

# Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship)

## PURPOSE AND OBJECTIVES

1. The purpose of these guidelines is to assist Parties in meeting their obligations under Article 13 of the WHO Framework Convention on Tobacco Control. They draw on the best available evidence and the experience of Parties that have successfully implemented effective measures against tobacco advertising, promotion and sponsorship. They give Parties guidance for introducing and enforcing a comprehensive ban on tobacco advertising, promotion and sponsorship or, for those Parties that are not in a position to undertake a comprehensive ban owing to their constitutions or constitutional principles, for applying restrictions on tobacco advertising, promotion and sponsorship that are as comprehensive as possible.

2. These guidelines provide guidance on the best ways to implement Article 13 of the Convention in order to eliminate tobacco advertising, promotion and sponsorship effectively at both domestic and international levels.

3. The following principles apply:

(a) It is well documented that tobacco advertising, promotion and sponsorship increase tobacco use and that comprehensive bans on tobacco advertising, promotion and sponsorship decrease tobacco use.

(b) An effective ban on tobacco advertising, promotion and sponsorship should, as recognized by Parties to the Convention in Articles 13.1 and 13.2, be *comprehensive* and applicable to *all* tobacco advertising, promotion and sponsorship.

(c) According to the definitions in Article 1 of the Convention, a comprehensive ban on all tobacco advertising, promotion and sponsorship applies to *all* forms of *commercial communication, recommendation or action* and all forms of *contribution* to any event, activity or individual with the *aim, effect, or likely effect* of promoting a tobacco product or tobacco use either *directly or indirectly*.

(d) A comprehensive ban on tobacco advertising, promotion and sponsorship should include *cross-border advertising, promotion and sponsorship*. This includes both out-flowing advertising, promotion and sponsorship (originating from a Party's territory) and in-flowing advertising, promotion and sponsorship (entering a Party's territory).

(e) To be effective, a comprehensive ban should address *all persons or entities* involved in the production, placement and/or dissemination of tobacco advertising, promotion and sponsorship.

(f) Effective *monitoring, enforcement and sanctions* supported and facilitated by strong *public education and community awareness programmes* are essential for implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship.

(g) *Civil society* has a central role in building support for, developing and ensuring compliance with laws addressing tobacco advertising, promotion and sponsorship, and it should be included as an active partner in this process.

(h) Effective *international cooperation* is fundamental to the elimination of both domestic and cross-border tobacco advertising, promotion and sponsorship.

### ***Scope of a comprehensive ban***

4. The scope of a comprehensive ban on tobacco advertising, promotion and sponsorship is outlined in general terms in subsection “Overview” (paragraphs 5–11) below, while the following subsections (paragraphs 12–34) address aspects that could pose special challenges for regulators in introducing a comprehensive ban.

#### ***Overview***

5. A ban on tobacco advertising, promotion and sponsorship is effective only if it has a broad scope. Contemporary marketing communication involves an integrated approach to advertising and promoting the purchase and sale of goods, including direct marketing, public relations, sales promotion, personal selling and online interactive marketing methods. If only certain forms of direct tobacco advertising are prohibited, the tobacco industry inevitably shifts its expenditure to other advertising, promotion and sponsorship strategies, using creative, indirect ways to promote tobacco products and tobacco use, especially among young people.

6. Therefore, the effect of a partial advertising ban on tobacco consumption is limited. This is recognized in Article 13 of the Convention, which lays down the basic obligation to ban tobacco advertising, promotion and sponsorship. According to Article 13.1 of the Convention, “Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products”.

7. To implement the comprehensive ban laid down in Articles 13.1 and 13.2 of the Convention, Parties should ban advertising, promotion and sponsorship as defined in Article 1(c) and (g) of the Convention. Article 1(c) defines “tobacco advertising and promotion” as “any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”. Article 1(g) defines “tobacco sponsorship” as “any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”.

8. It is important to note that both “tobacco advertising and promotion” and “tobacco sponsorship” cover promotion not only of particular tobacco products but also of tobacco use generally; not only acts with a promotional aim but also acts that have a promotional effect or are likely to have a promotional effect; and not only direct promotion but also indirect promotion. “Tobacco advertising and promotion” is not restricted to “communications”, but also includes “recommendations” and “actions”, which should cover at least the following categories: (a) various sales and/or distribution arrangements<sup>1</sup>; (b) hidden forms of advertising or promotion, such as insertion of tobacco products or tobacco use in various media contents; (c) association of tobacco products with events or with other products in various ways; (d)

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<sup>1</sup> For instance, incentive schemes for retailers, display at points of sale, lotteries, free gifts, free samples, discounts, competitions (whether the purchase of tobacco products is required or not) and incentive promotions or loyalty schemes, e.g. redeemable coupons provided with purchase of tobacco products.

promotional packaging and product design features; and (e) production and distribution of items such as sweets and toys or other products that resemble cigarettes or other tobacco products.<sup>2</sup> It is also important to note that the definition of “tobacco sponsorship” covers “any form of contribution”, financial or otherwise, regardless of how or whether that contribution is acknowledged or publicized.

9. Promotional effects, both direct and indirect, may be brought about by the use of words, designs, images, sounds and colours, including brand names, trademarks, logos, names of tobacco manufacturers or importers, and colours or schemes of colours associated with tobacco products, manufacturers or importers, or by the use of a part or parts of words, designs, images and colours. Promotion of tobacco companies themselves (sometimes referred to as corporate promotion) is a form of promotion of tobacco products or tobacco use, even without the presentation of brand names or trademarks. Advertising, including display and sponsorship of smoking accessories such as cigarette papers, filters and equipment for rolling cigarettes, as well as imitations of tobacco products, may also have the effect of promoting tobacco products or tobacco use.

10. Legislation should avoid providing lists of prohibited activities that are, or could be understood to be, exhaustive. While it is often useful to provide examples of prohibited activities, when legislation does so, it should make clear that they are only examples and do not cover the full range of prohibited activities. This can be made clear by using terms like “including but not limited to” or catch-all phrases such as “or any other form of tobacco advertising, promotion or sponsorship”.

11. An indicative (non-exhaustive) list of forms of advertising, promotion and sponsorship that fall under the ban in Article 13 of the Convention is attached in the appendix to these guidelines.

### ***Recommendation***

A comprehensive ban on tobacco advertising, promotion and sponsorship, should cover:

- all advertising and promotion, as well as sponsorship, without exemption;
- direct and indirect advertising, promotion and sponsorship;
- acts that aim at promotion and acts that have or are likely to have a promotional effect;
- promotion of tobacco products and the use of tobacco;
- commercial communications and commercial recommendations and actions;
- contribution of any kind to any event, activity or individual;
- advertising and promotion of tobacco brand names and all corporate promotion; and

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<sup>2</sup> This text reflects the spirit of Article 16.1 of the Convention, which obliges Parties to “adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit sales of tobacco products to persons under the age set by domestic law, national law or eighteen. These measures may include [...] (c) prohibiting the manufacture and sale of sweets, snacks, toys or any other object in the form of tobacco products which appeal to minors”.

- traditional media (print, television and radio) and all media platforms, including Internet, mobile telephones and other new technologies as well as films.

### ***Retail sale and display***

12. Display of tobacco products at points of sale in itself constitutes advertising and promotion. Display of products is a key means of promoting tobacco products and tobacco use, including by stimulating impulse purchases of tobacco products, giving the impression that tobacco use is socially acceptable and making it harder for tobacco users to quit. Young people are particularly vulnerable to the promotional effects of product display.

13. To ensure that points of sale of tobacco products do not have any promotional elements, Parties should introduce a total ban on any display and on the visibility of tobacco products at points of sale, including fixed retail outlets and street vendors. Only the textual listing of products and their prices, without any promotional elements, would be allowed. As for all aspects of Article 13 of the Convention, the ban should also apply in ferries, airplanes, ports and airports.

14. Vending machines should be banned because they constitute by their very presence a means of advertising or promotion under the terms of the Convention.<sup>3</sup>

### ***Recommendation***

Display and visibility of tobacco products at points of sale constitutes advertising and promotion and should therefore be banned. Vending machines should be banned because they constitute, by their very presence, a means of advertising and promotion.

### ***Packaging and product features***<sup>4</sup>

15. Packaging is an important element of advertising and promotion. Tobacco pack or product features are used in various ways to attract consumers, to promote products and to cultivate and promote brand identity, for example by using logos, colours, fonts, pictures, shapes and materials on or in packs or on individual cigarettes or other tobacco products.

16. The effect of advertising or promotion on packaging can be eliminated by requiring plain packaging: black and white or two other contrasting colours, as prescribed by national authorities; nothing other than a brand name, a product name and/or manufacturer's name, contact details and the quantity of product in the packaging, without any logos or other features apart from health warnings, tax stamps and other government-mandated information or markings; prescribed font style and size; and standardized shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products.

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<sup>3</sup> Banning vending machines because they amount to advertising or promotion complements the provisions of Article 16 of the Convention on protecting minors. The possible measures described in Article 16.1 include "ensuring that tobacco vending machines under [each Party's] jurisdiction are not accessible to minors and do not promote sale of tobacco products to minors"; and Article 16.5 stipulates that "... a Party may, by means of a binding written declaration, indicate its commitment to prohibit the introduction of tobacco vending machines within its jurisdiction or, as appropriate, to a total ban on tobacco vending machines".

<sup>4</sup> See also the guidelines for implementation of Article 11 of the Convention, which address plain packaging with regard to health warnings and misleading information.

17. If plain packaging is not yet mandated, the restriction should cover as many as possible of the design features that make tobacco products more attractive to consumers such as animal or other figures, “fun” phrases, coloured cigarette papers, attractive smells, novelty or seasonal packs.

***Recommendation***

Packaging and product design are important elements of advertising and promotion. Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.

***Internet sales***

18. Internet sales of tobacco inherently involve advertising and promotion as defined in the Convention. The problem is not only limited to advertising and promotion but also includes sales to minors, tax evasion and illicit trade.

19. The most direct way of avoiding tobacco advertising or promotion on the Internet is to ban tobacco sales on the Internet.<sup>5</sup> The ban should apply not only to entities that sell the products but also to others, including credit card companies that facilitate payment and postal or delivery services for the products.

20. To the extent that Internet sales are not yet banned, restrictions should be imposed, allowing only textual listing of products with prices, with no pictures or promotion features (e.g. any references to low prices).

21. Given the covert nature of tobacco advertising and promotion on the Internet and the difficulty of identifying and reaching wrongdoers, special domestic resources are needed to make these measures operational. Measures recommended in decision FCTC/COP3(14) to eliminate cross-border tobacco advertising, promotion and sponsorship, in particular identifying contact points and dealing with notifications from other Parties, would help to ensure that domestic enforcement efforts are not undermined.

***Recommendation***

Internet sales of tobacco should be banned as they inherently involve tobacco advertising and promotion.

***Brand stretching and brand sharing***

22. “Brand stretching” occurs when a tobacco brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) is connected with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or service are likely to be associated.

23. “Brand sharing” occurs when a brand name, emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations) on a non-tobacco product or service is connected with a tobacco product or tobacco company in such a way that

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<sup>5</sup> Options for regulating Internet sales are being discussed by the Intergovernmental Negotiating Body on a Protocol on Illicit Trade in Tobacco Products.

the tobacco product or company and the non-tobacco product or service are likely to be associated.

24. “Brand stretching” and “brand sharing” should be regarded as tobacco advertising and promotion in so far as they have the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.

***Recommendation***

Parties should ban “brand stretching” and “brand sharing”, as they are means of tobacco advertising and promotion.

***Corporate social responsibility***<sup>6</sup>

25. It is increasingly common for tobacco companies to seek to portray themselves as good corporate citizens by making contributions to deserving causes or by otherwise promoting “socially responsible” elements of their business practices.

26. Some tobacco companies make financial or in-kind contributions to organizations, such as community, health, welfare or environmental organizations, either directly or through other entities. Such contributions fall within the definition of tobacco sponsorship in Article 1(g) of the Convention and should be prohibited as part of a comprehensive ban, because the aim, effect or likely effect of such a contribution is to promote a tobacco product or tobacco use either directly or indirectly.

27. Tobacco companies may also seek to engage in “socially responsible” business practices (such as good employee–employer relations or environmental stewardship), which do not involve contributions to other parties. Promotion to the public of such otherwise commendable activities should be prohibited, as their aim, effect or likely effect is to promote a tobacco product or tobacco use either directly or indirectly. Public dissemination of such information should be prohibited, except for the purposes of required corporate reporting (such as annual reports) or necessary business administration (e.g. for recruitment purposes and communications with suppliers).

28. Tobacco industry public education campaigns, such as “youth smoking prevention campaigns” should be prohibited on the basis that they involve “contributions” when implemented by other parties or represent corporate promotion if conducted by the industry itself.

***Recommendation***

The Parties should ban contributions from tobacco companies to any other entity for “socially responsible causes”, as this is a form of sponsorship. Publicity given to “socially responsible” business practices of the tobacco industry should be banned, as it constitutes advertising and promotion.

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<sup>6</sup> The guidelines on Article 5.3 of the Convention, elaborated by a working group established by the Conference of the Parties, address this subject from the perspective of protecting public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.

### ***Legitimate expression***

29. Implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship should not prevent legitimate journalistic, artistic or academic expression or legitimate social or political commentary. Examples include news images with coincidental tobacco-related content in the background, the depiction of historical personalities or presentation of views on regulation or policy. Nevertheless, appropriate warnings or disclaimers may be required.

30. In some cases, journalistic, artistic or academic expression or social or political commentary may contain elements that are not justified for editorial, artistic, academic, social or political reasons and must be regarded as advertising, promotion or sponsorship rather than genuine editorial, artistic or academic content or genuine social or political commentary. This is obviously the case if an insertion is made for commercial, tobacco-related reasons, for example, paid placement of tobacco products or images in the media.

### ***Recommendation***

Implementation of a comprehensive ban on tobacco advertising, promotion and sponsorship need not interfere with legitimate types of expression, such as journalistic, artistic or academic expression or legitimate social or political commentary. Parties should, however, take measures to prevent the use of journalistic, artistic or academic expression or social or political commentary for the promotion of tobacco use or tobacco products.

### ***Depictions of tobacco in entertainment media***

31. The depiction of tobacco in entertainment media products, such as films, theatre and games, can strongly influence tobacco use, particularly among young people. Therefore, Parties should take the following measures:

- Implement a mechanism requiring that when an entertainment media product depicts tobacco products, use or imagery of any type, the responsible executives at each company involved in the production, distribution or presentation of that entertainment media product certify that no money, gifts, free publicity, interest-free loans, tobacco products, public relations assistance or anything else of any value has been given in exchange for the depiction.
- Prohibit the depiction of identifiable tobacco brands or tobacco brand images in association with, or as part of the content of, any entertainment media product.
- Require the display of prescribed anti-tobacco advertisements at the beginning of any entertainment media product that depicts tobacco products, use or images.
- Implement a ratings or classification system that takes into account the depiction of tobacco products, use or images in rating or classifying entertainment media products (for example, requiring adult ratings which restrict access of minors) and that ensures that entertainment media aimed at children (including cartoons) do not depict tobacco products, use or imagery.

### ***Recommendation***

Parties should take particular measures concerning the depiction of tobacco in entertainment media products, including requiring certification that no benefits have been received for any tobacco depictions, prohibiting the use of identifiable tobacco brands or imagery, requiring anti-tobacco advertisements and implementing a ratings or classification system that takes tobacco depictions into account.

### ***Communication within the tobacco trade***

32. The objective of banning tobacco advertising, promotion and sponsorship can usually be achieved without banning communications within the tobacco trade.

33. Any exception to a comprehensive ban on tobacco advertising, promotion and sponsorship for the purpose of providing product information to actors within the tobacco trade should be defined and applied strictly. Access to such information should be restricted to those persons who make trading decisions and who consequently need the information.

34. Tobacco manufacturers' newsletters can be exempted from the comprehensive ban on tobacco advertising, promotion and sponsorship, but only if they are destined exclusively for the manufacturer's employees, contractors, suppliers and other business partners and only to the extent that their distribution is limited to those persons or entities.

### ***Recommendation***

Any exception to a comprehensive ban on tobacco advertising, promotion and sponsorship to allow communication within the tobacco trade should be defined and applied strictly.

### ***Constitutional principles in relation to a comprehensive ban***

35. Any Party whose constitution or constitutional principles impose constraints on undertaking a comprehensive ban should, under Article 13 of the Convention, apply restrictions that are as comprehensive as possible in the light of those constraints. All Parties are obliged to undertake a comprehensive ban unless they are "not in a position" to do so "*due to* [their] constitution or constitutional principles". This obligation is to be interpreted in the context of the "recogni[tion] that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products", and in the light of the Convention's overall objective "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke" (Article 3 of the Convention).

36. It is acknowledged that the question of how constitutional principles are to be accommodated is to be determined by each Party's constitutional system.

### ***Obligations related to Article 13.4 of the Convention***

37. Under Articles 13.2 and 13.3 of the Convention, Parties are obliged to undertake a comprehensive ban on tobacco advertising, promotion and sponsorship (or apply restrictions that are as comprehensive as possible in light of their constitution or constitutional principles). Some forms of tobacco advertising, promotion and sponsorship can be expected to persist in Parties that have not yet met their obligations under Articles 13.2 and 13.3 of the Convention. In addition, some very limited forms of relevant commercial communication,

recommendation or action might continue to exist after a comprehensive ban has been implemented, and some forms of tobacco advertising, promotion and sponsorship may continue in Parties whose constitutions or constitutional principles prevent a comprehensive ban.

38. Any form of tobacco advertising, promotion or sponsorship that is not prohibited is obliged to meet the requirements of Article 13.4 of the Convention. Notably, these requirements include to “prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions” (13.4(a)); to “require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship” (13.4(b)); and to “require, if [a Party] does not have a comprehensive ban, the disclosure to relevant governmental authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship not yet prohibited” (13.4(d)).

39. Parties should prohibit the use of any term, descriptor, trademark, emblem, marketing image, logo, colour and figurative or any other sign<sup>7</sup> that promotes a tobacco product or tobacco use, whether directly or indirectly, by any means that are false, misleading or deceptive or likely to create an erroneous impression about the characteristics, health effects, hazards or emissions of any tobacco product or tobacco products, or about the health effects or hazards of tobacco use. Such a prohibition should cover, inter alia, use of the terms “low tar”, “light”, “ultra-light”, “mild”, “extra”, “ultra” and other terms in any language that may be misleading or create an erroneous impression.<sup>8</sup>

40. Parties should consider giving health or other warnings and messages accompanying any tobacco advertising, promotion and sponsorship at least equal prominence to the advertising, promotion or sponsorship. The content of the required warnings and messages should be prescribed by the relevant authorities and should effectively communicate the health risks and addictiveness of tobacco use, discourage the use of tobacco products and increase motivation to quit tobacco use. In order to maximize their effectiveness, the warnings or other messages required by Parties under Article 13.4(b) of the Convention should be consistent with the warnings or other messages on packaging that the Convention requires under Article 11.

41. Parties should require disclosure by the tobacco industry to relevant governmental authorities of any advertising, promotion and sponsorship in which it engages. The disclosures should be made at regular intervals prescribed by law and in response to specific requests. They should include, both in total and by brand, information about:

- the kind of advertising, promotion or sponsorship, including its content, form and type of media;
- the placement and extent or frequency of the advertising, promotion or sponsorship;
- the identity of all entities involved in the advertising, promotion and sponsorship, including advertising and production companies;

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<sup>7</sup> These phrases are taken from Article 11.1(a) of the Convention, with the addition of the word “colour”, which the working group recognizes can be used to convey a misleading impression about the characteristics, health effects or hazards of tobacco products.

<sup>8</sup> See Article 11.1(a) and the guidelines on Article 11 of the Convention.

- in the case of cross-border advertising, promotion or sponsorship originating from a Party's territory, the territory or territories in which it is intended to be, or may be, received; and
- the amount of financial or other resources used for the advertising, promotion or sponsorship.

42. Parties should make the information readily available to the public (e.g. via the Internet)<sup>9</sup> while ensuring the protection of trade secrets.

43. While the obligations stated in Article 13.4(d) of the Convention regarding disclosure of expenditures by the tobacco industry on advertising, promotion and sponsorship that is not yet prohibited apply only to Parties that do not have a comprehensive ban, all Parties should implement the recommended measures in line with Article 13.5, which encourages Parties to implement measures beyond their obligations under Article 13.4. Requiring disclosure by the tobacco industry of expenditures on all advertising, promotion and sponsorship in which it engages may help Parties that consider that they have a comprehensive ban to identify any advertising, promotion or sponsorship not covered by the ban or engaged in by the tobacco industry in contravention of the ban. Disclosure requirements may have the added benefit of discouraging the tobacco industry from engaging in tobacco advertising, promotion or sponsorship in which it might otherwise engage.

#### ***Recommendation***

Parties should meet the requirements of Article 13.4 of the Convention regarding any form of tobacco advertising, promotion or sponsorship that is not prohibited. Parties should prohibit all promotion of a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression; mandate health or other appropriate warnings or messages; and require regular disclosure by the tobacco industry to authorities of any advertising, promotion and sponsorship in which it engages. Parties should make the disclosed information readily available to the public.

#### ***Consistency***

44. Domestic bans and their effective enforcement are the cornerstones of any meaningful comprehensive ban on tobacco advertising, promotion and sponsorship at the global level. Contemporary media platforms such as the Internet, films and direct broadcast satellite easily cross borders, and many forms of advertising, promotion and sponsorship regulated by domestic rules, such as event sponsorship, are broadcast and disseminated widely to other States. Moreover, advertising and promotion are often linked to products such as items of clothing and technological devices or appear in publications, and thus move from one State to another when these items move.

45. It is obvious that the effectiveness of domestic bans can be undermined unless there is international cooperation.

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<sup>9</sup> This provision supports the obligation under Article 12(c) to promote public access to a wide range of information on the tobacco industry as relevant to the objectives of the Convention.

***Cross-border advertising, promotion and sponsorship originating from a Party's territory (out-flowing material)***

46. Article 13.2 of the Convention states that “a comprehensive ban shall include, subject to the legal environment and technical means available to [each] Party, a comprehensive ban on cross-border advertising, promotion and sponsorship *originating from its territory*”.

47. Implementation of the ban should cover, for example, all publications and products printed or produced within the territory of a Party, whether they are targeting persons within the Party's territory or persons in the territories of other States. It is often difficult to differentiate between publications or products targeting or actually used in the originating State and those targeting and used in other States.

48. The ban should also apply to the placing of tobacco advertising, promotion and sponsorship on the Internet or another cross-border communications technology by any person or entity within the territory of a Party, whether the material is targeting persons outside or inside that Party's territory.

49. Moreover, the ban should also apply to any person or entity that broadcasts tobacco advertising, promotion and sponsorship that could be received in another State.

50. A comprehensive ban on advertising, promotion and sponsorship originating from a Party's territory should also ensure that a Party's nationals – natural persons or legal persons – do not engage in advertising, promotion or sponsorship in the territory of another State, irrespective of whether it is imported back to their State of origin.

***Cross-border advertising, promotion and sponsorship entering a Party's territory***

51. Article 13.7 of the Convention states that “Parties which have a ban on certain forms of tobacco advertising, promotion and sponsorship have the sovereign right to ban those forms of cross-border tobacco advertising, promotion and sponsorship entering their territory and to impose equal penalties as those applicable to domestic advertising, promotion and sponsorship originating from their territory in accordance with their national law”.

52. Implementation of the ban should cover, for example, publications and products printed or produced in other States entering the territory of a Party or targeting persons in that territory. Parties should consider carrying out sampling checks for imported consignments of printed publications. If such publications are printed, published or distributed by nationals of a Party or by entities established in a Party's territory, they should be held liable and the ban should be enforced to the fullest extent possible.<sup>10</sup> The ban should also apply to all Internet content that is accessible within a Party's territory and to any other audio, visual or audiovisual material broadcast into or otherwise received in a Party's territory, whether or not it is targeting persons in the territory of that Party.

***Recommendation***

Parties with a comprehensive ban or restrictions on tobacco advertising, promotion and sponsorship should ensure that any cross-border tobacco advertising, promotion and sponsorship originating from their territory is banned or restricted in the same manner

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<sup>10</sup> A Party may also enforce its ban against non-nationals in some circumstances. How to address nationals of other Parties may be the subject of provisions of a possible protocol on cross-border advertising, promotion and sponsorship.

as domestic tobacco advertising, promotion and sponsorship. Parties should make use of their sovereign right to take effective actions to limit or prevent any cross-border tobacco advertising, promotion and sponsorship entering their territory, whether from Parties that have restrictions or from non-Parties, recognizing that in some cases effective actions might have to be addressed in a protocol.

### ***Responsible entities***

53. The responsible entities should be defined widely, covering the entire marketing chain. Primary responsibility should lie with the initiator of advertising, promotion or sponsorship, usually tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations.

54. Moreover, many other entities are involved in tobacco advertising, promotion and sponsorship and should also be held responsible.

55. Responsibility cannot be attributed in the same manner to all entities as their involvement in the production, placement and dissemination of tobacco advertising, promotion and sponsorship varies. In the case of tobacco sponsorship, the responsible entities are those that make any relevant form of contribution, those that receive any relevant form of contribution and any intermediaries that facilitate the making or receiving of any relevant form of contribution. When tobacco advertising and promotion involve communication, the way in which entities should be held responsible depends on their role in the production and dissemination of the content of the communication and the possibilities they have to control it. The disseminator should be made responsible in so far as it is aware of, or was in a position to become aware of, the content of the advertising and promotion. This is true for whatever media or communications technology is involved, but it applies especially to controlling content on the Internet and disseminated via direct broadcast satellite.

56. In relation to all forms of media and communications:

- Persons or entities that produce or publish content (e.g. advertising agencies, designers, publishers of newspapers and other printed materials, broadcasters and producers of films, television and radio programmes, games and live performances, and Internet, mobile phone, satellite and game content producers) should be banned from including tobacco advertising, promotion and sponsorship.
- Persons or entities such as media and events organizers, sportspeople, celebrities, film stars and other artists should be banned from engaging in tobacco advertising, promotion and sponsorship.
- Particular obligations (for example, remove or disable access to content) should be applied to other entities involved in analogue or digital media and communication (such as social networking sites, Internet service providers and telecommunication companies), once they have been made aware of tobacco advertising, promotion and sponsorship.

In the case of legal entities, the responsibility should normally lie with the company, not with an individual employee.

57. A contract, agreement or arrangement concerning tobacco advertising, promotion or sponsorship should be held invalid if it is agreed in violation of a comprehensive ban.

58. In relation to the Internet, for example, there are five principal categories of responsible entity upon which bans or particular obligations should be imposed.

- *Content producers* create the content or cause it to be created. These include tobacco companies, advertising agencies and producers of television programmes, films and games that are distributed online. Content producers should be *banned* from including tobacco advertising, promotion or sponsorship in the content they produce.
- *Content publishers* include publishers and entities that select content before it is made available to Internet users (e.g. Internet sites of newspapers or broadcasters). Content publishers should be *banned* from including tobacco advertising, promotion or sponsorship in the content they make available.
- *Content hosts* are entities that control Internet-connected computer servers on which content is stored, including entities that aggregate content produced by others without selecting the content before they make it available to Internet users (such as social networking Internet sites). Content hosts should have an *obligation to remove or disable access to* tobacco advertising, promotion and sponsorship *once they have been made aware of the content*.
- *Content navigators* are entities, such as Internet search engines, that facilitate the location of content by users of communications services. Content navigators should have an *obligation to disable access to* tobacco advertising, promotion and sponsorship *once they have been made aware of the content*.
- *Access providers* are entities that provide end-user access to communications services, such as Internet service providers and mobile telephone companies. Access providers should have an *obligation to disable access to* tobacco advertising, promotion and sponsorship *once they have been made aware of the content*.

59. Unlike the obligations on content producers, content publishers and content hosts, Parties could limit the obligations on content navigators and access providers to using reasonable efforts to disable access in light of what is technically possible.

### ***Recommendation***

The entities responsible for tobacco advertising, promotion and sponsorship should be defined widely, and the way in which they are held responsible should depend on their role.

- Primary responsibility should lie with the initiator of advertising, promotion or sponsorship, usually tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations.
- Persons or entities that produce or publish media content should be banned from including tobacco advertising, promotion and sponsorship in the content they produce or publish.
- Persons or entities (such as events organizers, sportspeople and celebrities) should be banned from engaging in tobacco advertising, promotion and sponsorship.

- Particular obligations, for example, to remove content should be applied to other entities involved in analogue or digital media after they have been made aware of the tobacco advertising, promotion and sponsorship.

### ***Domestic enforcement of laws on tobacco advertising, promotion and sponsorship***

#### ***Sanctions***

60. Parties should introduce and apply effective, proportionate and dissuasive penalties (including fines, corrective advertising remedies and licence suspension or cancellation). In order that the penalties imposed be effective deterrents they should be graded and commensurate with the nature and seriousness of the offence(s), including a first offence, and should outweigh the potential economic benefits to be derived from the advertising, promotion or sponsorship.

61. Repeat infringements should incur a highly significant penalty for a manufacturer or responsible entity. In the case of frequent or flagrant infringements, more stringent sanctions should be imposed, including possible imprisonment. Sanctions should also include the obligation to remedy the infringement, for example by:

- removal of the advertising, promotion or sponsorship;
- publication of court decisions in a manner to be determined by the court and at the expense of the party or parties designated by the court; and
- funding of corrective or counter-advertising.

62. Sanctions should be applied to the conduct of entities and not only to individuals (including corporate entities that can be held responsible for the conduct of related corporate entities outside the territory but with an effect within the territory). Sanctions should also be applied to the conduct of managers, directors, officers and/or legal representatives of corporate entities when those individuals bear responsibility for the corporate entity's conduct.

63. Licensing of tobacco manufacturers, wholesale distributors, importers and retailers can be an effective method for controlling advertising, promotion and sponsorship. A licence would be granted or renewed only if the applicant could ensure compliance with the legal requirements. In cases of non-compliance, the licence could be withdrawn for a certain time or cancelled. For responsible entities not directly involved in producing or selling tobacco (such as broadcasters) when such entities are required to be licensed, compliance with the provisions on tobacco advertising, promotion and sponsorship should be included in the criteria for granting, renewing, suspending or revoking a licence.

64. If deterrent sanctions are in place, enforcement authorities might be successful in putting an end to illegal practices without court proceedings (e.g. by contacts, meetings, warnings, administrative decisions and periodic penalty payments).

#### ***Monitoring, enforcement and access to justice***

65. Parties should designate a competent, independent authority to monitor and enforce the laws and entrust it with the necessary powers and resources. This agency should have the power to investigate complaints, seize unlawful advertising or promotion, and pronounce on complaints and/or initiate appropriate legal proceedings.

66. Civil society and citizens should be involved in the monitoring and effective enforcement of the ban. Civil society organizations, notably entities such as public health, health care, prevention, youth protection or consumer organizations, can be expected to undertake rigorous monitoring, and legislation should specify that members of the public may initiate complaints.

67. In addition, civil law options should be made available to oppose tobacco advertising, promotion and sponsorship. National law should enable any interested person or nongovernmental organization to initiate legal action against illegal tobacco advertising, promotion and sponsorship.

68. The enforcement programme may include a toll-free telephone complaint hotline, an Internet web site or a similar system to encourage the public to report violations.

#### ***Recommendation***

Parties should introduce and apply effective, proportionate and dissuasive penalties. Parties should designate a competent, independent authority to monitor and enforce the law and entrust it with the necessary powers and resources. Civil society should be involved in the monitoring and enforcement of the law and have access to justice.

#### ***Public education and community awareness***

69. In the spirit of Article 12 of the Convention,<sup>11</sup> Parties should promote and strengthen public awareness of tobacco advertising, promotion and sponsorship in all sectors of society, using all available communication tools. Parties should, inter alia, adopt appropriate measures to promote broad access to effective, comprehensive public education and awareness programmes that underline the importance of a comprehensive ban, educate the public concerning its necessity and explain why advertising, promotion and sponsorship by the tobacco industry is unacceptable.

70. Engaging the support of the community to monitor compliance and report violations of laws against tobacco advertising, promotion and sponsorship is an essential element of enforcement. In order for members of the community to perform this role, they must be made aware of the problem and understand the law and the ways in which they can act on breaches.

71. Parties should implement public education and awareness programmes, inform members of the community about existing laws on tobacco advertising, promotion and sponsorship, the steps that can be taken to inform the relevant government agency of any advertising, promotion or sponsorship, and the steps that can be taken against a person who has engaged in tobacco advertising, promotion or sponsorship in breach of the law.

#### ***Recommendation***

Parties should promote and strengthen, in all sectors of society, public awareness of the need to eliminate tobacco advertising, promotion and sponsorship, the laws against it, and the ways in which members of the public can act on breaches of these laws.

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<sup>11</sup> "Education, communication, training and public awareness".

### ***International collaboration***

72. The effectiveness of efforts to eliminate tobacco advertising, promotion and sponsorship depends not only on the initiatives undertaken by individual Parties but also on the extent to which Parties cooperate in addressing tobacco advertising, promotion and sponsorship. Effective international cooperation will be essential to the elimination of both domestic and cross-border tobacco advertising, promotion and sponsorship.

73. Parties to the Convention already have undertaken commitments with respect to international cooperation, including under Article 13.6 (*Cooperation in the development of technologies and other means necessary to facilitate the elimination of cross-border advertising*); Article 19 (*Liability*); Article 20 (*Research, surveillance and exchange of information*); particularly Article 20.4 (*Exchange of publicly available, scientific, technical, socioeconomic, commercial and legal information, as well as information regarding the practices of the tobacco industry*); Article 21 (*Reporting and exchange of information*); Article 22 (*Cooperation in the scientific, technical, and legal fields and provision of related expertise*); and Article 26 (*Financial resources*).

74. In addition to the recommendations in these guidelines, the Conference of the Parties also takes note of the recommendations of the working group on other measures with respect to facilitation of the exchange of information and other cooperation between Parties that would contribute to the elimination of cross-border advertising, promotion and sponsorship.<sup>12</sup> Such measures to eliminate domestic tobacco advertising, promotion or sponsorship are also beneficial, recognizing that Parties would benefit from sharing information, experience and expertise in respect of *all* tobacco advertising, promotion and sponsorship, not only cross-border tobacco advertising, promotion and sponsorship.

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<sup>12</sup> Decision FCTC/COP3(14).

## APPENDIX

### ***Indicative (non-exhaustive) list of forms of tobacco advertising, promotion and sponsorship within the terms of the Convention***

- communication through audio, visual or audiovisual means: print (including newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (computer games, video games or online games), other digital communication platforms (including the Internet and mobile phones) and theatre or other live performance;
- brand-marking, including in entertainment venues and retail outlets and on vehicles and equipment (e.g. by use of brand colours or schemes of colours, logos or trademarks);
- display of tobacco products at points of sale;
- tobacco product vending machines;
- Internet sales of tobacco products;
- brand stretching and brand sharing (product diversification);
- product placement (i.e. the inclusion of, or reference to, a tobacco product, service or trademark in the context of communication (see above), in return for payment or other consideration);
- provision of gifts or discounted products with the purchase of tobacco products (e.g. key rings, T-shirts, baseball hats, cigarette lighters);
- supply of free samples of tobacco products, including in conjunction with marketing surveys and taste testing;
- incentive promotions or loyalty schemes, e.g. redeemable coupons provided with purchase of tobacco products;
- competitions, associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
- direct targeting of individuals with promotional (including informational) material, such as direct mail, telemarketing, “consumer surveys” or “research”;
- promotion of discounted products;
- sale or supply of toys or sweets that resemble tobacco products;
- payments or other contributions to retailers to encourage or induce them to sell products, including retailer incentive programmes (e.g. rewards to retailers for achieving certain sales volumes);
- packaging and product design features;

- payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or particular manufacturer's product in a retail outlet, at a venue or at an event;
- sale, supply, placement and display of products at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events;
- provision of financial or other support to events, activities, individuals or groups (such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare organizations, politicians, political candidates or political parties), whether or not in exchange for publicity, including corporate social responsibility activities; and
- provision of financial or other support by the tobacco industry to venue operators (such as pubs, clubs or other recreational venues) in exchange for building or renovating premises to promote tobacco products or the use or provision of awnings and sunshades.

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