4 UN WHO FCTC Article 5.3, and accompanying guidelines. See, for example, http://www.who.int/fctc/guidelines/article_5_3.pdf and <http://www.smokefreepartnership.eu/documents/briefing-article-53-fctc-global-treaty-global-problem>

Public health lobby: outnumbered, out-gunned?

The tobacco industry are not the only ones lobbying around the Tobacco Products Directive. Public health and anti-smoking groups are also active lobbying the Parliament in the run up to the vote on legislation which has the potential to impact the nearly 700 000 tobacco related deaths in the EU each year.⁵ But another distinction – beyond the rules in the FCTC - that should be made is that even though tactics may sometimes be similar (invitations to lobby meetings, sending briefings or amendments, or even e-campaigns from citizens), the tobacco industry dramatically outnumbers and out-guns those lobbying on tobacco regulation from a public health perspective. Compared to the 100 or so declared full-time tobacco industry lobbyists, there are only a handful of professional lobbyists active from the public health perspective.

Paul Murphy MEP, from the European United Left/Nordic Green Left (GUE/NGL), testified to this massive disparity between the level of tobacco lobbying and NGO campaigning around the Tobacco Products Directive:

“My understanding is that Smoke Free Partnership have two people working for them whereas the tobacco industry have 100 full time people... It's a massive disparity because tobacco have a lot of money - and its worth a lot of money to them - whereas NGOs might get some government funding... It's completely mismatched... And that makes it not a fair representative of opinion in society... People with money have a bigger voice.”

The Smoke Free Partnership is a Brussels-based NGO comprised of the European Respiratory Society, Cancer Research UK, the European Heart Network and Action on Smoking and Health UK. Florence Berteletti Kemp, the director of the group, re-emphasised the message that NGOs' lobbying is far outmatched by tobacco:

“Because this legislation would have an impact on their business, there are hundreds of tobacco industry lobbyists. It's an army. ”

Not all MEPs' offices claimed to have experienced this vast disparity between industry and public health lobbying on tobacco. Indeed, two assistants for Socialist and Democrat (S&D) MEPs said they had received higher volumes of emails from NGOs and hadn't noticed much material from the tobacco industry. This takes us to the heart of the tobacco industry's lobbying tactics. *Knowing who to target.*

Know your enemy: the lobbyist's art of political targeting

Part of the tobacco industry's lobbying strategy – as with any savvy industry or cause - is knowing who to target. A sensible tobacco lobbyist won't waste their time and reputation on lobbying those individual MEPs or parties that have a well-known interest in transparency (particularly those who know about WHO FCTC rules), or who are known to be public health champions or hostile to the tobacco industry (such as with most Greens, GUE/NGL and many S&D MEPs). Instead, they will target their lobbying towards MEPs who are known to be pro-industry or have a record of opposing trade barriers or limitations on intellectual property (of which you'll find a higher number in the EPP, ALDE, ECR, etc groupings). This message was confirmed by many of the MEPs' offices who've made it publicly clear that they will not be meeting with tobacco lobbyists, but are nonetheless surrounded by, and aware of, tobacco lobbying being directed at many of their

5 http://ec.europa.eu/health/tobacco/introduction/index_en.htm

colleagues.

For example, the assistant of an S&D MEP on the ENVI committee stated that:

"They [tobacco lobbyists] target opinion giving committees... They [the opinion giving committees] are a softer touch because everyone on the ENVI committee has been discussing this for months... All know the WHO guidelines... whereas the other committees aren't dealing with it closely... It's easier to put it to MEPs who aren't clued up..."

As we noted in our introduction, although the lead committee – the ENVI committee – will vote on the tobacco directive this week, two of 'opinion giving' committees, the legal affairs and trade committees, have in recent weeks voted to weaken the directive, in line with many of the tobacco industry's wishes. Wishes that have no doubt been expressed quite explicitly to these committee's members.

Similarly, another S&D MEP assistant remarked that:

"There is no point lobbying us because we're very vocal about being anti-tobacco... They have lobbied our Romanian colleagues.. gave them copies of amendments... They hold events and give out free cigarettes, we know this from our Tory colleagues... they did one just before a committee... but we never get invited..."

An MEP from the GUE/NGL group noted that they *"Don't get lobbied because the GUE group are considered a waste of time,"* whereas the Green group's trade committee advisor remarked about an e-cigarette industry stunt, which involved putting sample e-cigarettes in the post boxes of MEPs, that *"I didn't get one through my pigeonhole... They focus on more promising people"*

Burning questions: Are tobacco lobbyists applying undue pressure?

The testimony of these MEPs describing the targeting of tobacco lobbyists also gives a window into some of their activities – distributing freebies, offering amendments to table, inviting MEPs and staff to events. We have also repeatedly heard MEPs and Parliamentary staff describing tobacco lobbyists' behaviour as "aggressive." Aggressive lobbying – or more specifically, the use of dishonesty, undue pressure or inappropriate behaviour – is banned by the code of conduct for lobbyists.⁶ This code is agreed to by all lobbies that sign up to the Commission and Parliament's Joint Transparency Register. This voluntary register is currently under review,⁷ and one element that is under the spotlight for rectification is the code of conduct's vague wording and lack of implementation.⁸ Some tobacco industry lobbies have signed up to the register and are therefore covered by this code. If the register is made mandatory – as the European Parliament has long demanded – all lobby actors would be covered by this code of conduct.

One such example of undue pressure, if not outright dishonesty, was given to CEO by an MEP assistant who described their experience with one tobacco lobbyist: *"He played the usual game of being all nice. But then half an hour before a vote was due, he sent an amendment to be submitted"*. The lobbyist claimed he'd already agreed the amendment with another member of staff from the same office. But this later proved to be untrue, and was revealed to be a deception used by a lobbyist determined to get what he wanted, by hook or by crook.

6 <http://ec.europa.eu/transparencyregister/info/about-register/codeOfConduct.do?locale=en>

7 For more information, see ALTER-EU's June 2013 report, Rescue the Register! How to make EU lobby transparency credible and reliable http://www.alter-eu.org/sites/default/files/documents/Rescue_the_Register_report_20June2013.pdf

8 ALTER-EU Briefing on the Code of Conduct for Lobbyists,

http://www.alter-eu.org/sites/default/files/documents/ALTER-EU_Briefing_Lobbyist-Code-of-Conduct%20_April2013.pdf

Other examples of dubious lobbying techniques include using other groups – sometimes front groups – to push their agenda, without making it clear whose interests (the tobacco companies) are actually being represented. The not uncommon tabling of industry amendments has also been described as widespread, although here the onus is on MEPs to critically consider any amendments or suggestions they take from outside interests, be they from industry, civil society or other interests. The e-cigarette campaign has gone further, by distributing free products, orchestrating an aggressive social media offensive and even accusing MEPs reluctant to accept their viewpoint of 'questionable motives'.

The backdoor approach: using other groups to indirectly lobby MEPs

“Philip Morris representatives won’t lobby you,” one MEP assistant told CEO. “Instead it will be farmers’ groups, legal firms and groups discussing intellectual property rights”.

A number of assistants in the European Parliament told CEO that they had been contacted by local retailers, anti-fraud and anti-counterfeiting companies and trade unions. But these contacts had an eerie similarity and political and legislative sophistication that marked them out as - very likely - originating from a particularly clever type of industry offensive.

One said the tobacco lobby was using a *“backdoor approach”*, lobbying them through organisations which seemingly had very little to do with tobacco interests, and thereby increasing the apparent credibility of the message and so the chances that MEPs will listen to them.

According to another MEP assistant, a small firm had contacted their office to say they were concerned about losing jobs. But, according to the assistant, when the company sent through suggested amendments for the Directive, their proposals covered a diverse range of tobacco interests, not just employment. Once again, the hand of big tobacco appeared to loom in the background.

Other MEPs’ assistants testified that a number of emails from constituents looked suspiciously similar and assumed they were part of a co-ordinated campaign instigated by the tobacco industry. This is not of course a tactic unique to tobacco; all kinds of interest groups – including public-interest environmental, development and human rights groups – use citizen email campaigns to try to influence policy-makers. CEO does not however find it cynical to see a difference between a company using citizens (who may themselves be harmed by that company's business) to promote its commercial interests and public-interest civil society groups garnering public pressure to convince policy-makers to act in the interests of the public.

Evidence of copy-pasted tobacco industry amendments

Opinion is divided over the normality and acceptability of interest groups suggesting amendments to MEPs, but what is clear is that only a critical approach by our law-makers over what they include in their own amendments to legislation is defensible.

Both the tobacco lobby and public health NGOs have been noted by MEPs as 'delivering suggestions' for amendments, and it is commonly accepted by many in Brussels that all stakeholders do this. But when a legislative proposal can be seen to have word-for-word sections that almost perfectly mimic the proposals for amendments of particular business or industry interests, especially those that are at odds with the public interest in strong health policy, there is very clearly a problem.

Some MEPs believe it is the sheer quantity of suggestions, particularly from the tobacco industry, that have amounted to a problem, though others disagree. One MEP assistant declared that, when attending a meeting of the trade committee on the tobacco directive, *“it was very evident that the major groups were all singing from the same hymn sheet... There were multiple amendments that were the same.. .”*

Paul Murphy MEP from GUE/NGL said: *“It is a massive problem. Industry are trying to write legislation for themselves”*.

In one particular example, MEPs have reported receiving an email from SWM, a producer of cigarette papers, asking them to support the deletion of paragraphs in Article 2 and 6 of the Tobacco Products Directive, and suggesting the addition of text to the amendments.

CEO has also seen three unmarked documents regarding the Directive, which according to MEP assistants, were handed to MEPs personally rather than emailed to them. Whilst none of the documents carry the name of an author or publisher, and so it is not possible to verify, several Parliamentary sources have testified to CEO that they are tobacco industry lobby documents. The amendments do, in any case, clearly represent the interests of the tobacco industry, such as a proposal to reduce the area of the package covered by health warnings from 75% to 50%.

CEO has analysed hundreds of the amendments to the Directive that have been tabled and compared them with the three lobby documents. Two MEPs in particular have tabled amendments that are *remarkably* similar to the alleged tobacco lobby amendments. Holger Kraemer from the Group of the Alliance of Liberals and Democrats (ALDE) tabled 36 amendments with a striking similarity to the amendments *and* to the justifications contained in documents seen by CEO. (See Annex 4)

Mr Kraemer has previously warned against *“waging a crusade”* against tobacco consumers. When former health Commissioner John Dalli was forced to resign last autumn, Mr Kraemer said he was pleased this meant the Tobacco Products Directive would probably be delayed: *“It is good that we now have more time to reflect on the meaning of further sales restrictions on tobacco products”*.⁹

Christa Klass MEP from the EPP also tabled 12 amendments that almost completely resemble the amendments and justifications contained in the documents seen by CEO. (See Annex 5). Ms Klass said in an interview with CEO that she wrote the amendments herself, that she does not know why hers are the same as the apparent tobacco lobby amendments, but that *“It could be the tobacco industry think the same way.”* She furthermore stated that she had not seen any tobacco industry amendments, but that she does meet with tobacco lobbyists, as well as all stakeholders, including NGOs.¹⁰

CEO has asked Mr Kraemer for an interview about the similarities between his amendments and the proposed amendments contained in the seen documents. At the time of publishing, we have received no response.¹¹

9 Quoted in the European Voice 18/10/12

<http://www.europeanvoice.com/article/imported/the-invisible-hand-of-big-tobacco-/75404.aspx>

10 Interview with Christa Klass MEP, 3rd July

11 Holger Kraemer's office was asked for an interview by phone and email on 26/06/13 and again on 01/07/13. Mr Kraemer did not respond.

Electronic cigarettes: the next big thing?

It has already been reported in the media, in particular a recent exposé in the Wall Street Journal (WSJ),¹² that the battle around the classification and restrictions on e-cigarettes in the Tobacco Product Directive has been intense. MEPs and their assistants have told CEO that they are most often contacted by the electronic cigarette lobby regarding this Directive.

Electronic cigarettes - also called 'personal vaporisers' - are battery-powered inhalers that vaporise a nicotine liquid solution. Electronic cigarette companies claim they are a safe alternative to cigarettes, but the World Health Organisation has warned that too little is known about the health risks of long term use. Moreover, the WSJ documented that e-cigarette makers are emulating tactics once used by tobacco companies, such as sponsoring medical studies and testimonials from doctors, and running television spots advertising the use of e-cigarettes indoors or in the presence of children. WSJ quoted a professor at the Research Center for Prevention and Health in Copenhagen as explaining that the e-cigarette industry *"is really undermining all the progress we have made in de-normalizing smoking."*

Under proposals in the Tobacco Products Directive, e-cigarettes would be classed as a medicine, subjected to intense testing and might only be available in pharmacies in some countries. The Directive also proposes they be reduced in strength. The Electronic Cigarette Industry Trade Association and the European Smokeless Tobacco Council are lobbying hard against these proposals. Individual electronic cigarette firms have also been directing intense fire at the Parliament, now it that the Directive is in MEPs' hands.

UK electronic cigarette manufacturer Skycig have urged users, their friends and family, to contact their MEPs, claiming that millions of people would turn back to cigarettes *"effectively allowing 5 million people to die from smoking related illnesses"*.¹³

Paul Murphy MEP explained that in the Parliament, MEPs *"are subjected to a lot of astroturf campaigning in the sense that it is manufactured. We get emails from so-called ordinary constituents about electronic cigarettes. But they are really detailed about the Directive."*

'Astroturf' is the name given to seemingly grass roots campaigns, that have actually been established, encouraged and sometimes funded by companies and corporate lobby groups interested in their success. One MEP assistant told CEO: *"They have organised online, created electronic cigarette forums. They're quite an aggressive lobby"*. Another said: *"We get a lot of abuse on Twitter about calling for more legislation on electronic cigarettes."*

Totally Wicked, another UK electronic cigarette firm, sent every MEP an e-cigarette. One MEP commented incredulously that *"They are sending addictive drugs to MEPs. It is quite incredible"*. Jutta Haug MEP from the S&D said she had been *"strongly lobbied by electronic cigarette users"*. The rapporteur on the Tobacco Products Directive, Linda McAvan MEP, has also said that *"There is a very aggressive attitude."*

Indeed, Ms McAvan was the center of a controversy around e-cigarette company Totally Wicked after their managing director stepped down at the end of June, after admitting sending "inappropriate" emails to Ms McAvan. In the emails, the former managing director called in to question her legitimacy and motivations.¹⁴

12 Wall Street Journal, 18 June 2013, Battle Brewing in Europe Over E-Cigarettes, <http://online.wsj.com/article/SB10001424127887323836504578553390887524794.html>

13 <http://www.skycig.co.uk/ecita>

14 <http://www.totallywicked-eliqid.co.uk/news/2013/june/totally-wicked-s-managing-director.html>

Background: The Dalligate tobacco lobby scandal

The current health Commissioner Tonio Borg's predecessor, John Dalli, was forced to resign in October 2012 in the wake of a cash-for-access tobacco lobby scandal that followed an OLAF (EU anti-fraud agency) investigation. This investigation was prompted by a complaint by tobacco company Swedish Match. The firm alleged that an associate of Mr Dalli had offered to set up meetings with the Commissioner, with a view to changing tobacco legislation in the company's favour, in return for €60 million. The story started however with Swedish Match seeking access to the Commissioner through his personal contacts on Malta, in order to further their political agenda. CEO deems this to fall under the category of "inappropriate behaviour" that is banned by the code of conduct for lobbyists, which Swedish Match signed up to when they joined the EU Transparency Register.¹⁵

Mr Dalli has consistently denied allegations of his knowledge of Mr Zammit's dealings, and has taken both the European Commission and Swedish Match to court. The OLAF investigation – despite the claims of OLAF's director, Giovanni Kessler, that there was "unambiguous circumstantial evidence" that Dalli knew of these dealings – has been shown, following a leak of the investigation report, to contain no conclusive evidence of Mr Dalli's involvement. The responsible authorities – the Maltese judiciary – in June confirmed that there were no grounds to begin legal proceedings against Dalli. Corporate Europe Observatory has also submitted formal complaints regarding the failure of the Commission to disclose documents about the affair, which the European Ombudsman is now investigating.¹⁶

The relevance of this scandal, now nearly a year old, is not only that considerable mystery continues to surround the Dalligate affair, as well as the fact that new and curious details continue to emerge.¹⁷ Dalligate also remains important because it delayed the Tobacco Products Directive whilst the new health Commissioner, Tonio Borg, was appointed. The delay won the approval of the tobacco industry and the dismay of public health NGOs. Following Commissioner Borg's appointment at the end of November 2012, the European Commission adopted the new proposal for the Tobacco Products Directive in December. Speculation has continued about whether the affair was a tobacco industry set-up, designed to delay a directive unfavourable to their interests. Indeed, it is not clear if the delay could be the difference between the Directive getting through the legislative process before the next European Parliament election or not. If it does not go through on the first reading, the whole dossier will have to be started from scratch in the next legislative period, starting 2014.

The Dalligate scandal is also extremely important because of the facts that have been uncovered in the scandal's slip-stream. From undeclared high-level meetings with the tobacco lobby in the Commission, which breach the WHO FCTC, to the role of former head of the Commission's Legal Service, Michel Petite. Mr Petite now works as a lawyer-lobbyists for Phillip Morris, has met with his former colleagues on the Tobacco Products Directive, and yet still advises the Commission President on ethical issues and revolving-door type conflicts of interest.¹⁸ The wake of the scandal has also uncovered the internal dynamic in the Commission between DG SANCO – responsible for the Directive – and the Secretariat General and Ms Catherine Day, who has twice tried to delay the new tobacco law, and even to water it down.

15 http://corporateeurope.org/sites/default/files/complaint_swedishmatch_lobbyist_code_of_conduct.pdf

16 <http://corporateeurope.org/publications/ceo-submits-ombudsman-complaint-against-eu-commissions-dalligate-secrecy>

17 <http://www.maltatoday.com.mt/en/newsdetails/news/world/Dalli-transferred-millions-to-Bahamas-bank-account-International-Herald-Tribune-20130701>

18 <http://corporateeurope.org/pressreleases/2013/european-commissions-petite-problem-investigated>

Varying degrees of transparency over MEPs' contacts with tobacco lobbyists

We have already mentioned the UN FCTC and its rules governing contacts between public health policy-makers and the tobacco industry. These must be limited to those strictly necessary in order to regulate the industry and be conducted completely transparent, including 'disclosure of records of such interactions to the public.'¹⁹ CEO has previously documented the lack of transparency between the European Commission and tobacco lobbyists.²⁰ Whilst the Commission's directorate for health and consumers (DG SANCO) lists meetings with tobacco lobbyists and publishes minutes (although omissions have been found), other directorates have been having meetings without any disclosure. But do MEPs fair any better?

Earlier this year, the Greens wrote to European Parliament president Martin Schulz arguing that a common approach was needed to implement the Parliament's obligations under the UN FCTC, in the form of joint transparency rules for contacts with tobacco lobbyists. This letter was discussed at a meeting of the chairs of the Parliament's committees, led by MEP Klaus-Heiner Lehne, where it was argued that the UN FCTC rules are not binding and that a common approach for all MEPs was therefore not needed. This is a problematic analysis, as the FCTC is itself a piece of binding international law. The guidelines that accompany it, and elaborate on how to implement the principles enshrined in the law, should – CEO believes – be considered to have a de facto binding character as well.



The European Parliament's rapporteur on the Tobacco Products Directive, Linda McAvan MEP, has nonetheless publicly listed the meetings she has had with the tobacco and electronic cigarette industry, as well as NGOs and government agencies. She has included these as a legislative footprint to her draft report on the TPD for the ENVI committee, listing all the organisations she met with, received, or heard from representatives, as rapporteur.²¹ The footprint shows she had ten contacts with EU and National Regulatory Agencies, 7 with NGOs and 3 with industry. Participant lists and records of the two open meetings with industry (tobacco industry and suppliers,²² and the e-cigarette industry²³) are also made available. The practice of having only public hearings with the tobacco industry is a very good one. Ms McAvan's approach not only meets the requirements of the FCTC but sets a good benchmark for the practice of a legislative footprint, and it is one that CEO would like to see followed by Commission and Parliament alike.

The political grouping in Parliament most serious about implementation of the WHO rules is the Greens, who have an online 'Registry of contacts between Greens/EFA and the tobacco

19 http://www.who.int/fctc/guidelines/article_5_3.pdf

20 <http://corporateeurope.org/news/commission-shabby-implementation-un-rules-tobacco-lobbying>

21 p. 46, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-508.085%2b03%2bDOC%2bPDF%2bV0%2f%2fEN>

22 Open meeting with the tobacco industry and upstream and downstream suppliers, participant list available at <http://www.mepheartgroup.eu/meetings-activities/item/52-the-battle-against-tobacco-cancer-and-heart-disease.html> and record of the meeting available at <http://www.europarl.europa.eu/document/activities/cont/201303/20130320ATT63555/20130320ATT63555EN.pdf>

23 Open meeting with the electronic cigarette industry, Participant list available <http://www.europarl.europa.eu/document/activities/cont/201303/20130320ATT63557/20130320ATT63557EN.pdf> and record of the meeting available <http://www.europarl.europa.eu/committees/en/envi/events.html?id=other#menuzone>

industry'.²⁴ This lists all contacts between Members and/or staff of the Greens/EFA group and the tobacco industry, and includes details of 17 meetings during the last three months.

The Greens are the only political group that has a coherent policy across all its MEPs, but there are also MEPs in other groups who are actively implementing the WHO rules. Rebecca Taylor, an ALDE MEP, states on her website that:

*"The World Health Organisation Framework Convention on Tobacco Control requires policy makers to be as transparent as possible when meeting with representatives of the tobacco industry and other affiliated companies, and so details of **all such meetings** will be published below. In the interests of balance, I am also including details of meetings with all stakeholders on the tobacco directive."*

Ms Taylor lists around 20 meetings over the last few months, March to June 2013, the vast majority of which appear to be with the tobacco or e-cigarette industry.²⁵

The GUE/NGL has been very outspoken about being pro-transparency. For example, MEP Martina Anderson has stated that she *"urges fellow MEPs to adhere to WHO conduct guidelines"*²⁶, but it is not clear whether the GUE group have actually had any tobacco industry meetings to declare.

Contrastingly, Christa Klass, the EPP MEP who tabled 12 amendments almost exactly the same as alleged tobacco industry amendments, stated in an interview with CEO that she does not publish or declare her meetings with the tobacco industry: *"No, why should I?"*. When informed of the FCTC requirement to do so, she replied *"I have no time for this. I would need another secretary to do all this."*

In an attempt to find out more about other meetings between MEPs and tobacco lobbyists, CEO wrote to 102 members (and their substitutes) on the ENVI committee to ask if they had met with tobacco lobbyists in the previous six months. We had very few responses from which to elaborate, with only six MEPs answering our questions. (See Annex 3)

It is perhaps worth noting however the variety of these responses. Karl-Heinz Florenz MEP listed seven meetings with representatives from e-cigarette firms and the tobacco industry since February 2013 (Annex 3). Jutta Haug MEP reported meetings with representatives from one tobacco company and one manufacturer. Anna Rosbach MEP said she had met with some tobacco lobbyists but had declined others because she was concerned that they were not on the Transparency Register. Sandrine Belier MEP was invited to a meeting but declined. Tobacco company Swedish Match asked to see Rebecca Harms MEP but she refused. Nessa Childers MEP said she had not been invited to any meetings.

Conclusions

The tobacco lobby – and e-cigarette industry – has been intensifying its lobbying offensive towards the European Parliament. Their tactics and strategies have included frequent calls, emails and invitations for drinks and meals; the distribution to MEPs of product samples; turning up to MEP offices without prior arrangements; putting pressure on MEPs to table amendments that are in their interests; orchestrating email and social media campaigns; and, indirect lobbying through small retailers, anti-counterfeiting firms and farmers' groups. All of this should be seen in

²⁴ www.greens-efa.eu/revision-of-the-tobacco-directive-9319.html

²⁵ <http://www.rebeccataylor.eu/my-work-in-parliament/>

²⁶ <http://www.derrysinnfein.ie/news/24041>

the context of the UN FCTC – which prohibits contacts between public health policy-makers and the tobacco industry unless strictly necessary to regulate it, and then only under complete public transparency.

The bulk of our research, including contacts with MEPs, has indicated that:

- Many MEPs, their assistants and advisers have described an intense or even 'aggressive' lobby from tobacco industry representatives, particularly in regards to high numbers of telephone calls, emails and requests for meetings. Others seem to be less targeted, and note public health NGOs, although far fewer in number and resources, also have a prominent lobby presence.
- It is apparent that the tobacco lobby knows who to target to achieve the best results (for its interests), in particular targeting MEPs that they see as more receptive to their arguments as well as those on opinion giving – rather than the lead committee on the Tobacco Products Directive – committees.
- The electronic cigarette industry has in recent months represented a particularly vociferous lobby, notably using social media campaigns, 'astro turfing' tactics as well as the distribution of free samples.
- Only some political groupings, as well as certain individual MEPs – notably including the rapporteur on the Directive - are publicly disclosing meetings and contacts with tobacco industry representatives. There is not yet a consistent implementation of the UN FCTC rules on contacts with tobacco lobbyists by the European Parliament. There have even – very worryingly – been signals from the Parliament that suggest they do not consider the FCTC to be legally binding on them and consequently see no need for a consistent approach to transparency around tobacco contacts.
- There is evidence that industry-sourced amendments have made their way more or less word-for-word into the amendments proposed by some MEPs. Two MEPs in particular appear to have largely copy-pasted from the documents showing amendments in the industry's favour – and contrary to the strengthening of public health policy.

With a key European Parliament ENVI committee vote on new tobacco legislation taking place later this week, this report is a curtain-raiser on the scale and intensity of tobacco industry lobbying that has been going on in the Parliament in recent months. The tobacco industry has a long record of manipulation and disinformation, which has - uniquely - resulted in international law intended to minimise interactions between the tobacco industry and public-health policy makers. The lobby battle around the EU's new Tobacco Products Directive however shows considerable activity from traditional tobacco lobbyists as well as e-cigarette companies, resulting in numerous contacts between policy-makers and the tobacco industry, many of which are subject to little or no transparency. The concerns expressed by many MEPs about the apparent tobacco industry amendments tabled via their Parliamentary colleagues, indicates that the tobacco lobby is having significant *success* where it should not even be having significant access.

Annexes

Annex 1

37 MEPs, MEPs' assistants and political advisers were telephoned and then emailed. 18 agreed to talk. A further 3 were in email contact without a telephone conversation.
1 campaign group (Smoke Free Partnership) was telephoned.

102 members and substitutes of the ENVI committee were emailed a survey with the following text (below). 6 responded, namely:

Sandrine Belier - Greens/ European Free Alliance
Nessa Childers - Progressive Alliance of Socialists and Democrats
Anna Rosbach - European Conservatives and Reformists Group
Karl-Heinz Florenz - European People's Party
Rebecca Harms - Greens/ European Free Alliance
Jutta Haug - Progressive Alliance of Socialists and Democrats

Survey

1. How often are you contacted by individuals or organisations representing tobacco industry interests? (including public relations professionals, lobbyists, trade associations, trade unions, retailers, suppliers, employees, farmers)

- a. once a day
- b. once a week
- c. once a month
- d. once every quarter (three months)
- e. never

Please tell us about this contact: what do you receive, in what format and on what grounds?

2. Have you been invited to any seminars or public events by any individual or organisation representing tobacco interests in the last six months?

- a. yes, but I declined
- b. yes, and I attended
- c. no

Please tell us about the nature of these meetings.

3. Have you been invited to meet personally with any individual representing the tobacco lobby in the last six months?

- a. yes, but I declined
- b. yes, and I attended
- c. no

Please tell us about the context of these meetings. (We understand you may not feel able to discuss their content).

Annex 2

Karl-Heinz Florenz MEP was contacted by the following tobacco and electronic cigarette industry organisations in the last six months:

Weidenhammer Packaging Group GmbH

Wirtschaftsverbände Papierverarbeitung (WPV) e.V.
Mayr-Melnhof Karton Aktiengesellschaft
Confédération Européenne des Détaillants en Tabac (CEDT)
American Chamber of Commerce in Germany e.V.
Bundesverband der Zigarrenindustrie e.V.
European Cigar Manufacturers Association (ECMA)
Deutsche Benkert GmbH & Co. KG
SWM INTL LTR Industries
Markenverband e.V.
Confederation of European Community Cigarette Manufacturers (CECCM)
British American Tobacco (BAT)
Reetsma
Simply Europe
Zentralverband der deutschen Werbewirtschaft ZAW e.V.
Can Packaging Greencan
Aktionskreis gegen Produkt- und Markenpiraterie e.V. (APM)
Verband der Deutschen Rauchtobakindustrie e.V.
European Smokeless Tobacco Council (ESTOC)
International Trademark Association (INTA)
European Association of Communications Agencies (EACA)
European Political Analysis Group GmbH (eupag)
Trierenberg-Gruppe
MM Graphia Innovaprint GmbH
Verband Deutscher Zeitschriftenverleger (VDZ)
Policy Action SPRL
Federation of European Direct and Interactive Marketing (FEDMA)
Business Action to Stop Counterfeiting and Piracy (BASCAP)
European Magazine Media Association (EMMA)
Global Acetate Manufacturers Association (GAMA)
Kreab Gavin Anderson
Jean-François Etter
www.stop-tabac.ch
Verband des eZigarettenhandel
Zandera Ltd
E-Lites
Njoy
Interessengemeinschaft E-Dampfen (IG-ED)
Greek Electronic Cigarette Trade Association

Annex 3

Email from Karl Heinz Florenz to CEO sent 26/06/13 listing his meetings with representatives of the tobacco industry between February and June 2013:

26 February 2013: meeting with Bodo Mehrlein (Bundesverband der Zigarrenindustrie eV) and Marcel Crijnen (ECMA).

19 March 2013: Tobacco stakeholder meeting in the European Parliament (recording: <http://www.europarl.europa.eu/committees/en/envi/events.html?id=other#menuzone>)

19 March 2013: electronic cigarette stakeholder meeting in the European Parliament, (recording: <http://www.europarl.europa.eu/committees/en/envi/events.html?id=other#menuzone>)

15 April 2013: telephone conference with Dr. Horst Heitz (Senior Policy Advisor (eupag)). Eupag represents the Trierenberg group.

3 June 2013: meeting with Deutsche Benkert GmbH & Co. KG (producer of cigarette tipping paper, <http://www.deutsche-benkert.de/>)

6 June 2013: meeting with Dr. Martin Blumenstock (BAT Bayreuth), Ulf Bauer (EU Public Affairs, BAT Brussels), Bas Tonnaer (BAT Hamburg) and Hermann Drummer (Simply Europe, consultancy, <http://www.simply-europe.eu/>)

Annex 4

Article	Alleged tobacco industry's amendment	Holger Kraemer's amendment
2	<p>Replace the word 'additives' with 'ingredients'.</p> <p>Justification: Due to alignment with the amendment to definition (18) 'ingredients', definition (2) 'additives' was deleted.</p>	<p>(Amendment 61) Mr Kraemer suggests replacing the same words.</p> <p>His justification: Following the removal of definition (2) additive, definition (18) 'ingredient' has to be used here.</p>
2-1-2	<p>Delete: 'additive' means substance contained in a tobacco product, its unit packet or any outside packaging with the exception of tobacco leaves and other natural or unprocessed parts of tobacco plants.</p> <p>Justification: To align with amendment to definition 18 'ingredients'</p>	<p>(Amendment 261) Mr Kraemer suggests deleting the same paragraph.</p> <p>His justification: To remain in keeping with amended definition 18, 'ingredient'</p>
2-1-4	<p>Replace paragraph with:</p> <p>(4) 'characterising flavour' means a distinctive sweet, fruity or confectionary-like taste resulting from a flavouring or combination of flavourings, observable upon intended use of the tobacco product. For the purpose of this definition, tobacco and menthol are not considered a sweet, fruity or confectionary-like taste.</p> <p>Justification: To ensure a proper functioning of a market economy, legitimate tobacco companies have the right to compete by developing and differentiating their products to facilitate adult consumer choice.</p>	<p>(Amendment 271) Mr Kraemer suggests replacing the paragraph with:</p> <p>(4) 'characterising flavour' means a sweet, fruity or confectionery-type aroma differing from tobacco or a taste distinguishable from tobacco, resulting from a flavouring or combination of flavourings, which is observable upon intended use of the tobacco product. For the purposes of this definition, it is assumed that tobacco and menthol do not have a sweet, fruity or confectionery-type taste.</p> <p>His justification: To ensure that the market can function, tobacco product manufacturers must be allowed to compete fairly for the consumer's custom by developing new products and distinguishing their products from those of their rivals.</p>

Article	Alleged tobacco industry's amendment	Holger Krahmer's amendment
2-1-13	<p>Replace 'additive' with 'ingredient'</p> <p>Justification: Follows the deletion of definition 2 'additives'</p>	<p>(Amendment 298) Mr Krahmer also suggests replacing 'additive' with 'ingredient'</p> <p>His justification: To bring the proposal into line with the fact that definition 2, 'additive', is to be deleted.</p>
2-1-18	<p>Make amendments so that the paragraph reads: 'Ingredient' means any substance except for tobacco leaf and other natural or unprocessed part of tobacco plants used in the manufacture or preparation of a tobacco product (including paper, filters, inks, capsules and adhesives) and still present in the finished report, even if in altered form.</p> <p>Justification: The definition of ingredients in the Proposal goes far beyond the definition in the FCTC Partial Guidelines, which propose the inclusion in the ingredient regime of substances intentionally added to the product in the manufacturing process.</p>	<p>(Amendment 302) Mr Krahmer suggests amendments so the paragraph reads: 'Ingredient' means any substance, apart from tobacco leaves and other natural, processed or unprocessed parts of tobacco plants, which is used in the making or preparation of a tobacco product, including paper, filter, inks, capsules and adhesives, and is present in a finished tobacco product, including in modified form</p> <p>His justification: The definition of ingredients goes far beyond that in the FCTC Partial Guidelines, which provides for inclusion of all substances deliberately added to the product during the manufacturing process.</p>
2-1-19	<p>Delete: 'including 0' and 'measured in grams'</p> <p>Justification: The relevance of providing quantities amounting to '0' of a substance in a tobacco product is unclear. Moreover, substances are measured in different metric units, not just in "grams".</p>	<p>Mr Krahmer suggests deleting exactly the same words.</p> <p>His justification: There is little point in notifying a maximum emission level of zero. Not all substances moreover, are measures in grams.</p>
3-2	<p>Delete: The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to adapt the maximum yields laid down in paragraph 1, taking into account scientific development and internationally agreed standards.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiary and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU)</p>	<p>(Amendment 361) Mr Krahmer suggests deleting the same paragraph.</p> <p>His justification: The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU).</p>

Article	Alleged tobacco industry's amendment	Holger Krahmer's amendment
3-3	<p>Delete</p> <p>'Taking into account internationally agreed standards, where available, and based on scientific evidence and on the yields notified by Member States, the Commission shall be empowered to adopt delegated acts in accordance with Article 22 to adopt and adapt maximum yields for other emissions of cigarettes and for emissions of tobacco products other than cigarettes that increase in an appreciable manner the toxic or addictive effect of tobacco products beyond the threshold of toxicity and addictiveness stemming from the yields of tar, nicotine and carbon monoxide fixed in paragraph 1.'</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiarity and lacking in any legal basis, but is also contrary to the Treaty's rules on "delegated acts" (Article 290 TFEU) and 'implementing acts (Article 291 TFEU)</p>	<p>(Amendment 384)</p> <p>Mr Krahmer suggests the same deletion.</p> <p>His justification: Laying down maximum emission yields for tobacco products is a major feature of the directive; they therefore should be laid down by both arms of the legislative authority and not by the Commission in delegated acts.</p>
4-3	<p>Delete:</p> <p>The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to adapt the methods of measurement of the tar, nicotine and carbon monoxide yields, taking into account scientific and technical developments and internationally agreed standards.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiarity and lacking in any legal basis, but is also contrary to the Treaty's rules on "delegated acts" (Article 290 TFEU) and 'implementing acts (Article 291 TFEU)</p>	<p>(Amendment 404)</p> <p>Mr Krahmer suggests deleting the same paragraph.</p> <p>His justification: The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU)</p>
4-4	<p>Delete:</p> <p>Member States shall notify the Commission of the methods of measurement that they use for other emissions of cigarettes and for emissions of tobacco products other than cigarettes. Based on these methods, and taking into account scientific and technical developments as well as internationally agreed standards the Commission shall be empowered to adopt delegated acts in accordance with Article 22 to adopt and adapt methods of measurement.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiarity and lacking in legal basis, but is also contrary to the Treaty's rules on "delegated acts" (Article 290 TFEU) and "implementing acts (Article 291 TFEU)</p>	<p>(Amendment 410)</p> <p>Mr Krahmer suggests deleting the same paragraph.</p> <p>His justification: The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU).</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
5-1	<p>Insert "on a yearly basis"</p> <p>Delete: Manufacturers or importers shall also inform the competent authorities of the concerned Member States if the composition of a product is modified affecting the information provided under this Article. Information required under this Article shall be submitted prior to the placing of the market of a new or modified tobacco product.'</p> <p>Justification: Pre-notification procedure for "new or modified tobacco products" Commission attempts to implement into the future Directive the provisions laid down in the non-binding FCTC Partial Guidelines on Articles 9 and 10 of the FCTC without providing clear guidance on the technicalities of the data and the future purpose of their use.</p>	<p>(Amendment 418)</p> <p>Mr Krahrmer suggests inserting 'annually'.</p> <p>Mr Krahrmer suggests deleting the same paragraph.</p> <p>His justification: Through the prior approval procedure for new or modified tobacco products, the Commission intends incorporating provisions from the non-binding FCTC Partial Guidelines (concerning implementation of Articles 9 and 10 of the FCTC) into the legislative framework without, however, clearly specifying the technical details concerning the data to be submitted or the subsequent use thereof. To counter the impracticability of submitting data whenever a product is modified, annual reporting is being proposed.</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
5-1-2	<p>Delete: The list shall indicate their status, including whether the ingredients have been registered under Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as well as their classification under Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures.</p> <p>Delete: Member States may also require manufacturers or importers to carry out other tests as may be laid down by the competent national authorities in order to assess the effects of substances on health, taking into account, inter alia, their addictiveness and toxicity.</p> <p>Justification: REACH/ classification: Mentioning whether ingredients have been registered under REACH and their classification under Regulation No 1272/2008, had no added value in terms of determining the inherent toxicity of the final tobacco product. Other tests: without a clear harmonised, regulatory and scientific framework, it is meaningless to invite MS to require further tests to assess addictiveness and toxicity. There is no scientific evidence that any ingredients are addiction enhancing (s confirmed by SCENIHR). As regards toxicity, the question to look at from a consumer protection perspective is whether the addition of an ingredient increases the inherent toxicity of the final tobacco product and therewith the health risks associated with smoking.</p>	<p>(Amendment 424)</p> <p>Mr Krahrmer suggests deleting the same two parts.</p> <p>His justification: With regard to assessing the inherent toxicity of a finished tobacco product, there is no added value in making reference to the registration of a substance under the REACH Regulation or to classification under Regulation (EC) No 1272/2008. Without a clear, regulated and scientific framework, there can be no scope for Member States to use other test procedures to assess addictiveness and toxicity.</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
5-4	<p>Delete: Member States shall require manufacturers and importers to submit internal and external studies available to them on market research and preferences of various consumer groups, including young people, relating to ingredients and emissions. Member States shall also require manufacturers and importers to report the sales volume data per product, reported in sticks or kilograms, and per Member State on a yearly basis starting from the full calendar year following that of the entry into force of this Directive. Member States shall provide alternative or additional sales data, as appropriate, to ensure that information on sales volume requested under this paragraph is reliable and complete.</p> <p>Justification: There is no clarity on the precise information required and what it will be used for. Meanwhile, this general collation exercise puts a considerable burden on industry and increases the administrative burden for Member States.</p>	<p>(Amendment 430) Mr Krahrmer suggests deleting the same.</p> <p>Justification: It is not clear how the information would subsequently be used.</p>
6-1-2	<p>Replace the words 'additives' with 'ingredients' twice.</p> <p>Justification: Follows the deletion of definition 2 'additives'</p>	<p>(Amendment 472) Mr Krahrmer suggests the same replacement.</p> <p>Justification: Follows the deletion of definition 2 'additives'.</p>
6-2-1	<p>Delete: The Commission shall at the request of a Member State or may on its own initiative determine by means of implementing acts whether a tobacco product falls within the scope of paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiarity and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU)</p>	<p>(Amendment 488) Mr Krahrmer suggests deleting the same paragraph.</p> <p>Justification: The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU).</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
6-3	<p>Delete:</p> <p>In case the experience gained in the application of paragraphs 1 and 2 shows that a certain additive or a combination thereof typically impart a characterising flavour when it exceeds a certain level of presence or concentration the Commission shall be empowered to adopt delegated acts in accordance with Article 22 to set maximum levels for those additives or combination of additives that cause the characterising flavour.</p> <p>Justification:</p> <p>This conferral of powers is not only contrary to the principle of subsidiarity and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts (Article 291 TFEU)</p>	<p>(Amendment 503)</p> <p>Mr Krahrmer suggests deleting the same paragraph.</p> <p>Justification:</p> <p>The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU).</p>
9-1	<p>Delete 'combined' twice so that paragraph reads:</p> <p>Each unit packet and any outside packaging of tobacco for smoking shall carry combined health warnings. The combined health warnings shall:</p> <p>Justification:</p> <p>The current directive provides for the discretion of MSs to introduce combined health warnings in order to respect national differences and this should remain.</p>	<p>(Amendment 638)</p> <p>Mr Krahrmer suggests making the same deletions.</p> <p>His justification:</p> <p>The current directive gives Member States the option of introducing combined health warnings in order to take account of specific national factors.</p>
9-1-a	<p>Delete: 'and a corresponding colour photograph specified in the picture library'</p> <p>Justification:</p> <p>The current directive provides for the discretion of MSs to introduce combined health warnings in order to respect national differences and this should remain.</p>	<p>(Amendment 645)</p> <p>Mr Krahrmer suggests making the same deletion.</p> <p>His justification:</p> <p>The current directive gives Member States the option of introducing combined health warnings in order to take account of specific national factors.</p>
9-1-c	<p>Delete '75%' and replace with '50%' so the paragraph reads:</p> <p>cover 50% of the external area of both front and back surface of the unit packet and any outside packaging.</p> <p>Justification:</p> <p>Proportionate size, in line with FCTC recommendation, less trade-restrictive measure.</p>	<p>(Amendment 667)</p> <p>Mr Krahrmer suggests making the same replacement.</p> <p>His justification:</p> <p>In accordance with WHO-FCTC recommendations health warnings should cover at least 50% of the main surface of packaging and steps must be taken to ensure that the size of warnings is proportional to that figure.</p>

Article	Alleged tobacco industry's amendment	Holger Krahmer's amendment
9-1-e	<p>Delete: 'top' and replace with 'bottom'. Delete: 'in the same direction as any other information appearing on packaging' so that the paragraph reads: be positioned at the bottom edge of the unit packet and any outside packaging.</p> <p>Justification: There are no issues regarding the current provisions on the positioning of the health warning labels, therefore there are no reasons - health, internal market or other - for any amendments to these provisions.</p>	<p>(Amendment 686) Mr Krahmer suggests the same deletions and replacement.</p> <p>His justification: There is no need to change the current rules on the positioning of health warnings.</p>
9-1-g	<p>Delete: (g) for unit packets of cigarettes, respect the following dimensions: (i) height: not less than 64 mm; (ii) width: not less than 55 mm.</p> <p>Justification: There is no evidence that a minimum size for packs (deriving from the minimum dimensions of health warnings) will achieve the public health objective or discourage children to start smoking. These restrictions on the pack size are incompatible with the TBT and TRIPS agreements, will reduce consumer choice, damage competition, damage (sic) the business of service industries and deprive manufacturers of intellectual property rights.</p>	<p>(Amendment 703) Mr Krahmer suggests the same deletion.</p> <p>His justification: There are no findings which demonstrate that a minimum unit packet size (based on the minimum size of health warnings) does in fact contribute to the protection of public health or deter children and young people from smoking. Restrictions on unit packet size curtail consumers' freedom of choice, hamper free competition and undermine intellectual property rights.</p>
9-3-c	<p>Delete: 'position' and 'rotation and proportions' so the paragraph reads: define the format layout and design of the health warnings.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiarity and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU)</p>	<p>(Amendment 739) Mr Krahmer suggests deleting the whole paragraph, rather than the few words.</p> <p>His justification: The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU).</p>
10-4-c	<p>Delete: 'not less than' and 'and not more than 4mm' so the paragraph reads: surrounded by a black border of 3mm in width inside the surface reserved for the text of the warning.</p> <p>Justification: Will not improve the functioning of the internal market or achieve public health objective.</p>	<p>(Amendment 781) Mr Krahmer suggests the same deletion.</p> <p>Justification: The provision will not have a positive effect either on the internal market or on the protection of public health, and ought to be formulated clearly and unambiguously.</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
12-1	<p>Delete: The labelling of a unit packet and any outside packaging and the tobacco product itself shall not include any element or feature that:</p> <p>(a) promotes a tobacco product by means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions;</p> <p>(b) suggests that a particular tobacco product is less harmful than others or has vitalising, energetic, healing, rejuvenating, natural, organic or otherwise positive health or social effects;</p> <p>(c) refers to flavour, taste, any flavourings or other additives or the absence thereof;</p> <p>(d) resembles a food product.</p> <p>Justification: Will not improve the functioning of the internal market and is more trade-restrictive than necessary to achieve the public health objective, thus being incompatible with WTO provisions.</p>	<p>(Amendment 813) Mr Krahrmer suggests deleting the same paragraphs.</p> <p>Justification: The provision will not have a positive effect either on the internal market or on the protection of public health.</p>
12-2	<p>Delete: 'misleading colours' and 'or relate to the shape of the tobacco product itself. Cigarettes with a diameter of less than 7.5mm shall be deemed to be misleading'.</p> <p>Justification: There is no definition of "misleading" colours" and there is no credible justification for colours deemed to be misleading. Equally, there is no justification from a health and internal market perspective for a ban of small diameter cigarettes, which violates TBT agreement by unjustifiably discriminating between like products originating from different countries.</p>	<p>(Amendment 840) Mr Krahrmer suggests the same deletions.</p> <p>His justification: 'Misleading colours' are not defined, and no credible grounds are adduced for the assumption that certain colours could be misleading. Similarly, with reference to the protection of public health and the internal market, there are no grounds for banning across the board cigarettes with a small diameter.</p>
13-2	<p>Delete: A cigarette packet can be of carton or soft material and shall not contain an opening that can be re-closed or re-sealed after the opening is first opened, other than the flip-top lid. The flip-top lid of a cigarette packet shall be hinged only at the back of the packet.</p> <p>Justification: There is no Internal Market justification for restricting the packs in which tobacco products are sold. The Proposal runs counter to the EU's Internal Market policy on packaging and mutual recognition, notably Directive 2007/45, also TRIPS and TBT agreements.</p>	<p>(Amendment 889) Mr Krahrmer suggests deleting the same paragraph.</p> <p>Justification: From the point of view of the internal market, there are no grounds for regulating the size of the packaging in which various tobacco products are sold. The proposal is contrary to the EU's internal market policy in relation to packagings and mutual recognition pursuant to Directive 2007/45.</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
13-3	<p>Delete: The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to define more detailed rules for the shape and size of unit packets in so far as these rules are necessary to ensure the full visibility and integrity of the health warnings before the first opening, during the opening and after reclosing of the unit packet.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiary and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU).</p>	<p>(Amendment 902) Mr Krahrmer suggests deleting the same paragraph.</p> <p>His justification: The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU)</p>
13-4	<p>Delete: The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to make either cuboid or cylindrical shape mandatory for unit packets of tobacco products other than cigarettes and roll-your-own tobacco if there is a substantial change of circumstances as established in a Commission report.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiary and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU).</p>	<p>(Amendment 919) Mr Krahrmer suggests deleting the same paragraph.</p> <p>His justification: The transfer of powers is not only at odds with the subsidiarity principle and any possible legal basis, but also with the guidelines laid down in the Treaty concerning the use of delegated acts (Article 290 TFEU) and implementing acts (Article 291 TFEU)</p>
14	<p>Replace the words 'additives' with 'ingredients' twice.</p> <p>Justification: Due to alignment with the amendment to definition (18) 'ingredients', definition (2) 'additives' was deleted.</p>	<p>(Amendment 92) Mr Krahrmer suggests replacing the same words.</p> <p>His justification: Following the removal of definition (2) additive, definition (18) 'ingredient' has to be used here.</p>
14-10	<p>Delete: '5' and replace with '10' so paragraph reads: Tobacco products other than cigarettes and roll-your-own tobacco shall be exempted from the application of paragraph 1 to 8 during a period of 10 years following the date referred to in paragraph 1 of Article 25.</p> <p>Justification: There are over 100 manufacturers in the EU and the excessive cost and limited time frame will make it impossible for a large number to comply.</p>	<p>(Amendment 1012) Mr Krahrmer also suggests replacing '5' with '10'.</p> <p>His justification: Article 8(3) of the WHO FCTC Protocol to eliminate illicit trade in tobacco products provides for a transition period of 10 years for tobacco products other than cigarettes and roll-your- own tobacco.</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
15	<p>Delete: A number of studies indicated that mentholated tobacco products can facilitate inhalation as well as smoking uptake among young people.</p> <p>Justification: The available scientific data do not support the contention that menthol causes deeper tobacco smoke inhalation and there is no evidence to suggest that mentholated cigarettes are associated with any independent reduction in the age of smoking.</p>	<p>(Amendment 102) Mr Krahrmer suggests deleting precisely the same sentence.</p> <p>His justification: The scientific data available do not support the assertion that menthol contributes to a more intense inhalation of tobacco smoke. Moreover, there is no reason to believe that menthol cigarettes are associated with people starting to smoke earlier.</p>
16	<p>Replace the word 'additives' with 'ingredients' five times.</p> <p>Justification: Due to alignment with the amendment to definition (18) 'ingredients', definition (2) "additives" was deleted.</p>	<p>(Amendment 107) Mr Krahrmer also suggests replacing 'additives' with 'ingredients' five times.</p> <p>His justification: Following the removal of definition (2) additive, definition (18) 'ingredient' has to be used here.</p>
17	<p>Delete paragraph.</p> <p>Justification: There is no scientific evidence to this effect. Any decision to ban or regulate an ingredient should be based on sound scientific assessment appropriate for tobacco products applying validated assessment criteria.</p>	<p>(Amendment 113) Mr Krahrmer suggests deleting the same paragraph.</p> <p>His justification: There is no hard scientific evidence as to whether certain/some additives create the impression that the tobacco product may be less harmful and therefore more attractive for certain groups of consumers. Any decision to prohibit or regulate an ingredient should be based on compelling scientific studies for which clear EU-agreed criteria applicable to tobacco products have been used.</p>
22	<p>Delete: 'Evidence also suggests that large combined health warnings are more effective than text-only warnings. In this light combined health warnings should become mandatory throughout the Union and cover significant and visible parts of the packet surface. A minimum size should be set for all health warnings to ensure their visibility and effectiveness.'</p> <p>Justification: There is no convincing evidence that very large, picture based warnings will result in fewer people smoking. In fact, there is a lot of evidence that pack regulations such as enlarged pictorial health warnings do not change people's decisions about whether to smoke or not.</p>	<p>(Amendment 134) Mr Krahrmer suggests deleting exactly the same text.</p> <p>His justification: There is absolutely no hard scientific proof that very large, image-based warnings lead to a reduction in smoker numbers. There is indeed evidence that packaging regulations such as enlarged pictorial warnings have no effect whatsoever on the decision by people to smoke or not.</p>

Article	Alleged tobacco industry's amendment	Holger Krahrmer's amendment
23	<p>Delete whole paragraph.</p> <p>Justification: Will not improve the functioning of the internal market or achieve the public health objective. Also, there is no evidence that the pack or product design are casual factors in the decision to smoke. Regarding a ban on slim cigarettes, this will be ineffective at reducing tobacco consumption, but will increase illicit trade and cause serious economic harm. This ban would also be contrary to the provision of the TBT and TRIPs agreement.</p>	<p>Mr Krahrmer also suggests deleting the whole paragraph.</p> <p>His justification: This proposal contributes neither to improving the functioning of the internal market, nor to protecting public health. There is, moreover, no hard evidence that the packaging or appearance of a product is a causal factor that has an influence on the decision to smoke. The prohibition of slim cigarettes does not help reduce tobacco consumption, but will lead to an increase in cigarette smuggling and serious economic damage.</p>
38	<p>Delete: 'in particular in respect of adopting and adapting maximum yields for emissions and their measurement methods, setting maximum levels for ingredients that increase toxicity, addictiveness or attractiveness, the use of health warnings, unique identifiers and security features in the labelling and packaging, defining key elements for contracts on data storage with independent third parties, reviewing certain exemptions granted to tobacco products other than cigarettes, roll-your- own tobacco and smokeless tobacco products and reviewing the nicotine levels for nicotine containing products.'</p> <p>Justification: Premature to list specific elements to be delegated. General terminology will avoid the possible need for changes to the recital.</p>	<p>(Amendment 219) Mr Krahrmer proposes exactly the same deletion.</p> <p>His justification: It is too early to already refer to specific elements in the field of delegated acts. The use of general terms avoids having to make future changes to the recitals.</p>

Annex 5

Article	Alleged tobacco industry's amendment	Christa Klaß's amendment
8-3	<p>Delete: These warnings shall have a width of not less than 20 mm and a height of not less than 43 mm.</p> <p>Justification: There is no evidence that a minimum size for packs (deriving from the minimum dimensions for health warnings) will achieve the public health objective. These restrictions on the pack size are incompatible with the TBT and TRIPS agreements, will reduce consumer choice, damage competition, damage (sic) the business of service industries and deprive manufacturers of intellectual property rights.</p>	<p>(Amendment 615) Ms Klaß suggests deleting the same words.</p> <p>Her justification: There is no evidence that a minimum size for packs (deriving from the minimum dimensions for health warnings) will achieve the public health objective. These restrictions on the pack size will reduce consumer choice, damage competition, damage (sic) the business of service industries and deprive manufacturers of intellectual property.</p>
9-1	<p>Delete 'combined' twice so that paragraph reads: Each unit packet and any outside packaging of tobacco for smoking shall carry combined health warnings. The combined health warnings shall:</p> <p>Justification: The current directive provides for the discretion of MSs to introduce combined health warnings in order to respect national differences and this should remain.</p>	<p>(Amendment 637) Ms Klaß suggests making the same deletions.</p> <p>Her justification: The current directive provides for the discretion of the member states to introduce combined health warnings in order to respect national differences and this should remain.</p>
9-1-a (new)	<p>Insert: Member States may require combined health warnings in the form of the text warning a colour photograph specified in the picture library.</p> <p>Justification: Self explanatory.</p>	<p>(Amendment 649) Ms Klaß suggests the same insertion.</p> <p>She does not provide a justification.</p>
9-1-c	<p>Delete '75%' and replace with '50%' so the paragraph reads: cover 50% of the external area of both front and back surface of the unit packet and any outside packaging.</p> <p>Justification: Proportionate size, in line with FCTC recommendation, less trade-restrictive measure.</p>	<p>(Amendment 662) Ms Klaß suggests the same deletion and replacement.</p> <p>Her justification: Proportionate size, in line with FCTC recommendations.</p>

Article	Alleged tobacco industry's amendment	Christa Klaß's amendment
9-1-e	<p>Delete: 'top' and replace with 'bottom'. Delete: 'in the same direction as any other information appearing on packaging' so that the paragraph reads: be positioned at the bottom edge of the unit packet and any outside packaging.</p> <p>Justification: There are no issues regarding the current provisions on the positioning of the health warning labels, therefore there are no reasons - health, internal market or other - for any amendments to these provisions.</p>	<p>(Amendment 685) Ms Klaß suggests the same deletion and replacement.</p> <p>She gives no justification.</p>
9-1-g	<p>Delete: (g) for unit packets of cigarettes, respect the following dimensions: (i) height: not less than 64 mm; (ii) width: not less than 55 mm.</p> <p>Justification: There is no evidence that a minimum size for packs (deriving from the minimum dimensions of health warnings) will achieve the public health objective or discourage children to start smoking. These restrictions on the pack size are incompatible with the TBT and TRIPS agreements, will reduce consumer choice, damage competition, damage (sic) the business of service industries and deprive manufacturers of intellectual property rights.</p>	<p>(Amendment 701) Ms Klaß suggests the same deletion.</p> <p>Her justification: There is no evidence that a minimum size for packs (deriving from the minimum dimensions of health warnings) will achieve the public health objective or discourage children to start smoking. These restrictions on the pack size will reduce consumer choice, damage competition, damage (sic) the business service industries and deprive manufacturers of intellectual property.</p>
10-4-c	<p>Delete: 'not less than 3mm and not more than 4mm' so the paragraph reads: surrounded by a black border of 3mm in width inside the surface reserved for the text of the warning.</p> <p>Justification: Will not improve the functioning of the internal market or achieve public health objective.</p>	<p>(Amendment 780) Ms Klaß suggests the same deletion.</p> <p>Her justification: Will not improve the functioning of the internal market or achieve the public health objective.</p>

Article	Alleged tobacco industry's amendment	Christa Klaß's amendment
12-1	<p>Delete: The labelling of a unit packet and any outside packaging and the tobacco product itself shall not include any element or feature that:</p> <ul style="list-style-type: none"> (a) promotes a tobacco product by means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions; (b) suggests that a particular tobacco product is less harmful than others or has vitalising, energetic, healing, rejuvenating, natural, organic or otherwise positive health or social effects; (c) refers to flavour, taste, any flavourings or other additives or the absence thereof; (d) resembles a food product. <p>Justification: Will not improve the functioning of the internal market and is more trade-restrictive than necessary to achieve the public health objective, thus being incompatible with WTO provisions.</p>	<p>(Amendment 812) Ms Klaß suggests deleting the same paragraphs.</p> <p>Justification: Will not achieve the functioning of the internal market or achieve the public health objectives.</p>
12-2	<p>Delete: 'misleading colours' and 'or relate to the shape of the tobacco product itself. Cigarettes with a diameter of less than 7.5mm shall be deemed to be misleading'.</p> <p>Justification: There is no definition of "misleading" colours" and there is no credible justification for colours deemed to be misleading. Equally, there is no justification from a health and internal market perspective for a ban of small diameter cigarettes, which violates TBT agreement by unjustifiably discriminating between like products originating from different countries.</p>	<p>(Amendment 839) Ms Klaß suggests deleting the same words.</p> <p>Her justification: There is no definition of "misleading" colours" and there is no credible justification for colours deemed to be misleading. Equally, there is no justification from a health an (sic) internal market perspective for a ban of small diameter cigarettes.</p>
13-1	<p>Delete: A unit packet of cigarettes shall have a cuboid shape. A unit packet of roll-your- own tobacco shall have the form of a pouch, i.e. a rectangular pocket with a flap that covers the opening. The flap of the pouch shall cover at least 70% of the front of the packet. A unit packet of cigarettes shall include at least 20 cigarettes. A unit packet of roll-your-own tobacco shall contain tobacco weighing at least 40 g.</p> <p>Justification: There is no Internal Market justification for restricting the packs in which tobacco products are sold. The Proposal runs counter to the EU's Internal Market policy on packaging and mutual recognition, notably Directive 2007/45.</p>	<p>(Amendment 868) Ms Klaß suggests deleting the same paragraph.</p> <p>Her justification: There is no Internal Market justification for restricting the packs in which tobacco products are sold. The proposal runs counter to the EU's Internal Market policy on packaging and mutual recognition, notably Directive 2007/45.</p>

Article	Alleged tobacco industry's amendment	Christa Klaß's amendment
13-3	<p>Delete: The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to define more detailed rules for the shape and size of unit packets in so far as these rules are necessary to ensure the full visibility and integrity of the health warnings before the first opening, during the opening and after reclosing of the unit packet.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiary and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU).</p>	<p>(Amendment 901) Ms Klaß suggests deleting the same paragraph.</p> <p>Her justification: This conferral of powers is not only contrary to the principle of subsidiary and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU).</p>
13-4	<p>Delete: The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to make either cuboid or cylindrical shape mandatory for unit packets of tobacco products other than cigarettes and roll-your-own tobacco if there is a substantial change of circumstances as established in a Commission report.</p> <p>Justification: This conferral of powers is not only contrary to the principle of subsidiary and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU).</p>	<p>(Amendment 918) Ms Klaß suggests deleting the same paragraph.</p> <p>Her justification: This conferral of powers is not only contrary to the principle of subsidiary and lacking in any legal basis, but is also contrary to the Treaty's rules on 'delegated acts' (Article 290 TFEU) and 'implementing acts' (Article 291 TFEU).</p>