

**Transparency and Accountability
Mechanisms in the Design and
Implementation of Tobacco Control
Public Policies: A Government Approach**

About this document:

This document is part of *Fostering Transparency and Accountability in the Design and Implementation of Tobacco Control Policies: A Whole-Of-Government Approach*, a project of Ethos Laboratorio de Políticas Públicas, with the general coordination of Lisa Grabinsky, Yahir Acosta, Ana Laura Barrón and Silvia Márquez, as well as the support of Gabriel Reyes, Rodrigo Bolaños, Alejandra Moreno and Javier Zúñiga.

Graphic design: Óscar Alva

This project was made possible by a grant awarded by the International Union Against Tuberculosis and Lung Disease (The Union) and funded by Bloomberg Philanthropies. The contents of this study are the responsibility of the authors and should in no way be construed to reflect the views of The Union or Bloomberg Philanthropies.

Executive Summary

This technical document contains an analysis of the main vulnerabilities of the Mexican legal framework for the implementation of the WHO Framework Convention on Tobacco Control (FCTC), which allow undue interference by the tobacco industry (TI), as well as recommendations for its strengthening based on the principles and guidelines of Article 5.3 of the FCTC, international best practices and existing regulations in Mexico.

The preparation of the document is based on the review of a series of journalistic investigations conducted within the framework of the project *Fostering Transparency and Accountability in the Design and Implementation of Tobacco Control Policies: A Whole-Of-Government Approach*, of Ethos Laboratorio de Políticas Públicas. Based on this review, **the most common interference tactics used by the TI to influence legislative, regulatory, and legal processes and public opinion in Mexico were identified, and recommendations were drafted to protect them from commercial interests of the TI and new electronic devices.** Within the project framework, interviews and two round tables were also organized with tobacco control experts on the Mexican and Latin American political context to strengthen the recommendations developed.

To facilitate the analysis of the tactics identified according to WHO literature, these were grouped to characterize their social, political and economic dynamics into: 1) **Regulatory capture** or actions that directly influence decision making when advocating for public health, 2) **Public opinion** or tactics to create doubt about information on tobacco control policies, and 3) **Confrontation** or direct political, economic or legal impact.

Finally, **it is recommended, in general, to work collectively to achieve compliance with the FCTC**, strengthen the capacities of public institutions and public officials for the implementation of public health policies, act with caution towards the industry, involve civil society and prioritize compliance with the FCTC.

Table of Content

Executive Summary

Index

I. Introduction

II. Methodology

2.1 Investigative journalism

2.2 Identify improvements in current regulations to promote transparency and accountability in industry-government interactions.

III. TI Interference Actions

3.1 FCTC

3.2 FCTC Article 5.3

3.3 Proposed classification of tactics

IV. Regulatory capture

4.1 Context

4.2 Recommendations

V. Public opinion

5.1 Context

5.1.1 Propaganda in favor of the TI

5.1.2 Negative tobacco control propaganda

5.2 Recommendations

VI. Confrontation

6.1 Context

6.2 Recommendations

VII. Conclusions and final recommendations

VIII. References

Annex 1. Legal Framework Regulating Governmental Strategies for Tobacco Control in Mexico

I. Introduction

Smoking is one of the leading causes of preventable morbidity and mortality in the world.

Its effects cause serious damage to the health of people, generating in turn a negative impact on the economy due to high public health costs (WHO, 2008). This ranges from those related to the treatment of tobacco-associated diseases to the costs associated with premature deaths to smoking-related disability and lost productivity (Drope, Schluger, Cahn et al., 2018).

The effects of tobacco on humans and the environment have been extensively studied, but **huge numbers of smokers and users of tobacco products still prevail worldwide.** Globally, there is a prevalence of 942 million men and 175 million women aged 15 years and older who are smokers (Drope, Schluger, Cahn et al., 2018, p.20). According to the most recent results of the National Survey on Drug, Alcohol and Tobacco Use (ENCODAT 2016-2017), 14.9 million Mexicans are smokers, of which 3.8 million are women and 11.1 million are men (INPRFM, INSP, CONADIC and Ministry of Health, 2017, p. 49).

The World Health Organization's Framework Convention on Tobacco Control (FCTC) is an international treaty of which Mexico was one of the first signatories on August 12, 2003, ratifying its signature on May 28, 2004 (PAHO/WHO, 2009). Therefore, it is **legally binding and has implementation guidelines for its components** - principles, protocols and guidelines - to protect *"present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke"* (WHO FCTC, 2008, p.5), through public health policies, which seek to continuously and substantially reduce the prevalence of tobacco consumption and exposure to tobacco smoke.

Unfortunately, almost 20 years after the FCTC was signed by Member States, **the tobacco control situation in Mexico has not reached the optimal level recommended by the FCTC.** In addition, the recent inclusion of new electronic devices as "reduced-risk" alternatives to conventional cigarettes and the context of the COVID-19 pandemic have made the debate more complex (Ochoa, Núñez Guadarrama, Ochoa et al., 2020).

While the tobacco industry (TI) uses a range of tactics from different fronts to impose its commercial interests over public health, **the deficient legal framework in Mexico has**

allowed some of these actions to proliferate. This document is the result of a series of investigations that expose the main tactics of undue interference that the TI carries out in Mexico to avoid the implementation of control measures in the following general areas:

1. **New electronic devices for tobacco and nicotine consumption.** Despite the decree banning the importation of these types of alternative products to conventional cigarettes, these are being marketed, with the COVID-19 pandemic and the confinements being catalysts that have facilitated online sales. Likewise, the debate has become polarized, because while some actors would prefer to see their commercialization, sale, promotion and advertising prohibited, others-including civil society organizations with links to the tobacco and nicotine industry- demand the removal of the prohibition decree and the creation of a specific regulation on the matter.
2. **Smoke-free spaces.** The FCTC states that in order to protect people from secondhand tobacco smoke -which has been shown to be harmful to non-smokers-, smoking should not be allowed in enclosed spaces: *"indoor workplaces, public transport, indoor public places and, as appropriate, other public places"* (WHO FCTC, 2005, p. 9). However, almost 13 years after the publication of the [General Law for Tobacco Control \(LGCT\)](#), there are still states in Mexico that have yet to adopt this measure within their state regulations, as commercial interests have taken precedence over public health. Likewise, Article 27 of the LGCT leaves open the possibility of *"insulated indoor spaces with mechanisms to prevent the transfer of particles to 100% smoke-free spaces where non-smokers are not required to enter for any reason"* (Congress of the Union, 2008), as well as outdoor spaces that allow smoking. The COVID-19 pandemic and the need for restaurants and bars to serve in outdoor spaces have jeopardized this last condition for smoking areas, especially because of the hypothesis of SARS-CoV-2 transmission through saliva droplets exhaled along with tobacco smoke.
3. **Taxation.** Taxes are one of the most effective measures to discourage tobacco consumption, especially among vulnerable population groups. In order for this measure to have the expected results, not only in terms of cessation but also in terms of tax collection to cover the public health costs generated by smoking, it has been recommended that in Mexico the total tax -Special Tax on Products and Services (IEPS)

plus Value Added Tax (VAT)- should be 75% of the final price of a pack of cigarettes (Waters, Ross, Sáenz de Miera et al., 2012). However, despite the adjustment for inflation at the beginning of 2020, which had been pending for 10 years, the total tax barely adds up to 68.4% (Saldaña & Melgoza, 2020).

Based on the identification of the main tactics carried out by the TI in the Mexican context, a series of recommendations were developed to strengthen the processes of development and implementation of public policies on tobacco control. These recommendations are based both on Mexico's regulatory framework and on the principles and guidelines of article 5, section 3, of the FCTC. The latter refers to the **identification and regulation of conflicts of interest, as well as the creation of mechanisms to make the relationship between the TI and decision-makers transparent.**

An analysis of the main tactics by group is presented - with clear examples of each, from journalistic investigations, roundtables and interviews with tobacco control experts - along with specific recommendations for the tactics identified. The goal is to raise **awareness of the vulnerabilities of the Mexican legal framework to reduce gaps in FCTC implementation.**

II. Methodology

2.1 Investigative journalism

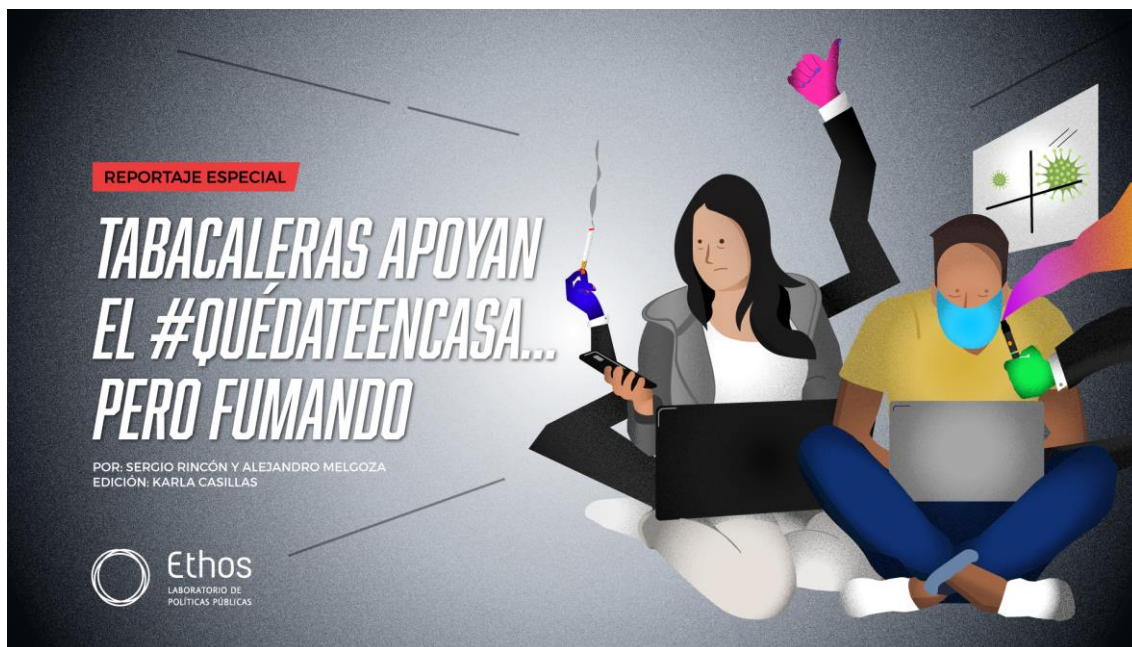
A number of journalistic investigations were conducted with the objective of exposing the TI's strategies to prevent the implementation of effective tobacco control policies.

A total of five reports on **new tobacco products, COVID-19, taxes, smoke-free spaces** and **civil associations in favor of vaping** were produced and published in various media outlets.

Click on the images below to read the reports.



Sergio Rincón describes how the TI has orchestrated promotional campaigns for the new devices through the use of *influencers* and other celebrities with a strong social media presence (especially among youth). To achieve this, the research suggests that the TI has taken advantage of loopholes and omissions in tobacco control legislation to send the message that these are "reduced risk" products, despite the fact that there is no hard scientific evidence to support this claim.



The first report focused on the context of the COVID-19 pandemic. Sergio Rincón and Alejandro Melgoza explore how -despite the increased risk that, on the one hand, smoking poses for the development of complications of COVID-19 disease and, on the other hand, that the transmission of the virus through smoke could entail- the TI has taken advantage of the e-commerce *momentum* during the confinements to promote its new products, thus incurring in violations of Mexican legislation and the FCTC.



The second report touches on the COVID-19 pandemic. In it, Sergio Rincón and Alejandro Melgoza explore the status of the ban on smoking in outdoor spaces in restaurants and bars in Mexico City, which were previously designated for smokers. In addition, this report provides a retrospective analysis of the ambiguous and uneven regulation of smoke-free spaces by the LGCT, which has failed to comply with the FCTC.



Cigarette taxes are one of the most effective measures to discourage consumption. However, the tax in Mexico remains below 75% of the price of a pack of cigarettes, the minimum recommended by the WHO. Nantzin Saldaña and Alejandro Melgoza make an exhaustive analysis of the key events of the last 10 years that have led to Mexico's tobacco tax failing to comply with this recommendation, unraveling a series of actions that the TI has put in place since the signing and ratification of the FCTC to curb the tax increase.



In this latest report, Nantzin Saldaña and Sergio Rincón expose the relationships between civil society organizations that promote the use of vapers and electronic cigarettes as an alternative to conventional cigarettes and the TI. The investigation emphasizes the conflicts of interest between members of these organizations and an intricate network of scientists, journalists, research centers and media, which have received funding -directly or indirectly- from the tobacco and nicotine industry to position their "reduced risk" products in public opinion.

2.2 Identify improvements in current regulations to promote transparency and accountability in industry-government interactions.

Based on the journalistic investigations, a matrix was developed to systematize the different strategies of undue interference documented in them.

For each tactic identified, we developed a possible recommendation based on the "*Guidelines for the implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies on tobacco control from commercial and other vested interests of the tobacco industry*". Other FCTC guidelines, current legislation on tobacco control and health, consumer protection and administrative sanctions, as well as internal regulations of the Congress and action protocols for public officials, were also used to complement the recommendations.

Subsequently, interviews and two round tables were held with tobacco control experts in Mexico to strengthen these recommendations:

- *"Transparency and tobacco control: tools from civil society and academia to limit the incidence of the Tobacco Industry on the political process in Mexico"*: This first roundtable was held virtually on December 10, 2020 and was attended by the following experts:
 - **Adriana Rocha**, Director of Legislative Affairs and Civil Society at [Polithink](#) and Head of Strategy and Outreach at the [Mexico Salud-Hable Coalition](#).
 - **Erick Antonio Ochoa**, General Director of [Salud Justa MX](#)
 - **Inti Barrientos**, Researcher of the [Instituto Nacional de Salud Pública \(INSP\)](#)
 - **Eduardo del Castillo**, General Director of [Código Comunicación, Diálogo y Conciencia, S.C.](#)
 - **Ricardo Alemi Benitez Esparza**, Director of Health and Smoke-Free Spaces at [Refleacciona con Responsabilidad A. C.](#)

- 2nd roundtable *"Transparency and tobacco control: recommendations to protect the process of development and implementation of public health policies"*: It was held on January 22, 2021 and was attended by:
 - **Miguel Malo**, Advisor on Chronic Diseases and Mental Health, Pan American Health Organization and World Health Organization (PAHO/WHO)
 - **Luz Myriam Reynales Shigematsu**, Head of the [Department of Smoking Prevention and Control](#), [INSP](#)
 - **Juan Arturo Sabines Torres**, Director of the National Office for Tobacco Control of the [National Commission Against Addictions \(CONADIC\)](#)
 - **Miguel Ángel Toscano**, Former Member of the Mexican Congress, Former Commissioner of the [Federal Commission for the Protection against Sanitary Risks \(COFEPRIS\)](#) and Founding President of [Refleacciona con Responsabilidad, A.C.](#)

III. TI Interference Actions

3.1 FCTC

With the aim of protecting present and future generations from the health, social, environmental and economic consequences of tobacco use, the FCTC was developed as the first international health treaty negotiated under the World Health Organization (WHO). The FCTC presents a proposal as a response to the various factors that favor the tobacco epidemic. **Its principles include the importance of information on the health consequences, addictive nature and lethal threat of tobacco use, as well as the need for political commitment to establish and support measures for its implementation** (WHO FCTC, 2005).

Along with the FCTC, the **MPOWER** package proposes **six public policies that have already proven to help reduce the prevalence of tobacco use**, preventing millions of associated deaths annually.

These policies are:

1. **(M)onitor**: Monitor tobacco use and prevention policies;
2. **(P)rotect**: Protect people from tobacco smoke;
3. **(O)ffer**: Offer help to quit smoking;
4. **(W)arn**: Warn about the dangers of tobacco;
5. **(E)nforce**: Enforce bans on tobacco advertising, promotion and sponsorship;
6. **(R)aise**: Raise tobacco taxes (WHO, 2008)

3.2 FCTC Article 5.3

The FCTC signing process began in 2003. Mexico was one of the first countries to sign and ratify its signature, but **from the beginning it has failed to comply with the treaty because it has not fully implemented the measures for tobacco control, reduction of its use and protection of people from tobacco** (Ochoa, Núñez Guadarrama, Ochoa et al., 2020).

Part of the non-compliance with FCTC measures is due to the work of the TI, which prevents full implementation of the FCTC. The TI carries out activities that have been identified in the available literature on tobacco control. It is for this reason that the Convention establishes the importance of raising awareness of and preventing these actions by the TI. This is stated in Article 5, paragraph 3, ***"in establishing and implementing their public health policies relating to tobacco control, Parties shall act in a manner that protects such policies from commercial and other vested interests of the tobacco industry, in accordance with national law"*** (WHO, 2015, p. 7).

One of the most important aspects of tobacco control is to address the interests of TI. In order to generate sound public policies, it is necessary to have both **legislative processes and actions of the executive and judicial branches that are free of conflict of interest**, which requires preventing the TI from having political influence on tobacco control legislation and regulation. In this sense, Article 5.3 sets forth a series of principles, guidelines and recommendations with the objective of ***"assisting Parties to meet their legal obligations"*** (WHO, 2008, p. 2) **regarding tobacco control**.

In order to understand the rationale behind Article 5.3, the four guiding principles must be analyzed:

1. The first one refers to the fact that ***"There is a fundamental and irreconcilable conflict between the interests of the tobacco industry and the interests of public health policies"*** (WHO, 2008, p. 2), since the TI produces and promotes a product that is addictive and has an impact on public health and even on poverty. Thus, its primary interest is economic and to preserve the conditions of sale of its product. On the other hand, the public health interest is to reduce the mortality and morbidity associated

with its use, as well as the elimination of factors that promote it, such as the advertising of these products, to mention just one example.

2. The second principle states that ***"In dealing with the tobacco industry or those working to promote its interests, Parties shall be accountable and transparent"*** (WHO, 2008, p. 3); precisely because of the irreconcilable conflict noted in the previous principle, transparency allows civil society and other stakeholders to monitor tobacco control processes, which leads to uncovering and tackling conflicts of interest.
3. The next principle is similar in nature, stating that ***"Parties shall require the tobacco industry and those working to promote its interests to operate and act in an accountable and transparent manner"*** (WHO, 2008, p. 3). An example of information that is useful for an effective application of the guidelines could be information on the suppliers and main partners of the TI, as well as on their internal processes related to actions that could potentially trigger undue interference, such as fiscal donations, hiring of public relations agencies and lobbyists, among others.
4. Finally, ***"because their products are lethal, incentives should not be granted to the tobacco industry to establish or conduct business"*** (WHO, 2008, p. 3), precisely because such preferential treatment would be in conflict with a tobacco control-oriented policy.

Of these guiding principles, those most closely related to **transparency are the second and third**, since they imply interaction between the Parties in a responsible manner. However, the first and fourth principles are also implicitly linked to transparency, because they require disclosure of the conflict and everything emanating from it.

In addition, there are four main measures within the guidelines that address the issue of transparency:

- The first is to ***"raise awareness of the addictive and harmful nature of tobacco products and the tobacco industry's interference in the Parties' tobacco control"***

policies" (WHO, 2008, p.3). One of the reasons is that the TI uses various actors, such as lobbyists or "front groups"¹, to promote its interests overtly or covertly (1.2).

- The second related recommendation is to **"Reject partnerships and agreements that are not binding or enforceable with the tobacco industry."** (WHO, 2008, p.3) Within this measure the two specific recommendations that may be related to lobbying are 3.3 and 3.4, which state that Parties **shall not accept offers or proposals for legislation and/or codes of conduct drafted by or in collaboration with the TI.**
- The third one states **"Avoid conflicts of interest for public officials and employees"** (WHO, 2008, p.3). Recommendations 4.1, 4.2, 4.5, 4.6 and 4.10 refer to:
 - disclosure and management of conflicts of interest; establishment of codes of conduct for public officials,
 - transparency regarding present or past occupational activities with the TI,
 - disclosure and detachment of the interests of the TI by such persons, and
 - prohibition to accept gifts, services, payments, among others, from the TI.
- The final one is to **"Require that information provided by the tobacco industry is transparent and accurate."** (WHO, 2008, p.3) Recommendations 5.2, 5.3 and 5.4 in this measure refer to requiring timely information from the TI on tobacco-related activities and registration of industry-related entities. On the other hand, it also recommends **the application of sanctions in case of providing false and misleading information.** These recommendations are very important because they also include lobbyists.

In sum, Article 5.3 provides a set of specific recommendations to protect legislative and regulatory processes from industry interests. Likewise, in order to apply public health policies

¹ "Front groups are organizations that claim to serve a public cause while actually serving the interests of a third party, sometimes hiding the connection between them. The tobacco industry uses fake local organizations to give an impression of social support for its interests, usually "smokers' rights" groups, "citizens' rights" and business groups." (WHO/PAHO, 2012, p. 7)

related to tobacco control, **it is necessary to identify the interference actions carried out by the TI**, since Article 5.3 provides a series of guidelines that can be applied to such tactics.

The WHO states that the main actions carried out by the TI are:

- 1. Conspiring to sabotage political and legislative processes**
- 2. Exaggerating the economic importance of the industry**
- 3. Manipulating public opinion to generate the appearance of respectability**
- 4. Feigning support through front groups**
- 5. Discrediting proven scientific evidence**
- 6. Intimidating governments with litigation or the threat of litigation** (Luiza da Costa, Aguinaga Bialous & Aguinaga Bialous, 2012; WHO/PAHO, 2012, p.3).

These actions, in turn, are divided into tactics, which are presented below:

Table 1. Overview of the most commonly documented tobacco industry tactics for interfering with tobacco control (Source: Luiza da Costa, Aguinaga Bialous & Aguinaga Bialous, 2012).

Tactics	Target
Consulting	Recruiting independent experts to criticize tobacco control measures
Social Responsibility	Creating the illusion that the tobacco industry has changed, alliances with health organizations and other interests
Creating alliances and support groups	Mobilize or create the impression of mobilization of groups of farmers, vendors, tourism and others to intervene in legislation.
Funding research and universities	Creating doubt about the evidence of the effects of tobacco use.
Collection of information	Monitoring opponents to anticipate future challenges
International treaties and other instruments	Using trade agreements to force entry into closed markets
Intimidation	Using legal and economic power to harass and intimidate tobacco control advocacy groups

Table 1. continued

Articulation of manufacturing and licensing agreements	Teaming up with large monopolies to put pressure on governments
Litigation	Using the legal route to intimidate opponents of tobacco control through legal action
Lobbying	Making deals and influencing policy processes
Philanthropy	To gain fiends and respectable groups such as artists, sportsmen, humanitarians and cultural groups.
Political financing	Using campaign contributions to win votes and favors from politicians
<i>Pre-emption</i>	Overriding local or state policies from higher powers
Youth tobacco prevention and retailer education programs	Supporting efforts to prevent youth smoking and present smoking as an adult decision
Public relations	Changing public opinion by using the media to promote the industry's favorable position
Smokers' rights groups	Creating groups for the public
Smuggling	Undermining taxes, market and trade
Voluntary agreements with governments	Avoiding regulatory measures by either promoting voluntary regulations instead of legislation or by drafting and circulating TI -friendly draft legislation (WHO/PAHO, 2012)

3.3 Proposed classification of tactics

The study of the TI interference tactics in Mexico is highly relevant given the national context. On the one hand, the severe health crisis related to smoking - with its serious human and economic costs - requires us to address this problem urgently.

On the other hand, **the problem of corruption is a condition that exacerbates the weaknesses of the Mexican State in the face of the TI influence.** According to the National Census of State Government, Public Security and Penitentiary System (CNGSPSPE 2020), during 2019, 51,833 investigations were initiated for the alleged responsibility of administrative misconduct, of which 45.2% were by complaint and/or filing of reports. Of the total of these investigations, 3,936 administrative responsibility procedures were initiated, while 4,133 were concluded, and only 2,288 public officials received sanctions (INEGI, 2020).

Below, we propose a classification of the TI interference tactics, adapted to the Mexican context. The objective is to characterize their **social, political and economic** dynamics.

Table 2. Proposed classification of the TI interference tactics

GROUP 1: REGULATORY CAPTURE
Direct work within the government to influence public policy. It does not involve confrontation but payment for a gain: collaboration, corruption and influence-peddling.
Lobbying
Political financing
Voluntary agreements with governments

Table 2. Continued

GROUP 2: PUBLIC OPINION
Tactics used by the TI to promote a good image and influence public opinion through discourse, with practices ranging from promoting the dissemination of false information to appealing to rights (of smokers, for example). It includes the search for allies "external

to TI " to exert social and political pressure. The pressure is political but indirect, through the social base.
<p><i>2.1 Propaganda in favor of the industry</i></p> <p>Seeks a good image and gain justification for not attacking them. This type of argument may involve ideological aspects² (1. free market; 2. smokers' self-determination), as well as the image of a socially responsible company that seeks to compensate for damages.</p>
Social Responsibility
Philanthropy
Youth tobacco prevention and retailer education programs*.
Public relations
³ Smokers' rights groups
Create alliances and support groups
<p><i>2.2 Negative tobacco control advertising</i></p> <p>Seeks to discredit, criticize or attack tobacco control initiatives or movements.</p>
Consulting ⁴
Funding research and universities
Smokers' rights groups
Create alliances and support groups
Smuggling

Table 2. Continued

<p>GROUP 3: CONFRONTATION</p> <p>Direct attacks by the TI, from institutional, economic, political and legal pressure, to threats against public officials.</p>
Intimidation
Litigation

² The propaganda can use as inputs different ideological aspects that can be related either to the free market, to smokers' rights and/or to a supposed search for smokers' health through a fight against tobacco smoke.

³ This action, together with "Create alliances and support groups", is aimed at forming front groups. However, these can have an impact on public opinion (manipulation).

⁴ The objective of hiring experts to critique tobacco control measures is to impact public opinion.

International treaties and other instruments
<i>Pre-emption</i>
Articulation of manufacturing and licensing agreements

Note:

- The tactics marked with (*) are inherent to TI interference.
- "Information gathering" (not included in any of the three groups) can be considered as basic to carry out any of the actions in the previous groups.

Based on the three groups of tactics proposed, we have broken down the analysis of the information from the research, as well as the recommendations to strengthen transparency in TI actions and its interactions with decision-makers.

IV. Regulatory capture

4.1 Context

Only a couple of months after the ratification of Mexico's signature to the FCTC, a decree was released and went into effect condoning excise taxes (IEPS) and Value Added Taxes (VAT) in exchange for tobacco companies sponsoring the Catastrophic Expenses Fund for the then newly created Seguro Popular: the infamous "one peso per pack" agreement. In doing so, **Mexico disregarded the FCTC's commitment to keep tobacco companies out of its health and tobacco policies.**

This pact was attributed to the then Secretary of Health and current president of the University of Miami, Julio Frenk, and the first regulator of Cofepris, Ernesto Enriquez Rubio, who in 2018 was appointed Secretary of Social Management of the CEN of the Institutional Revolutionary Party (PRI). However, in 2010 an investigation by the International Consortium of Investigative Journalists (ICIJ) revealed that it was the tobacco executives themselves who designed it, thus **incurring in a voluntary agreement with the government** (Saldaña & Melgoza, 2020).

Subsequently, in 2005, then Congressman Miguel Angel Toscano stated that **a group of lobbyists sought to bribe legislators in favor of the tobacco industry, especially with trips to Europe.** This event prompted the Chamber of Deputies to take action and regulate lobbying. Rules of operation were imposed within the Chamber: measures on registration and delivery of quarterly activity reports. These actions included modifications to the internal regulations of the Chamber, prohibiting legislators from receiving contributions or gifts from lobbyists (Jiménez, 2017).

One last case of TI 's interference in the legislative process is that of Yeidckol Polevnsky (former leader of Morena), whose daughter - Shirley Almaguer - has worked for the tobacco company British American Tobacco (BAT), in various positions, from director of public relations to manager of regulatory affairs. At the same time, Almaguer headed Canacintra's

Committee to Combat Illegality in 2014, and currently serves as leader of the Food, Beverage and Tobacco sector and vice-president of Public Relations at the national level (Saldaña & Melgoza, 2020).

Polevnsky has been denounced for having acted in favor of the TI interests and despite **this evident personal closeness with the industry, she has refused to disclose any conflict of interest** (Cruz Martínez, 2012; Ochoa, Núñez Guadarrama, Sosa et al., 2015; Saldaña & Melgoza, 2020).

Despite the precedent set by Miguel Angel Toscano's claims in 2005, **the records in the Lobbyists' Register and the guidelines established in the internal regulations established in 2010 are only applicable in the physical legislative space**, that is, inside the Chamber of Deputies and Senators, excluding any extramural activity (Saldaña & Melgoza, 2020).

To date, **there is no regulatory agency for lobbying and conflict of interest strategies**, other than a Board that has failed to fully enforce such guidelines (Torres, 2018).

It should be noted that legislative lobbying is a professional activity that, if well regulated, can contribute to informed debate and evidence-based public policy decisions in the general interest of society. However, derived from the FCTC, which has the force of law in Mexico, there is a distinction between "necessary" and "unnecessary" tobacco control interactions, and a prohibition of the latter. Given this⁵, **legislative lobbying should be limited to other issues and industries whose interests do not pose an "irreconcilable" conflict with public health.**

Unfortunately, the lack of adequate legislation and regulation on lobbying, in and from the Mexican Congress, has not allowed the FCTC guidelines to be grounded and detailed. This puts at risk the processes and decision making in the Legislative, Executive and Judicial branches because it **creates regulatory spaces and loopholes that are exploited by industries**

⁵ This can be achieved when, in addition to people who promote the interests of industry, there are also others who promote the defense of causes that cause a benefit for social rights. However, it is important to keep in mind that lobbying by corporations involves the use of extensive financial resources to defend their commercial interests, while the work of activists and members of civil society organizations (CSOs) is done with far fewer monetary and human resources.

to favor their commercial interests. This has resulted in the weakening of government actions for the health of the population, including those related to tobacco control.

Likewise, Mexican public health institutions do not have the same regulatory standard on lobbying. This has resulted in a **deficient control over health regulatory processes related to tobacco control, and has allowed tobacco control policies not to be fully implemented,** largely favoring the interests of the industry. However, there is a federal health institution that has been working in recent months on a more adequate regulation to avoid TI interference in decision making: CONADIC. Later on, we will present the benefits of the regulatory instrument proposed by this institution.

4.2 Recommendations

Knowing that for years the TI has acted with the aim of preventing governments and the WHO from adequately implementing public health policies aimed at combating the tobacco epidemic (WHO, 2008), the **industry's actions with the government should be treated with caution and transparency.** Appropriate regulation of regulatory capture tactics -especially lobbying, one of the most widely used in the Mexican political context- based on the guidelines of article 5.3 of the FCTC, provides a window of opportunity to strengthen the transparency of tobacco control decision-making at all levels of government, including the three branches of government: Executive, Legislative and Judicial.

According to section 2.1, *"Parties shall interact with the tobacco industry only when and to the extent strictly necessary to enable effective regulation of the tobacco industry and tobacco products"* (WHO, 2008, p. 5). This means that legislators would not have to meet with the TI to consult on legislative initiatives to regulate tobacco and its industry. **Only public officials could meet with the TI to report on the regulation to which the industry is subject,** as long as the meeting is conducted in compliance with the transparency measures listed below. At this point, the topics to be discussed with the TI should be based on public health principles and priorities, and the concepts of "interaction between the Parties and the TI", "necessary interaction" and "conflict of interest" should be clearly defined (PAHO, 2013).

For the purpose of this document, Ethos suggests the following definition of "conflict of interest":

A conflict of interest is a clash between two values, which may affect the fulfillment of the obligations and responsibilities of a person or organization. In the case of public officials, the conflict of values is between their public duty and loyalty and, on the other hand, their personal or private interests. In the case of a private entity, their conflict of interest contrasts their duty to a personal or work-related value against a societal value or public good, such as public health. Both public and private organizations, and the people who represent them, have personal, family, economic or business interests -including the previous, current or subsequent professional performance of the person, their family members or close persons- that could unduly influence the impartial and objective performance of their duties. (OECD, 2021, p.6; Cámara de Diputados del H. Congreso de la Unión, 2016, p. 2; Ethos Laboratorio de Políticas Públicas, 2020).

Therefore, it is necessary to ensure that **interactions between public officials and the TI are conducted in a transparent manner and, to the extent possible, be accompanied by subsequent public hearings, as well as to make their minutes public**; this in order to avoid "hidden" negotiations between public officials and the TI.

It should be emphasized that the following recommendations have a background foundation, as legislation, regulations, protocols and other tools are already in place, as well as agencies (e.g., the Ministry of Public Administration) in charge of their implementation. The problem that tobacco control experts have identified is the **dispersion, lack of uniformity, and ambiguity of these regulations, in addition to the fact that in the public sector there is a lack of knowledge among public officials, justice administration and legislators regarding the irreconcilable conflict between the TI and public health.**

1. REGULATORY CAPTURE		
TACTICS	RECOMMENDATION(S)	LEGAL GUIDELINES
Lobbying	Extramural lobbying (health agencies, executive and judiciary branches) <ul style="list-style-type: none"> It is recommended to standardize the Action Protocol for Public Officials, developed by CONADIC, to clearly define what are "necessary interactions", steps to follow in case of an "unnecessary 	<p>The General Law of Administrative Responsibilities and the framework of the National Anticorruption System (SNA) establish the fundamental principles and guidelines to be observed by public officials in the performance of their duties.</p> <p>One of the mandates of the law is that public entities formulate codes that</p>

	<p>interaction" and to establish parameters to evaluate and identify the evidence presented by the TI for its processes.</p> <p>Legislative Lobbying:</p> <ul style="list-style-type: none"> <p>Regulatory authority. Define an independent body that will act as an authority. It must incorporate an action protocol (it is recommended that it be the Action Protocol for Public Officials developed by CONADIC) and will not only monitor compliance with legislative lobbying regulations in both Chambers, but will also have legal powers, budget and trained personnel to apply sanctions and fines. Likewise, this authority will be responsible for verifying, concentrating, processing and making public the following information:</p> <ul style="list-style-type: none"> <p>Lobbyists lists. The authority will be in charge of verifying the information on the client and corresponding issues.</p> <p>Publicity of information. Recording and publication of expenditure and investment amounts for lobbying efforts, interactions, meetings and communications with Chamber staff.</p> <p>Conflicts of interest. Legislators' declarations of interest shall be mandatory and public through the National Digital Platform of the National Anticorruption System, but it is also necessary that the definition of "conflict of interest" is not limited to personal, family or business spheres, as set forth by the General Law of Administrative Responsibilities. It is recommended to use the definition previously established in this document.</p> 	<p>promote ethical and responsible behavior of public officials under the guidelines established by the Executive Secretariat of the SNA.</p> <p>In the executive branch, the agencies and entities have formulated their codes of ethics and conduct in accordance with the guidelines issued by the corresponding bodies.</p> <p>In 2019, the Code of Ethics for Public Officials of the Federal Government was published, together with the issuance of the General Guidelines for the integration and operation of the Ethics Committees by the Ministry of Public Function.</p> <p>The Chambers of the Congress of the Union have their own codes of ethics and conduct, which establish in a prescriptive manner the behaviors to be performed or avoided by their members in order to avoid incurring in a conflict of interest.</p> <p>The regulation of lobbying activity is in a gray area, i.e., there is no regulatory body that compiles all the provisions to be observed by both passive and active subjects of lobbying.</p> <p>Although the Chambers of Congress have a list of lobbyists according to Article 72 section XV of the General Law on Transparency and Access to Public Information and its regulations and the agreements adopted by their boards, this list is not a useful tool according to best practices, since it is not in an open data format. Through the existing transparency platforms: the National Transparency Platform (PNT) and the National Digital Platform (PDN), the lists of lobbyists (this is already done) and of individuals who manage interests of companies and corporations before the public authority could be made transparent to allow, and even, to cross-check the information and determine their influence on the voting of legislative initiatives (the PNT also presents the voting lists of the Chambers). In Chile, since 2014, there is a Lobby Law and a Lobby platform that gathers the records of public officials and managers, and keeps a record of travel, donations and hearings made by public officials in the exercise of</p>
--	--	---

	<p>In addition, the authority should compel legislators to abstain from voting on issues related to their disclosure of interest. Finally, legislators should be disqualified from lobbying for a "cooling off period" between the end of their term and their next career move.</p> <ul style="list-style-type: none"> • Sanctions. Establish regulatory mechanisms for the application of administrative sanctions - with a public nature- for all those involved in the failure, non-compliance or omission to comply with the regulation (legislators, staff of the Chambers and lobbyists). In turn, this entails the definition of complaint mechanisms that protect the identity of the whistleblower. • Other topics: <ul style="list-style-type: none"> ○ Legal provisions on ethical issues for both lobbyists and chamber personnel <ul style="list-style-type: none"> ■ Include as subjects of regulation: private consultants and technical secretaries (of Legislative Commissions, particularly), 	<p>public functions.</p> <p>There is no unanimous definition of what is included in the lobbying activity (definitions of the Chamber of Deputies and the Senate are different⁶), and there are no clear rules for the performance of this activity.</p> <p>The definition of conflict of interest⁷, the LGRA limits it to the conduct of public officials, it does not establish a typology of conducts that can be deemed as such, nor does it include prescriptions on the acts or actions of private parties⁸ that seek to influence the decisions of the public authority.</p>
--	---	--

⁶ Article 263 of the Rules of Procedure of the Chamber of Deputies: "1. Lobbying shall mean any activity carried out before any deputy, body or authority of the Chamber, individually or jointly, to obtain a resolution or agreement favorable to one's own interests or those of third parties" and Article 298 of the Rules of Procedure of the Senate: "activity carried out by persons engaged in promoting legitimate interests of individuals before the governing bodies and committees of the Senate or before senators, individually or jointly, for the purpose of influencing decisions that correspond to them in the exercise of their powers".

⁷ In accordance with the definition established by the LGRA itself, conflict of interest is understood as "The possible impairment of the impartial and objective performance of the functions of public officials due to personal, family or business interests" (art. 3, section VI).

⁸ The LGRA classifies the activity of private parties in another category, that of private misconduct, which includes conducts in violation of the laws, regulations and codes that constitute a serious or non-serious administrative misconduct. However, this definition is not clear with respect to actions of private interest that are permitted or prohibited, as well as the form for the accreditation and sanction in accordance with the law.

	<p>since regulatory mechanisms should apply to all those involved in the process.</p> <ul style="list-style-type: none"> ○ Obligation that the Open Parliament guarantees the participation of at least three civil society organizations without conflicts of interest (in accordance with the definition suggested in this document) on the topic to be discussed. ○ In order to avoid regulatory gaps that could be exploited by the TI and reduce transparency, standardize for both Chambers: <ul style="list-style-type: none"> ■ Lobbyist Roster Forms ■ Reporting and legal obligations <p>(Ethos Laboratorio de Políticas Públicas, 2020)</p>	
Voluntary agreements with governments	<ul style="list-style-type: none"> ● Regulatory authority: when dealing with interactions, mainly with executive branch health authorities (Ministry of Health, COFEPRIS, CONADIC, etc.), it is recommended to define actions that are considered "necessary" and "unnecessary", so that officials know when they should and should not meet with the TI. A clear listing of activities/situations that are considered "necessary interactions" so that they can know when they can communicate with industry and when it would not be useful for public officials. This can be done by means of manuals, protocols or action guides. In order not to limit the scope of the list, it should be established that it is 	<p>To avoid the collaboration and influence of the TI in the processes and decisions of the authorities of the three branches of government through voluntary agreements with the public sector, and in the absence of a code that compiles all the legal guidelines on this issue, it is necessary to strengthen the protocols of action for public officials in each of the regulatory authorities in the area of tobacco control.</p> <p>As detailed above, CONADIC is working on a protocol that should be a reference for other health authorities. While this protocol is being published, existing protocols should be strengthened one by one. For example, COFEPRIS has a code of conduct for its officials and <i>"for any person who conducts any activity inside and outside the facilities of the Federal Commission"</i>. It is recommended that the COFEPRIS protocol define the types of interactions, the tree diagrams for the actions of officials, the issues related to</p>

	<p>not exhaustive of all cases.</p> <ul style="list-style-type: none"> • In addition, to make internal control bodies aware of the particularities of the TI compared to other industries, in order to understand why in these cases, the restrictions are more limiting than in other industries. • Finally, it is recommended that specifications be made regarding the evaluation of evidence of conflict of interest. Conflict of interest evidence should not be the basis for the creation and implementation of public policies. • Sanctions: make these codes of ethics binding and sanction authorities that fail to comply with the agreement. 	<p>tobacco control, among others.</p> <p>At a higher normative hierarchical point, existing legislation related to conflict of interest can and should also be refined. For example, the guidelines in Article 7 of the LGRA state that public officials shall <i>"avoid and account for interests that may conflict with the responsible and objective performance of their powers and duties."</i> However, it does not specify what types of interests conflict with the exercise of their function. This definition should include economic interests that may conflict with the performance of their duties, as well as the prohibition of unnecessary interactions with industry on sensitive issues that affect the general interest, including those related to the protection of public health, as proposed in the definition of conflict of interest presented earlier in this document.</p> <p>The disclosures of interests and patrimonial evolution (Declaration 3 of 3) are an instrument to make the performance of the public function transparent. All public officials are required to submit it under oath (Article 32 LGRA) and update it when they consider that they may incur in a possible conflict of interest. The wording of this provision suggests that the presentation of this disclosure is optional and discretionary, but not mandatory, so the recommendation is to make it explicitly mandatory for public officials in the exercise of their functions.</p>
Political financing	<ul style="list-style-type: none"> • Transparency of monetary and other benefit relationships between the TI (and/or its allies) and public officials through public records. • Transparency of monetary and other benefit relationships between the TI (and/or its allies) and candidates, political parties and other partisan groups/movements. • Impose administrative sanctions on parties that incur in political financing from the TI and/or its allies. • On the threshold of Chamber elections, increase the political 	<p>The guidelines of Article 7 of the LGRA state the obligation of public officials to <i>"legally separate themselves from assets and economic interests that directly affect the exercise of their responsibilities in the public service and that constitute a conflict of interest, prior to undertaking any employment, position or commission"</i>.</p> <p>The LGRA also provides that legal entities may be sanctioned when acts related to serious administrative offenses are carried out by individuals acting on their own or on behalf of the legal entity and who intend to obtain benefits for the legal entity through such conduct.</p> <p>Within the framework of the National Anticorruption System, the agencies and entities of the federal public administration,</p>

	<p>cost of incurring political financing from the TI (and/or its allies), pointing them out and inviting the population to avoid giving them their vote.</p>	<p>as well as the Legislative and Judicial branches issued their guidelines on ethics and integrity in public service. These establish guidelines and measures to be observed by public officials in the exercise of their functions, which are aligned with the principles established in the Constitution and in the laws on administrative responsibilities and anti-corruption. These guidelines set forth the functions of the Ethics and Conflict of Interest Prevention Committees.</p> <p>The Ethics and Conflict of Interest Prevention Committees hear reports of infractions in terms of the LGRA, but are not empowered to sanction (they issue non-binding recommendations and in the case of administrative responsibilities or acts of corruption they will inform the Internal Control Bodies).</p> <p>Currently there are different platforms to make transparent the exercise of the public function in accordance with the laws on transparency and access to public information and the national anti-corruption system. The National Transparency Platform contains the registry of Lobbyists of the Chambers of the Congress of the Union, the registry of sessions and voting lists, among others in accordance with Article 72 of the General Law on Transparency and Access to Information. In the National Digital Platform, it is possible to consult the information systems of patrimonial evolution, declaration of interests and proof of submission of tax returns; of public officials and sanctioned individuals; and the system of public complaints of administrative offenses and acts of corruption, among others.</p> <p>Regarding political financing, the General Law of Political Parties expressly prohibits private financing from legal entities to political parties or to aspirants, pre-candidates or candidates for elected office, in cash or in kind, directly or indirectly and under any circumstances (art. 54, paragraph f). Therefore, no TI company could legally grant political financing.</p>
Smuggling (regulatory)	<ul style="list-style-type: none"> ● Regulatory authority: Establish transparency and conflict of 	<p>Since Mexico has neither signed nor ratified the "Protocol for the Elimination of Illicit</p>

<p>processes)</p>	<p>interest prevention actions in smuggling prevention mechanisms, such as markers, seals or tracking and tracing systems for tobacco products.</p> <ul style="list-style-type: none"> • In addition, implement mechanisms for transparency in the bidding process for companies that aim to develop the technology used to make the tracking and tracing systems for tobacco products. The participation of TI and TI - funded groups should be prohibited in these tenders. 	<p>Trade in Tobacco Products", it is necessary to strengthen Mexico's regulation of smuggling of tobacco products.</p> <p>The obligation for producers, manufacturers and importers to print a security code on each pack of cigarettes and other tobacco products is regulated in the Federal Tax Code (articles 86-G, 108, 109, 110 and 113, sections I and III), in article 19, section XII of the Excise Tax Law and in the general provisions issued by the Tax Administration System (SAT) - the Miscellaneous Tax Resolution and its Annexes. This security code functions as a mechanism for tracking and monitoring the legal origin of the products, as well as their compliance with tax obligations.</p> <p>The printing of the security code, as well as the registration, storage and provision of the information generated from the mechanisms or systems for printing said code, must be done through the security code printing service vendors previously authorized by the SAT.</p> <p>However, the way in which this legal obligation is structured fails to meet the standards of independence from industry provided for in both the FCTC and the LGCT.</p> <p>The recommendation is that the printing of this security code, the management of the information collected for printing and its delivery to the SAT be carried out by an independent third party that has no business ties with the industry, in order to ensure the impartiality and reliability of the system.</p> <p>It is important that clear rules are in place on the transparency of the processes for bidding, implementation and, subsequently, monitoring and sanctioning in relation to security codes.</p>
-------------------	---	--

V. Public opinion

5.1 Context

5.1.1 Propaganda in favor of the TI

In the last two years, tobacco control experts in Mexico have noted a **considerable increase in the discourse in favor of new electronic devices** in various media, including digital platforms. Currently, there are three categories of these products:

- **Electronic Nicotine Delivery Systems (ENDS)** and **Similar Systems without Nicotine (SSSN)**, commonly known as vapers or e-cigarettes.
- **Alternative Nicotine Consumption Systems (ANCS)**, which are marketed as heated tobacco products (HTP) or smokeless (CONADIC, 2020).

However, **these devices are not explicitly considered within the LGCT and the discussion on legislation for their control is polarized**: while some oppose their importation, manufacture and commercialization -as the Union Against Tuberculosis and Respiratory Diseases has suggested for low and middle income countries (The Union, 2020)-, others consider that prohibition could generate a black market and boost their consumption, so they would have to be regulated, either from the LGCT for the particular case of PTCs or separately (CONADIC, 2020b).

On the other hand, **the existing regulations refer to agreements or interpretations of the administrative authorities**. First, COFEPRIS has issued several health alerts and communications, under the interpretation that they are prohibited in the LGCT, in its article 16, fraction VI (Secretaría de Salud/COFEPRIS, 2017). In addition, a presidential decree was published in 2020, prohibiting the importation of ENDS, ANCS, SSSNs, electronic cigarettes and vaporizing devices with similar uses (SEGOB, 2020).

These actions from the authorities have been a source of controversy in the Judicial Branch, as previously mentioned. The cases have reached both chambers of the Supreme Court of Justice of the Nation, generating not only conflicting criteria (while the first cases generated

precedents in favor of the individuals seeking protection, the last ones have been in favor of prohibiting the sale, distribution and marketing of these products), but also a strong controversy and, to a certain extent, misinformation about the new products.




Although these alternative devices to conventional cigarettes were a first developed by small and new companies, today **they are the "spearhead" for maintaining the relevance of the TI** by incorporating a young niche market, to which the technology is appealing. The latter is of concern, since the average age at which young people start using tobacco is before 15 years of age (Reynales-Shigematsu, Thrasher, Lazcano et.al, 2012).

Both Philip Morris (PM) and BAT -the two largest tobacco companies in Mexico- have their own devices. Thanks to the ambiguous regulation of the new devices, their marketing and promotion, the **TI has taken advantage of legal loopholes to consolidate its market niche and position its products and brands**. An example of this situation is the hiring of celebrities and *influencers* who have a large number of followers in their personal social media channels to promote the devices.

Given this scenario, it should be mentioned that the advertising policies of social media platforms popular among young people, such as Facebook, TikTok, Snapchat and Instagram (the latter is owned by Facebook), prevent the existence of paid advertisements that promote smoking in any of its forms; it is not legally possible for tobacco companies to promote their products from commercial accounts in this way.

However, using a third party with thousands of followers to promote the devices organically is not explicitly prohibited, especially if such individual is shown using them as part of his or her daily life ⁹and does not explicitly mention the tobacco companies' accounts; if anything, only a *hashtag* alluding to the product's slogan. On the other hand, the LGCT prohibits the advertising of tobacco products except in the media and direct correspondence aimed at adults (Congress of the Union, 2008), despite the fact that **social media platforms are available for adolescents from 13 years of age**. In addition, they do not have data verification

⁹ [Facebook's community standards](#) regulating the contents of individual accounts do not allude to a ban on the dissemination of tobacco-related content, even though such posts may be implicitly presumed to be advertising. Instagram, on the other hand, [prohibits the sale of tobacco products between individuals](#), but not their advertising within personal accounts.

<p>Drogas, sustancias controladas, alcohol y tabaco</p> <p>No permitimos la representación, promoción ni comercio de drogas u otras sustancias controladas. El comercio de productos de tabaco y alcohol también está prohibido en la plataforma.</p> <p>No publikes, subas, transmitas ni compartas:</p> <ul style="list-style-type: none"> Contenido que promueva las drogas o el consumo de drogas, que aliente a otros a fabricar, consumir o traficar con drogas u otras sustancias controladas Contenido que ofrezca la compra, venta, comercio o solicitud de drogas u otras sustancias controladas, alcohol o productos de tabaco (incluidos los productos de vapeo) Contenido que proporcione información sobre cómo comprar sustancias ilegales o controladas Contenido que represente o promueva la elaboración de productos alcohólicos ilícitos Contenido que describa o promueva el uso indebido de sustancias legales, o instrucciones sobre cómo elaborar sustancias caseras con fines de embriaguez 	<h2>3. Contenido prohibido</h2> <h3>3.1 Contenido inapropiado</h3> <ul style="list-style-type: none"> Anuncios que promuevan comportamientos deshonestos (p. ej., anuncios de ID falsas, plagio, servicios de redacción de ensayos, etc.). Anuncios que se dirijan o tengan por objeto atraer de forma específica a menores de 13 años. Anuncios que puedan considerarse inapropiados para la cultura de la región en donde se exhiban. Anuncios que contengan groserías o gestos obscenos. Anuncios en los que aparezcan desnudos (salvo la acción de amamantar a un bebé en determinadas circunstancias), contenido sexual, objetificación de sexos, o imágenes sexualmente insinuantes. Anuncios de productos y servicios para adultos, tales como clubes de strippers, servicios de acompañamiento y tiendas especializadas en productos para adultos. Anuncios que promocionen cigarrillos (incluidos los cigarrillos electrónicos), puros, productos vaporizadores, tabaco, nicotina o productos relacionados de cualquier tipo.
<p>Fig. 1 Community rules - TikTok</p> <h2>4. Tabaco y productos relacionados con el tabaco</h2> <p>Política</p> <p>Los anuncios no pueden promocionar la venta ni el uso de productos de tabaco ni su respectiva parafernalia. Los anuncios no deben promocionar cigarrillos electrónicos, vaporizadores ni otros productos que simulen la acción de fumar.</p> <p>Ejemplos</p> <ul style="list-style-type: none"> ✔ Blogs o grupos que conecten a las personas con intereses relacionados con el tabaco, siempre que el servicio no resulte en la venta de tabaco o productos relacionados con el tabaco ✔ Campañas y libros electrónicos contra el tabaquismo, servicios de asesoramiento en relación con la adicción al tabaco, y programas o centros de rehabilitación para dejar de fumar ✖ Tabaco o productos relacionados con este, incluidos cigarrillos, puros, tabaco de mascar, pipas de tabaco, narguiles, salas de narguile, papeles de fumar, dispositivos de tabaco vaporizado y cigarrillos electrónicos ✖ "Compra aquí cigarrillos y cigarrillos electrónicos hoy mismo" <div>  <p>Esta imagen cumple nuestras políticas, dado que promociona una campaña en contra del tabaco.</p> </div> <div>  <p>Esta imagen promociona cigarrillos electrónicos, por lo que no cumple nuestras políticas.</p> </div> <div>  <p>Esta imagen muestra fotos de narguiles, por lo que no cumple nuestras políticas.</p> </div>	<h2>Tabaco y accesorios para tabaco</h2> <p><i>Para ver las traducciones disponibles de este artículo, selecciona un idioma en la esquina inferior derecha de la página. Las traducciones se ofrecen como un servicio y no tienen como objeto cambiar el contenido de nuestras políticas. En caso de haber discrepancias entre la traducción y la versión en inglés, prevalecerá la versión en inglés y esta es la que se debe tomar como referencia.</i></p> <p>Esta política se aplica a los productos publicitarios de pago de Twitter.</p> <h3>¿Cuál es la política?</h3> <p>Twitter prohíbe, a nivel global, la promoción de productos, accesorios y marcas que se relacionen con el tabaco.</p> <h3>Ejemplos de productos, accesorios y marcas que se relacionan con el tabaco:</h3> <ul style="list-style-type: none"> Cualquier tipo de tabaco Todo tipo de cigarrillos, incluso las alternativas que imitan el acto de fumar Cigarros Pipas de tabaco, papeles de liar y filtros Bares para fumadores y salones de hookah Fabricantes de tabaco Eventos patrocinados por fabricantes de tabaco <p>Fig. 4 Twitter Ads Policies</p>
<p>Fig. 3 Advertising policies - Facebook</p>	

Políticas de monetización de contenido de Instagram

Ofrecemos funciones y productos que ayudan a los creadores y editores a ganar dinero con su contenido. Ese contenido debe cumplir determinadas reglas.

Todo el contenido de Instagram debe cumplir nuestras [Condiciones](#) y [Normas comunitarias](#). Se trata de reglas de alto nivel contra el contenido sexual, violento, ofensivo o que incite al odio. No obstante, en general, el hecho de que un contenido sea adecuado para Instagram no implica necesariamente que sea adecuado para monetizarse.

Los creadores y editores deben cumplir nuestras [Políticas de monetización para socios](#) y Políticas de monetización de contenido para ganar dinero con su contenido. El contenido debe cumplir las siguientes normas a fin de poder usarse para monetización.

Si tu video cumple las Políticas de monetización de contenido, los anunciantes pueden evitar que sus anuncios aparezcan en contenido delicado. Puedes encontrar ejemplos de temas delicados para los anunciantes en nuestras normas sobre [contenido apto para anunciantes](#).

Formatos prohibidos

No es posible monetizar los siguientes formatos de contenido:

Videos estáticos

Contenido que incluye una imagen estática y un nivel bajo o nulo de movimiento.

Encuestas con imágenes estáticas

Contenido publicado con el único fin de aumentar la interacción, para lo cual se solicita a las personas que reaccionen a las preguntas que plantea el contenido.

Presentaciones de imágenes

Contenido que muestra, principalmente, una sucesión de imágenes estáticas.

Videos en bucle

Contenido que se reproduce en bucle y muestra el mismo segmento varias veces. Esto incluye contenidos y GIF de distintas duraciones.

Montajes de texto

Contenido que muestra, principalmente, imágenes fijas o en movimiento con texto superpuesto.

Anuncios insertados

Contenido que ya incluye anuncios insertados en ubicaciones que ofrece Instagram.

Comportamientos prohibidos

Los siguientes comportamientos pueden generar una reducción o restricción de la monetización del contenido:

Engagement bait

Contenido que incentiva a las personas a hacer clic en un enlace o a comentar o indicar que les gusta una publicación.

Solicitud de interacción

Contenido que solicita compensación a cambio de comportamientos extremos, como:

- Consumir sustancias no comestibles
- Mostrar contenido gráfico
- Consumir drogas, tabaco o alcohol

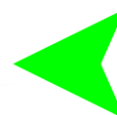
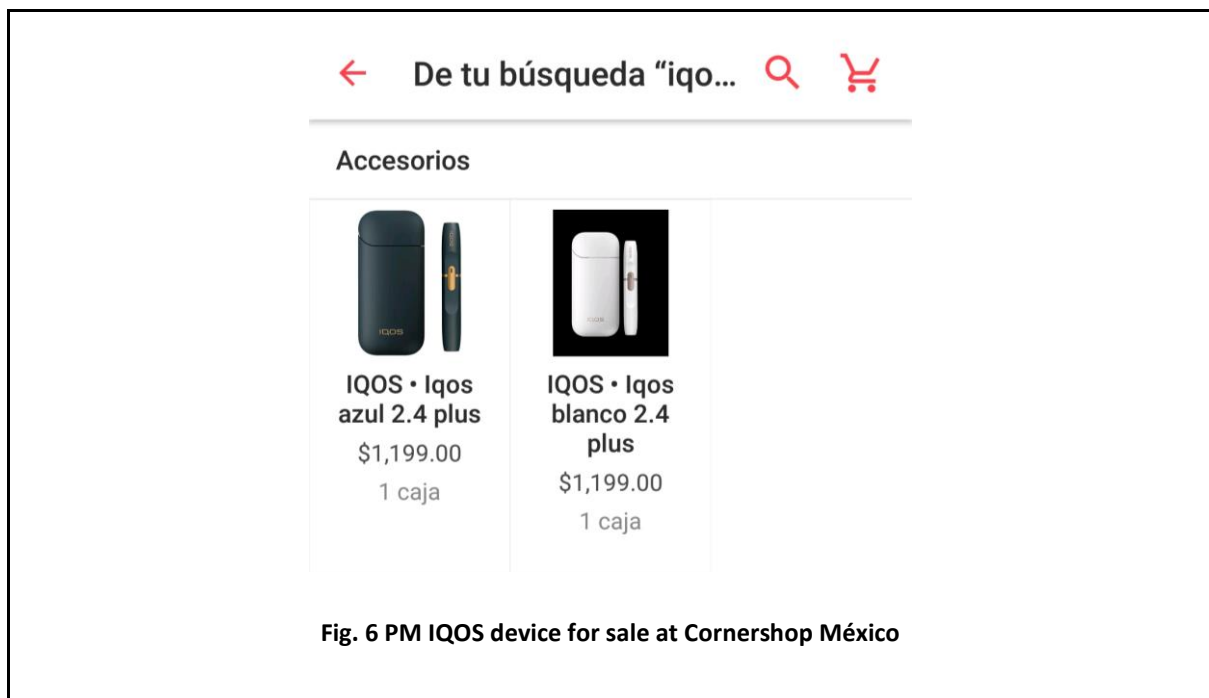


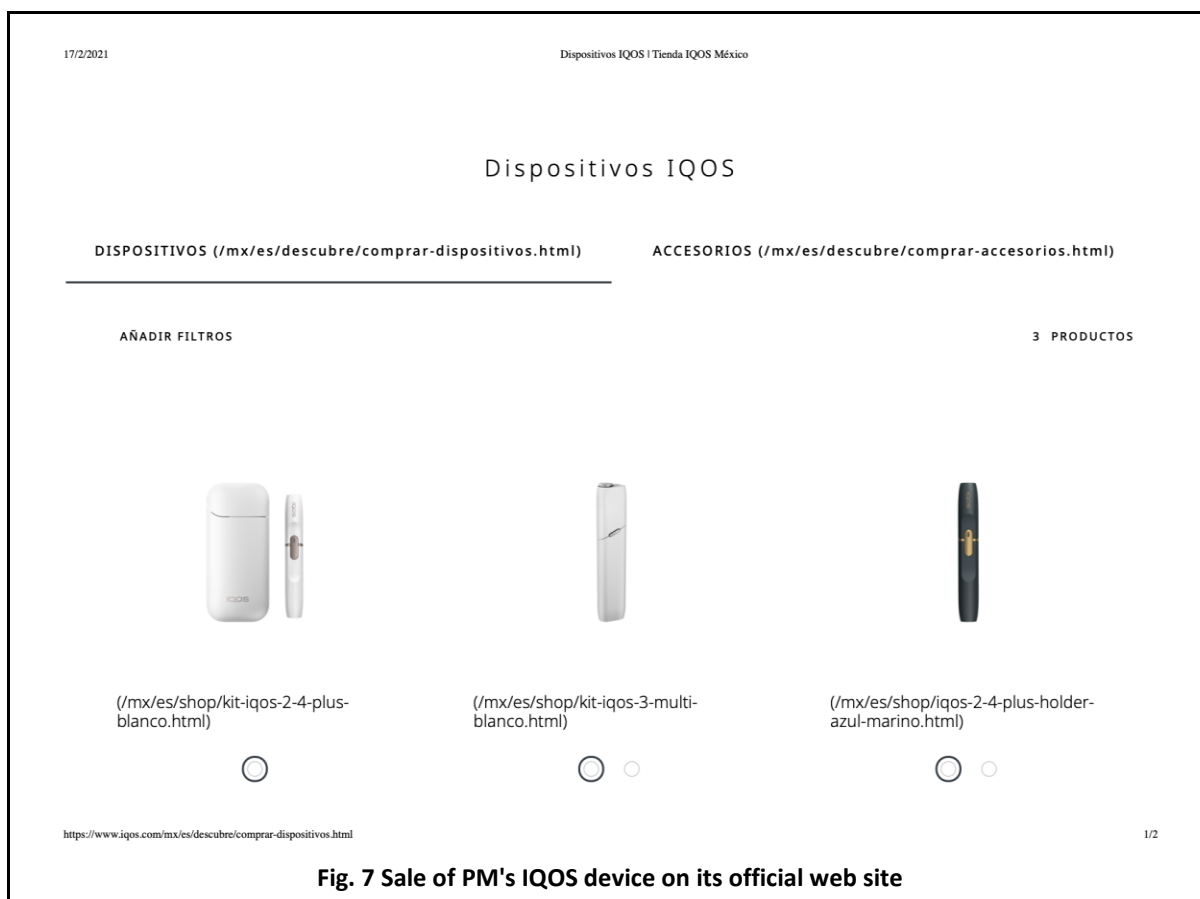
Fig. 5 [Instagram](#) content monetization policies.

In the context of the pandemic and the confinements, the rise in the use of digital platforms for buying and shipping products (or *e-commerce*) has strengthened the marketing of the new devices, especially due to the **ease of use and access to these platforms by minors and the**

information with conflict of interest that has been promoted in social media regarding nicotine "as a protector against COVID-19" (Rincón & Melgoza, 2020).

Article 16 of the LGCT prohibits the distribution, sale or gift, directly or indirectly, of tobacco products, as well as the use of purchase incentives, such as price discounts (Congress of the Union, 2008). The new products -if the ban on their importation and commercialization is lifted- would fall into another gray area. **As has been the case with IQOS (PM's product), devices and heated tobacco cartridges or e-liquids are sold separately.** Thus, the IQOS device alone is marketed over the internet, while the cartridges would fall under the LGCT by only being sold in physical stores.





As mentioned above, although COFEPRIS has warned since before the publication of the prohibition decree *"that the distribution and commercialization of electronic cigarettes and any object that is not a tobacco product, containing any of the elements of the brand or any type of design or auditory sign that identifies it with tobacco products, is illegal, since it contravenes the provisions of section VI of article 16 of the LGCT"* (Secretaría de Salud/COFEPRIS, 2017), **this section of the LGCT does not explicitly refer to END, ANCS, SSSN, electronic cigarettes and vaporizing devices with similar uses.** Instead, it sets out the prohibition of the trade, sale, distribution, exhibition, promotion or production of *"any object that is not a tobacco product, containing any of the elements of the brand or any type of design or auditory signal that identifies it with tobacco products"* (Secretaría de Salud/COFEPRIS, 2017).

This ambiguity in terms has led to the fact that, in addition to online sales of devices and, in the case of Vype, cartridges, these new products are included in special discounts and promotions, and are delivered to the customer's home.

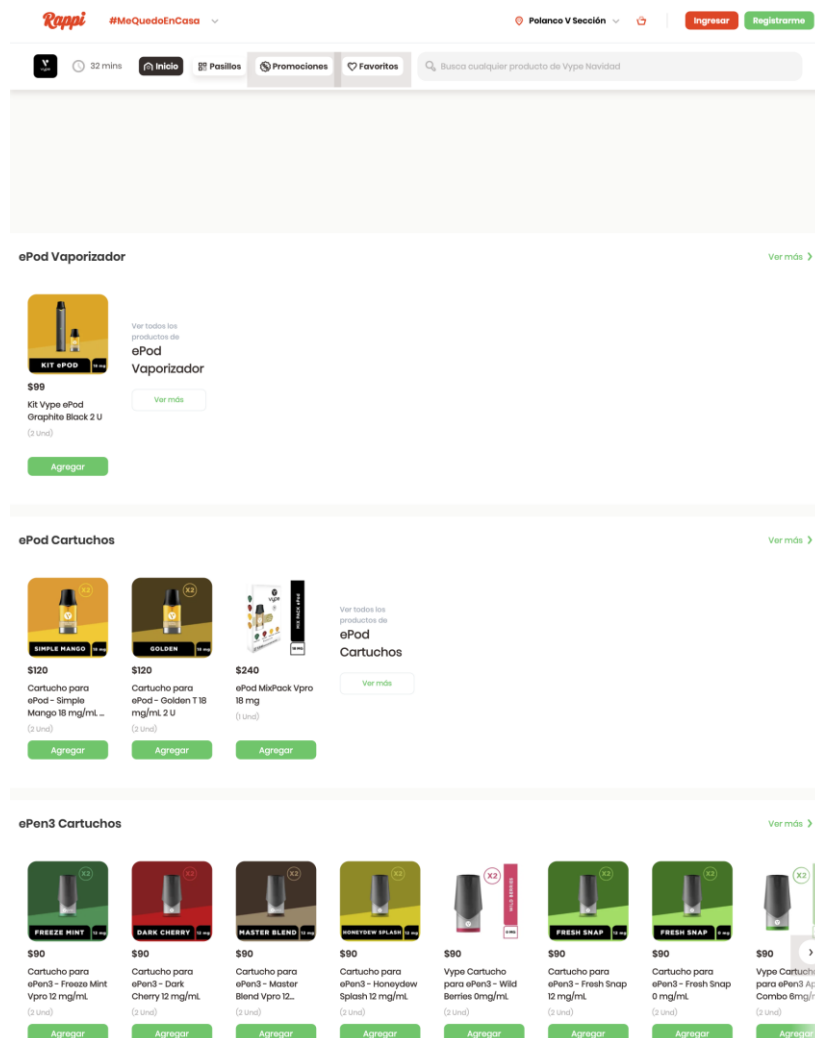


Fig. 8 Sale of BAT Vype devices and cartridges on Rappi Mexico

What is even more concerning -as in the case of advertising on social media through *influencers*- **there are no mechanisms to regulate the sale of these new devices among children and adolescents within e-commerce platforms**, despite the fact that their terms and conditions prohibit the use of these devices -as well as [the purchase of alcoholic beverages and cigarettes](#)- to [minors under 18 years of age](#). Nor are there strict filters in place to regulate users by age.

On the other hand, tobacco control experts warn about the increasing use of alliances with, for example, cigarette butt collection companies to portray themselves as socially responsible with the environment, and of advocacy groups to position their new devices (Rincón, 2020).

Above all, in the last two years, **civil society groups that promote the use of *vapers* and PTCs as a "reduced risk" alternative to conventional cigarettes have emerged and consolidated their position.** Although their discourse is not explicitly pro-TI and they even recognize the harms associated with smoking and the need for cessation, such groups are part of a machinery made up of media, research institutes, think tanks, among others, that receive funding from the TI (Saldaña & Rincón, 2021).

As mentioned above, the two big tobacco companies PM International and BAT have devices of their own. The growth in the *pro-vape* discourse is the gateway to this new young market, **keeping the TI alive despite the knowledge that has already been established about the harms of conventional cigarettes.**

5.1.2 Negative tobacco control propaganda

Regarding TI interference to discredit tobacco control regulations, in Mexico the most evident cases arose with two specific issues: smoke-free spaces and taxes. In the first case, **communication campaigns on "the fear of economic losses due to a decrease in customers"** (Melgoza & Rincón, 2020) in bars and restaurants flooded Mexico City in 2008, when the subnational Smoke-Free Spaces Law was reformed.

In terms of taxes, one of Mikel Arriola's key campaigns as COFEPRIS commissioner in 2011 was *"Together against illegality"*, a crusade against the consumption of illicit cigarettes following the approval of the 7 pesos increase in the price of a pack of cigarettes. The TI's argument in response to this price increase was that it would trigger illegal tobacco trade and they carried out campaigns against it.

Although Arriola has denied a relationship with the TI, **this key campaign during his tenure as Cofepris commissioner strengthened this narrative, which, on the one hand, discredits the taxation of tobacco products by assuming that far from reducing consumption (as the FCTC sets out), it drives smokers to seek illicit alternatives.** On the other hand, it is another violation of the commitment to keep tobacco companies out of health and tobacco policies (Saldaña & Melgoza, 2020).

Moreover, the aforementioned *pro-vape* machinery has also been in charge of discrediting tobacco control initiatives in Mexico. Using academic publications written by spokespersons

and researchers that are part of it, **members of civil associations have promoted attacks via social media directed towards decision makers and other relevant figures (e.g., civil society activists)** in the battle for the regulation of the new devices.

5.2 Recommendations

With the aim of limiting the manipulation of information to influence public opinion, guideline 5.2 of article 5.3 of the FCTC states what should be required of the TI and those who support its interests, which includes, for example, presenting transparent, regular and truthful information. This should include data not only on their direct business - production, market share, marketing expenditures and revenues, among others - but **also on those related to TI advocacy: lobbying, philanthropy, political contributions and other activities prohibited or not by Article 13 of the FCTC** (WHO, 2008).

Likewise, and in order to meet this objective, both the TI and stakeholders directly involved in its business must be co-responsible when incurring in violations such as unpermitted advertising, sponsorship or social responsibility actions. In addition, **the public dissemination of these verification actions could help to counteract the good image promoted by these actors** when carrying out advertising or social responsibility activities.

On the other hand, Article 5.3 also recommends that -to address TI tactics related to manipulation of public opinion- *"5.3 Parties should require that rules be established for the disclosure or registration of tobacco industry-related entities, affiliated organizations and individuals acting on their behalf, including lobbyists"* (WHO, 2008, p.7). While this recommendation is a first step in demanding transparency within the industry, it **is necessary to emphasize the separation between TI and government when it comes to corroborating information.**

Likewise, experts agree with the fact that the issue of tobacco control in Mexico is not usually present either in political discourse or among civil society. Therefore, **there is widespread ignorance about the state of regulation and about the first guiding principle of article 5.3 of the FCTC**, which refers to the irreconcilable conflict that the TI has with public health due to the mortality associated with its products (WHO, 2008).

In addition to the following recommendations, **it is essential to have an initial awareness-raising strategy to counteract manipulation and involve civil society in the fight for tobacco control in Mexico.** Referring to MPOWER's *Warn*, this should be done through the implementation of principle 30 of article 8 of the FCTC, which sets out the need for educational campaigns with the population, which should be carried out in conjunction with the implementation of the tobacco control law (WHO, 2007).

2. PUBLIC OPINION		
2.1 Propaganda in favor of the industry		
TACTICS	RECOMMENDATION(S)	LEGAL GUIDELINES
Social Responsibility	<ul style="list-style-type: none"> The impact of smoking in Mexico is of public interest given the impact on public health, therefore we recommend providing for transparency mechanisms by incorporating the exception of the TI and its associates within the 'tax secrecy' regulations, forcing them to make public the information contained in their tax returns. In this way, it will be possible to identify through whom the TI carries out actions of social responsibility and philanthropy through tax donations. To sanction the TI and associates for incurring in 'social responsibility' practices, establishing alliances to carry them out and/or promoting their brand and/or products within this type of actions. 	<p>Within the definition of advertising and promotion established in the LGCT, in addition to direct distribution and other forms, the promotion of elements of the brand through events and related products, through any means of communication or dissemination is included; therefore, any allusion to these products through "social responsibility" programs would be prohibited and may be sanctioned according to the Law.</p> <p>In any case, 'social responsibility' programs run by the TI are an example of the practice of <i>socialwashing</i>, defined as the misleading presentation of environmental or social benefits by a company and/or individual for a given product or service (Hallama, M. et al., 2011).</p> <p>Regarding "tax secrecy", this legal concept is provided for in various tax, taxpayer protection and defense, transparency and personal data</p>

		<p>protection laws, the scope of which has been determined by the SCJN through the interpretation of article 69 of the Federal Tax Code. It is an instrument for the protection of taxpayers, consisting of the obligation of confidentiality by the tax authorities in tax matters, including taxpayer's information, such as returns and data provided by the taxpayer or third parties, as well as those obtained by the authority in the exercise of its verification powers.</p> <p>Information related to tax secrecy in the possession of public authorities may be temporarily reserved for reasons of public interest under the terms established by law. However, this reserve is relative, since both the Federal Constitution and the various laws provide that exceptions may be made for reasons of public order, national security, health and protection of the rights of third parties, among others. Under this assumption, the recommendation is to establish in the legal framework an exception to the tax secrecy of those individuals and companies related to the activities of the TI, in order to make their relations transparent.</p> <p>An important precedent in the use of this type of figures and the application of exceptions to them for reasons of general interest is the "bank secrecy" provided for in the laws on financial matters, which, for purposes of compliance with the transparency obligations related to the exercise of public resources, the Law establishes that it is not a violation to provide the authority with the information related.</p>
Philanthropy	<ul style="list-style-type: none"> • Sanction celebrities, influencers, and other public figures who advertise tobacco products on their personal channels, regardless of whether they use their <i>hashtags/slogans</i> or not. Likewise, report their social media accounts and demand that they be suspended if they engage in these practices. • It is recommended to establish guidelines and regulations 	<p>Facebook's advertising policies (policy 4.4 Prohibited Content, prohibit the advertising of Tobacco and tobacco-related products (Facebook 2021), the policies of Instagram and other social media also prohibit the advertising of these products, but the scope of action of these companies is limited to the verification and blocking of content contrary to their community standards and, where appropriate, the suspension or termination of the accounts of users who violate these standards.</p>

	<p>regarding the health, education and all those related to vulnerable populations and philanthropy to limit or prohibit funding by the TI. For example, any initiative, communication campaign, social sports project promoted by the Ministry of Public Education (SEP) cannot receive contributions or donations that are directly or indirectly linked to the TI.</p> <ul style="list-style-type: none"> • Deploy public records that make transparent monetary transactions or other benefits between the TI (and/or its allies) and companies, public relations agencies, public figures, among others. 	<p>The LGCT completely prohibits, without any exception, any type of sponsorship by the TI. Therefore, social responsibility actions sponsored by the TI are illegal. Likewise, TI sponsorship of influencers is prohibited.</p> <p>In addition, it recognizes as tobacco promotion and advertising <i>"Any form of communication, recommendation or commercial action with the purpose, or the effect of promoting tobacco products, brand or manufacturer, to sell it or encourage its consumption, by any means, including direct advertisement, discounts, incentives, rebates, free distribution, promotion of brand elements through events and related products, through any means of communication or dissemination"</i>(art. 6, fraction XXII), which would include, in fact, social media. Although the scope is broad, it is necessary to update the law to establish explicit provisions regarding the use of these platforms.</p> <p>The LGCT expressly limits the advertising and promotion of tobacco products, which will only be directed to adults of legal age through magazines for adults, personal communication by mail or within establishments with exclusive access to them. The law also establishes the obligation for the industry, the owners and/or administrators of establishments where advertising or promotion of these products is carried out, to prove the legal age of the addressees of such advertising or promotion.</p> <p>Contrary to what is set forth in the preceding paragraphs, the latter would be the only available and legal means through which advertising and promotion of these products can be carried out. None of them refers to social media or digital platforms, spaces in which it is difficult to verify the identity, even the age of their users, so no activity that implicitly or explicitly is advertising or promotion can guarantee that its target audience is only persons of legal age.</p> <p>The complaint channels and sanctioning</p>
--	--	---

		<p>procedures established to impose sanctions on individuals who carry out conducts or activities through the use of social media in which it is presumed the promotion, advertising or sponsorship of tobacco products by the TI will be by means of a complaint that can be filed by any person through the channels enabled for this purpose by the Ministry of Health: the popular action (art. 60 of the LGS) -which allows reporting before the health authorities any fact, act or omission that represents a risk or causes damage to the health of the population- and the complaints for misleading advertising provided for in the Federal Consumer Protection Law (art. 97).</p> <p>The administrative verifiers may carry out the verification of the facts constituting faults to the provisions in the matter of tobacco control.</p> <p>However, the use of the citizen complaint mechanism is not closely associated with the issue of advertising, promotion and sponsorship as it has been widely disseminated for 100% smoke-free spaces and the sale of tobacco to minors with the telephone contact line in the ads placed in commercial establishments, even though the law states that the citizen complaint is available for any act that constitutes a violation of any of the provisions of the law and regulations on tobacco control. It is necessary to socialize the use of this mechanism among the general public and to make the message of the acts prohibited by law more forceful.</p> <p>Regarding the administrative sanctions established in the law for acts in violation of its provisions and those of its regulations, it should be noted that the law is ambiguous as to the criteria for the imposition of such sanctions, leaving their imposition and severity to the discretion of the authority (it does not establish objective criteria). Likewise, it is certainly difficult to prove the responsibility of an <i>influencer</i> or celebrity in the commission of these acts under the law, due to the dynamism of these platforms in which a post that can serve as evidence can disappear in a matter of</p>
--	--	--

		<p>seconds.</p> <p>In the area of philanthropy, Civil Society Organizations (CSOs) constituted as Associations or Civil Corporations under the provisions of the Federal Civil Code may finance their activities through self-generated resources and external resources from private donations, sponsorships, among others, including contributions from the public budget through government support programs. In the case of private donations, CSOs are not obliged to make these public, except for tax purposes, they must be declared before the SAT, and must comply with the provisions regarding the prevention of transactions with resources of illicit origin. Mexican laws have not established prohibitions or limitations on direct or indirect financing of organizations by the TI.</p> <p>As discussed in the 'Social Responsibility' tactic, the recommendation is to establish in the legal framework exceptions to the 'tax secrecy' for reasons of public order, general interest, public health, effects on third parties, among others, in order to add transparency to the route of financing by TI to CSOs.</p> <p>Another instrument that can contribute to the transparency of these relationships between the TI and philanthropy is to require through the regulation of the stock market that the reports presented by TI companies listed on the stock market, as provided for in Article 104 of the Securities Market Law, include the details of their financing to CSOs or non-profit organizations within the relevant information on the operating results and financial situation of the issuer, and for immediate dissemination to the general public through the stock exchange on which they operate.</p>
Public relations	<ul style="list-style-type: none"> ● Raise awareness among the parties and the general public that "reduced risk" for tobacco and nicotine products is not equivalent to "safe", so there is still a health risk, especially if there are no scientific studies to 	<p>The LGCT recognizes as sponsorship <i>"Any form of contribution to any act, activity or individual with the purpose, or the effect of promoting tobacco products or the consumption thereof"</i>. Article 23 of this law establishes the prohibition of any form of sponsorship, as a means to</p>

	<p>support it.</p> <ul style="list-style-type: none"> • In addition, sanction celebrities and influencers who disseminate misleading information regarding "reduced risk" as misleading advertising. • To carry out campaigns aimed at the population that disprove the information provided by the TI about its new products in regard to "reduced risk", smoking cessation products, among others. These campaigns should mention the damage to health caused by the consumption of these products. • Sanction TI and associates (including <i>e-commerce</i> platforms) if they incur in promotional practices, discounts, etc., as well as confiscate products offered on <i>e-commerce</i> platforms. • Require clear accounts from the TI regarding payments for public relations agencies, which in turn should provide reports on how the payment provided by the TI is broken down and to whom the product or payment is directed. • Sanction TI and the organizers, advertising agencies and any private individual involved, if they promote their products in events (massive or exclusive), especially those in which public officials will be present. 	<p>position the brand elements of any tobacco product or that encourages the purchase and consumption of tobacco products by the population.</p> <p>In turn, the Regulation of the General Health Law regarding tobacco advertising establishes that sponsorship <i>"must include the phrase: 'Sponsored by...' followed by the brand, corporate identification or company name of the advertiser"</i>, in addition to including a health message dictated by the Ministry of Health.</p> <p>These provisions are applicable to any type of advertising paid by the TI in the media, including newspapers of national circulation -both in their printed edition and online format (the latter should be expressly included in the regulation of tobacco advertising and sponsorship)-, since in fact it has been detected that these practices/ strategies of promotion, advertising, or sponsorship of events, through virtual platforms, social media or internet, contravene the provisions of this Regulation with respect to the assumptions in which the sponsorship of tobacco products should not be incurred (defined in art. 31 of the regulation). However, it is worth mentioning that the current regulation dates back to the year 2000, so it is necessary and appropriate to update its provisions to adapt it to the current practices that are intended to be regulated.</p> <p>Likewise, Article 24 of the LGCT prohibits the use of incentives that encourage the purchase of tobacco products, as well as the distribution, sale or gift, directly or indirectly, of promotional items that display the name or logo (of brands) of tobacco products. This is a practice that has been detected through the sending of advertisements through e-mails offering "free trials" of new devices associated with tobacco consumption and nicotine supply.</p> <p>COFEPRIS promotes within its scope of action -in conjunction with the industry and the federal entities- technical advertising guidelines that support advertising ethics and self-regulation.</p>
--	--	--

		<p>Although these strategies are valid for the industry in general and its relationship with the regulator (COFEPRIS), these are unnecessary interactions between the authority and the TI, within the scope of prohibitions of the FCTC and the LGCT.</p> <p>Regarding "reduced risk" products, this agency has stated that the scientific evidence is still insufficient to guarantee the safety in the use of these products for tobacco consumption or nicotine supply, for which it is necessary to regulate them as any other product associated with tobacco. Therefore, according to COFEPRIS, these products would fall under article 16, section VI, of the LGCT, which establishes their prohibition. This position has been supported in the last cases that the SCJN has resolved in relation to new tobacco products.</p>
Public relations (omission)	<ul style="list-style-type: none"> No supplies for tobacco products should be offered on <i>e-commerce</i> platforms. Strengthen the prohibition of the importation, commercialization, sale, distribution, exhibition, promotion and/or production of END, ANCS, SSSN, electronic cigarettes and vaporizing devices with similar uses. 	<p>A practice that contravenes tobacco control provisions and that has been frequently detected is advertising on the internet and in convenience and department store sales platforms that promote the sale of nicotine delivery and consumption devices.</p> <p>Both the LGCT and the Regulation of the General Health Law on advertising include specific provisions related to limiting the advertising, promotion and sponsorship of tobacco products. It is necessary to update the legal framework on tobacco control to incorporate such devices for the consumption and supply of tobacco that are not yet regulated.</p>
Create alliances and support groups	<ul style="list-style-type: none"> Require the industry to list relevant stakeholders in tobacco control in Mexico (public officials, tobacco product retailers, tobacco producers, consultants, CSOs and authorized donors) with whom they hold meetings to discuss commercial and marketing strategies. Such information would be reported in the stock exchange reports that the TI publishes 	<p>There is a need to clarify and expand the definition of conflict of interest provided in the LGRA in line with international recommendations and best practices, as proposed in the definition of 'conflict of interest' presented in this paper. The OECD (2004) has noted that "<i>uncertainty as to the [application of the] standard can be avoided by setting out in clear terms what circumstances and relationships may conflict with public interests and create a conflict of interest.</i>"</p>

	<p>periodically.</p> <ul style="list-style-type: none"> It is recommended to implement mechanisms for (corporate) accountability aimed at fighting conflict of interest and transparency among allies and actors that participate directly or indirectly in favor of an industry. This is mainly with existing or future industries that require regulation and expansion. One of the main items that this mechanism should consider is the financial relationship of the actors that comprise it. 	
<i>2.2 Negative tobacco control advertising</i>		
TACTICS	RECOMMENDATION(S)	LEGAL GUIDELINES
Consulting	<ul style="list-style-type: none"> Require the industry to submit monthly reports with information on all relevant tobacco control stakeholders with whom they meet, as well as expense reports, especially on public relations and consultancies, and require similar documents from these stakeholders. 	Although there is no legal obligation to require the TI to be transparent in its public or private relations beyond what strictly speaking constitutes an administrative offense or a crime under the laws in force and punishable under those laws, the current trend is to promote best practices that make the industry's relations with the private sector transparent and promote better corporate practices in the areas of compliance, anti-corruption, corporate ethics, social and environmental responsibility, among others.
Funding research and universities	<ul style="list-style-type: none"> Invite the parties and civil society and academia to send critiques of "scientific" publications that emphasize on the "benefits" of tobacco products to the <i>journals</i> that publish and disseminate them, demanding their removal from the databases. Discredit and not use as justification or basis for tobacco control regulations "scientific" studies where no conflict of interest is disclosed, but whose investigators have links to the TI. 	Article 37 of the LGRA establishes that persons engaged in scientific research, technological development and innovation activities, who are considered public officials under this law, may engage in liaison activities with the public, private and social sectors, and receive benefits, under the terms established by the governing bodies of such centers, institutions and entities, and that they will incur in a conflict of interest when they obtain benefits from profits, royalties or any other concept in contravention of the provisions applicable in the Institution, in accordance with the provisions established in this law. These assumptions of conflict of interest in

	<ul style="list-style-type: none"> It is recommended to establish a policy that seeks to regulate the production of TI data and research in terms of rigor, completeness, among others, for the sake of corporate transparency. In other words, accountability on the side of the TI should not only be with respect to the production, manufacture and marketing of its products, but also in the production of "scientific" research on its products and other topics, such as illegal market research, environmental impact of its operations, and economic research. 	<p>persons engaged in research and considered public officials in accordance with the Law are applicable to research developed in TI -related topics.</p> <p>Although there is a regulation of the General Health Law on Health Research, this regulation does not establish specific provisions on tobacco products or on the financing of research or publications derived therefrom, as it does refer to the obligation to verify and make transparent the origin and destination of financial resources destined to sponsored research related to the development of inputs, technologies and other products. application processes, susceptible of patents or commercial development, among others, which are carried out in human beings, through a report to the Ministry of Health.</p>
Smuggling	<ul style="list-style-type: none"> The security code implemented in Mexico since 2017 on tobacco product packaging does not comply with the recommendations for a tracking and tracing system of the Protocol to Eliminate Illicit Trade in Tobacco Products. It is recommended - in addition to the signature and ratification of this protocol by the Mexican authorities so that it has legal force in the country and is the basis for developing and implementing such a system - to establish mechanisms for the TI to make this information public through production, distribution and final sale reports (Sáenz de Miera Juárez & Reynales Shigematsu, 2019). Public health policies should be accompanied by communication campaigns that are not aligned with the TI discourse, and should be more ambitious: they should explore more than just the risks of tobacco consumption. For example, it is necessary to talk about the fiscal benefits of tobacco regulation, myths and realities regarding the tobacco 	<p>As previously mentioned, CONADIC is working on a proposal for an Action Protocol for Public Officials. This protocol should provide for actions for officials other than the SSA, such as SEGOB, to avoid cases such as the "Alliance of Illegal Products".</p> <p>COFEPRIS has a code of conduct for its officials and <i>"for any person who undertakes any activity inside and outside the facilities of the Federal Commission"</i>. The inclusion of the issue of communication alliances with the TI on illegal products should be sensitized within the regulatory authority, as well as being considered as a conflict of interest.</p> <p>The Ethics, Public Integrity and Prevention of Conflicts of Interest Unit of the Civil Service Secretariat is the body in charge of resolving consultations and interpreting situations that confront the application of the principles, values and rules of integrity set forth in said instruments. In these cases, this Unit could interpret that activities related to communication alliances, among others, are part of a conflict of interest.</p> <p>The Ethics and Conflict of Interest Prevention Committees are jointly responsible for processing complaints of non-compliance, although they are not</p>

	<p>market (beyond consumption).</p> <ul style="list-style-type: none"> ● Campaigns by the TI should be identified and sanctioned, as they misinform and confuse the population about the harms of its products. There is a recurrent practice in which TI claims that its products are less harmful than illegal tobacco products, when in fact the difference is that one pays taxes and others do not. ● It is necessary to standardize the Protocol of Action for the various officials who are directly or indirectly related to tobacco control activities, mainly in information/educational campaigns, as well as those related to the control of import and export products. ● On the other hand, it is recommended to avoid adopting approaches oriented toward combating organized crime in tobacco. The policies to be implemented must have a strong public health focus. 	<p>empowered by law to establish sanctions, but only non-binding recommendations, and, where appropriate, to inform the ICOs of alleged conflicts of interest or corruption.</p> <p>The LGCT establishes a chapter on measures to Combat the Illegal Production and Illicit Trade of Tobacco Products, which are limited to the surveillance and control of imports of tobacco products and their accessories, the application of "security measures" on imported products that do not comply with the provisions in force, as well as the issuance of sanitary permits for the importation of such products, in charge of the Ministry of Health.</p> <p>The Ministry, through verifiers and in coordination with the corresponding authorities, is empowered to intervene in maritime and air ports, at borders and, in general, at any point of the national territory, in relation to the traffic of tobacco products and accessories for the purposes of identification, control and sanitary disposition.</p> <p>Article 34 of the law provides that the Ministry will participate in the actions carried out to prevent the illicit trade, distribution, sale and manufacture of tobacco products and tobacco-related products.</p> <p>It is necessary to establish coordination mechanisms with the various authorities responsible for tobacco control in order to implement a more efficient strategy in line with technological and commercial advances.</p>
--	--	--

VI. Confrontation

6.1 Context

In addition to the campaign of demands from restaurateurs that arose from the smoke-free legislation in Mexico City in 2008, **businesses and legislators promoted 1,500 *amparos* to protect "the right to smoke"**, which was dismissed that same year (Melgoza & Rincón, 2020). This argument was based on the alleged violation of Article 14 of the Constitution and established that modifying the spaces where smoking is allowed retroactively affects smokers and their acquired right to smoke (Madrado-Lajous, 2008). However, Madrado-Lajous (2008) states that **there is no unconstitutionality because it is not possible that smoking is an acquired right and the doctrine on which the argument is based is contradictory**.

With the COVID-19 pandemic acting as a catalyst to reinforce and replicate federal and state smoke-free regulations, "experts already foresee tobacco companies' resistance to new legislation to ban tobacco smoke in public places" (Melgoza & Rincón, 2020).

It has been documented how the TI, **when it fails in its attempts to influence legislation, escalates its actions before the judiciary and uses the same arguments used against legislators or other similar arguments to attack tobacco control regulation, but from the courts**. Thus, members of the judiciary weigh the rights claimed by TI and its affinity groups against the right to health (O'Neill Institute for National & Global Health Law/Campaign for Tobacco Free Kids, 2012).

Nevertheless, the *amparos* had resolutions in favor of tobacco control by the authorities, declaring the constitutionality of both the no smoking in enclosed indoor spaces provisions of the Mexico City law, as well as the regulations on advertising and sale of tobacco products, set out in the LGCT. **Not only the right to smoke argument was debated in the courts, but also others such as commercial freedom, freedom of labor, the power of the states to legislate and create 100% smoke-free spaces, among others**.

Likewise, one way in which intimidation tactics have been used within the Mexican tobacco control context is through **aggressive campaigns against public officials who are in favor of the initiatives**. For example, in 2010, the reform that sought to quadruple the fixed quota per

pack or per tobacco, update the *ad valorem* from 160 to 180%, eliminate the gradualism and adjust according to inflation was discussed in the plenary. For 10 days after Manlio Fabio Beltrones, leader of the PRI bench, had pledged to support the initiative promoted by the then president of the Health Commission, Ernesto Saro Boardman (PAN), he was victim of "intense attacks (Saldaña & Melgoza, 2020).

Currently, the strategy of **intimidation via amparos and threats of litigation by the TI has had an upturn since the decree banning the importation of new tobacco products and their components**. As mentioned in the previous section, the trade of products whose description could include these devices has not been allowed since the publication of the LGCT in 2008. Even COFEPRIS launched the alert to consider "*vapers, electronic cigarettes, e-cigarettes and the recently named 'smokeless cigarette'*" (Secretaría de Salud/COFEPRIS, 2017) within article 16 fraction VI in 2017.

However, it was not until the beginning of 2020 that these new products were included among the prohibited items in the General Law on Import and Export Taxes, in an attempt to prevent their illicit trade (Ministry of Health, 2020).

Thus, **the same strategy of intimidation in the courts is now being carried out by the companies of new products and their users**. According to the media, there are around 200 amparos filed to declare unconstitutional the decrees and agreements of the executive branch authorities prohibiting and limiting the sale, distribution and importation of the new products (Tarragona, 2020; Redacción Milenio, 2020).

Faced with this new regulation, different companies filed amparos to prevent the regulation from being applicable to them. Possibly the most publicized case has been that of the Sanborns store, to which the SCJN rejected the amparo to market PM's IQOS product (Indigo Staff, 2020; SCJN, 2020), but granted that the device can continue to be sold under the argument that it uses tobacco (whose sale is legal) and not liquid or aerosol nicotine, thus being considered as a tobacco product of permitted sale, unlike *vapers* or electronic cigarettes, which do fall under the prohibition of the decree of importation and sale (Celis, 2020).

The anticipated consequence is that other brands of electronic nicotine delivery devices will begin to manufacture PTCs such as IQOS and will seek that they or their marketers in Mexico file an amparo to allow their sale, hoping that the same SCJN criteria that was applied to Sanborns will be applied to them. **This could only change with an amendment in the SCJN's criteria in a future case, or with legislation issued by the Federal Congress that expressly includes this type of devices:** END, ANCS (PTC), SSSN, electronic cigarettes and vaporizing devices with similar uses.

From another front, in addition to using the media -opinion columns in web portals of important newspapers, their own social networks, among others- to attack the control measures of the new devices and those who support them, **pro-vape groups have resorted to legal tools, such as amparos and "peaceful resistance", to prevent the devices from being banned or regulated within the LGCT (Saldaña & Rincón, 2021).** It should be noted that most of the directors of these organizations are lawyers by profession, so they have ample knowledge of how to proceed with amparo suits against decrees banning or regulating these devices.

6.2 Recommendations

Although some of the confrontational tactics employed by the TI to hinder tobacco control policies are citizens' rights, such as the filing of amparo lawsuits, it **should be considered that those who will make the decision -the judges- should be aware of the public health issue and the scientific evidence that exists regarding smoking.**

The FCTC emphasizes the following: *"In reviewing Article 12 of the Convention, Parties should inform and educate all public authorities and the general public about the addictive and harmful nature of tobacco products, the need to protect public health policies relating to tobacco control against commercial and other vested interests of the tobacco industry, and the strategies and tactics used by the tobacco industry to interfere with the establishment and implementation of such policies."* (WHO, 2008, p. 4).

Similarly, it states that *"Parties should protect the formulation and implementation of public health policies related to tobacco control from the tobacco industry to the greatest extent possible"* (WHO, 2008, p. 2).

In other words, not only is it crucial for judges to be aware of the irreconcilable conflict between the TI and public health to guide their actions, it is also important to prioritize the interests of public health, as part of the right to health, over the commercial pretensions of TI. **Tobacco control policies should be presented as part of the Mexican State's commitments to protect human rights, including the right to health.** This has been recognized both by national and comparative law courts in countries such as Peru, Uruguay, Brazil, among others (O'Neil Institute for National & Global Health Lay, supported by Campaign for Tobacco-Free Kids, 2012).

In this case, public officials who belong to the Judiciary are the ones who should keep this conflict in mind when ruling on amparo suits and other constitutional rights that go against tobacco control policies. In addition, they **should consider that the evidence on the toxic and carcinogenic effects of tobacco smoke, the effects of advertising on a mainly young population, the effectiveness of tobacco taxes and other tobacco control issues are incontrovertible and widely accepted.** As was achieved with the cases of smoke-free spaces, the weighing of rights must consider the nature of the right to health as a legally protected good both by the Constitution and by international human rights treaties, including the FCTC.

3. CONFRONTATION		
TACTICS	RECOMMENDATION(S)	LEGAL GUIDELINES
Litigation, intimidation, <i>pre-emption</i>	<ul style="list-style-type: none"> • Not to proceed with or grant amparos related to tobacco control, regardless of who requests them (TI, its associates, restaurants, bars, CSOs and other front groups, most recently vape groups and companies seeking to commercialize new products). • It is recommended that judges and members of the judiciary in general be sensitized to the solid evidence on the efficiency of tobacco control policies, emphasizing the importance of identifying those that may involve a conflict of interest. 	The right of access to justice for all persons is a fundamental right recognized in our Constitution. This access can be achieved through various jurisdictional channels, such as actions in the different channels before the courts of the federation, in accordance with the distribution of competencies to hear the cases filed. In this sense, the amparo proceeding is a means through which any person may request the protection of justice in the face of facts that he/she considers constitute violations of his/her fundamental rights, whether by acts of authority or by previous judicial rulings or

	<ul style="list-style-type: none"> • It is recommended that national and comparative judicial precedents for tobacco control within the Mexican judiciary be more widely disseminated, so that judges are updated on decisions that have prioritized the right to health over other rights. • It is recommended that, in addition to having a register of the actors that make up the TI actors' network, the control strategy should have a solid communication campaign and budget that allows it to be sustained before, during and after the legislative processes. 	<p>resolutions.</p> <p>The limitations for the promotion of the amparo proceeding are established in the Amparo Law, and refer to formal elements for the substantiation of the appeal before the federal courts.</p> <p>There are many examples of individuals who have resorted to this lawsuit claiming that legal or regulatory provisions constitute violations of their fundamental rights. The case of restrictions on tobacco products in different areas is no exception.</p> <p>However, it is important to point out that there are judicial precedents that prioritize the criteria for the decision of the controversies submitted to the judge; principles such as public health, general interest and public order. This has been stated in several jurisprudences¹⁰ issued by the Supreme Court of Justice of the Nation during the year 2011, on the occasion of controversies submitted to its review before the entry into force of the Law for the Protection of the Health of Non-Smokers in the Federal District (now Mexico City).</p> <p>The Code of Ethics of the Judiciary of the Federation states that <i>"By virtue of the innovative transformations that society is experiencing every day Mexican society, it is natural that judges in their daily interrelationship with each other should in this dynamic, as is the case in other sectors, providing the opportunity to</i></p>
--	---	---

¹⁰ HEALTH PROTECTION FOR NON-SMOKERS IN THE FEDERAL DISTRICT. THE RELATIVE LAW DOES NOT VIOLATE THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION (Thesis: P./J. 30/2011); PROTECTION OF THE HEALTH OF NON-SMOKERS IN THE FEDERAL DISTRICT. PROPORTIONALITY OF THE MEASURES LIMITING THE FREEDOM OF TRADE (Thesis: P./J. 27/2011); HEALTH PROTECTION OF NON-SMOKERS IN THE FEDERAL DISTRICT. THE RELATIVE LAW AND ITS REGULATIONS DO NOT VIOLATE THE PRINCIPLES OF LEGALITY AND LEGAL SECURITY (Thesis: P./J. 22/2011); HEALTH PROTECTION OF NON-SMOKERS IN THE FEDERAL DISTRICT. THE RELATIVE LAW DOES NOT VIOLATE THE RIGHT OF PROPERTY (Thesis: P./J. 21/2011).

		<p><i>the generation of links of interest that could affect their free conscience and role essential in the administration of justice, which is why it is very useful that there are referents that identify the values and principles related to the exercise of the jurisdictional function."</i></p> <p>This instrument establishes the following principles to be observed by judges in the administration of justice: independence, impartiality, objectivity, professionalism and excellence. Impartiality is understood as "<i>the attitude of the judge in the face of influences foreign to the law, from the social system. It consists of judging from the perspective of the Law and not on the basis of pressures or interests alien to it</i>".</p> <p>In observance of this principle, judges must refrain from deciding under the influence of illegitimate interests or influencing the determinations of other judges. This code also states that their decisions must be based on the legal interpretation of the law and on general principles of law, without privileging any other interest.</p> <p>It is important to make judges aware of the relevance of these principles in the control of products and activities that contravene public health regulations, which are of general interest. It is essential that the judges who rule on these controversies weigh the legal interests protected in each controversy and prioritize the general welfare over particular interests.</p> <p>All these aspects are included as part of a proposal for a comprehensive reform of the judicial system. In 2020, a package of initiatives was presented to reform and strengthen this body, through the professionalization of</p>
--	--	--

		<p>its members and the promotion of an ethical culture in its work. The reform proposal proposes to strengthen the Judicial Branch through changes to constitutional articles 94, 97, 99, 100, 103, 105 and 107, as well as the issuance of two new federal laws: The Organic Law of the Federal Judiciary, and a Judicial Career Law of the Federal Judiciary (Daen, 2020). Through the latter and the transformation of the Federal Judiciary Institute into the Federal Judicial Training School, the aim is to train -professionalize and sensitize- judges to better face the challenges of the administration of justice in Mexico; and to combat corruption, nepotism, impunity, sexual harassment and discrimination, among other negative behaviors within the Judiciary in order to move towards a new system that guides public policies and justice.</p>
--	--	---

VII. Conclusions and final recommendations

Recognizing the diversity of voices in the fight for tobacco control (CSOs, academia, government agencies, among others), **the response to TI interference tactics must be articulated, include actions at different levels and through different means, and, above all, remain active at all times.** Tobacco control in Mexico is still far from reaching the ideals established by the WHO and the inclusion of new electronic products in the market has made the discussion more complex, generating confusion among decision makers and the general public. This is why it is necessary not only for there to be greater dissemination of the FCTC and the principles and guidelines of article 5.3, but also for the literature on TI interference tactics to be updated.

Although Luiza da Costa, Aguinaga Bialous and Aguinaga Bialous (2012) have done an excellent job of identifying and classifying the tactics most commonly used by the TI, for their analysis in the Mexican context some of these have fallen short and the **literature should be updated and complemented with respect to emerging actions from the rise of new products and the evolution of information technologies.** For example, this research identified how the TI in Mexico tends to take advantage of gray areas or omissions (loopholes) in existing regulations, such as the case of advertising on social media through *influencers* and the sale of new electronic devices on *e-commerce* platforms.

On the other hand, the context of the COVID-19 pandemic represents an additional challenge due to the confinements and consequent delays in legislative processes, as well as a difficulty in carrying out political advocacy. Nevertheless, **the pandemic is both an opportunity to rethink objectives and revitalize strategies to confront commercial TI interests** and to advance public health policies.

There is a growing concern about the role that the smoking epidemic and its comorbidities have played in the development of complications that led to the high mortality rate by COVID-19 afflicting the Mexican population (Kánter Coronel, 2020; Redacción El Universal, 2020). Thanks to such concern derived from the pandemic and WHO recommendations to encourage cessation with proven methods (PAHO, 2020), subnational smoke-free legislation has finally seen the light of day.

There has also been a great opening of alternative communication channels to reach more people with tobacco control messages. However, because of remote working and the oversaturation of digital content and events on social media, tobacco control experts agree and recognize the fatigue among the public, which impairs their ability to respond. To address this situation, **consensus, consistency and clarity in the language of the messages that the various allies in the anti-tobacco fight transmit is absolutely crucial**, but above all it is time to exploit creativity in the ways of delivering this information.

If the TI has managed to reinvent itself, stay current and make itself present again in the public opinion, those who fight from different fronts to promote tobacco control cannot be left behind. In the round tables previously mentioned in the Methodology, the **development of a central platform where all the actors, messages and news related to tobacco control in Mexico converge** was discussed. The messages will be very diverse, but the objective is the same: to end smoking.

In the political sphere, given that coordination by the industry to avoid strong regulation has different components and times of action, it is necessary that -in addition to the specific recommendations for **each tactic- cross-cutting, inter-institutional, multidisciplinary and comprehensive strategies are considered to protect the processes of development and implementation of public health policies on tobacco products**, including specific actions for the fight against corruption (strengthening of the judiciary). In addition, as established by the FCTC, the implementation of a comprehensive tobacco control strategy should also consider crop substitution proposals and alternative development projects to tobacco, in addition to their communication campaigns.

With regard to key actors in tobacco control, it is necessary to sensitize, involve and hold accountable, in the first place, Congress representatives, senators and other public officials (including the President) to protect public health policies. Certainly, the Ministry of Public Administration already has several channels through which to **explore the possibility of developing and strengthening content regarding the conflict of interest with the TI**, in order to differentiate this type of company from any other that pays taxes and provides jobs. Finally, this is an industry that produces and markets products that contribute 8.4% of the total

deaths caused by diseases in the year, disproportionately affecting the most vulnerable groups of the population (Redacción El Financiero, 2018).

In addition, following recommendation 4.2 of Article 5.3¹¹, **CONADIC is about to officially publish the "Protocol of Action for Public Officials"**. This document contains a series of guidelines on behavior when dealing with TI and is based on the principles and guidelines of said article of the FCTC. Initially, it will be implemented at the base of the executive branch, as tobacco control experts have determined that this group of public officials is more susceptible to being coerced by TI. However, like the lobbying regulations, the protocol **must go hand in hand with an autonomous and independent body to act as a conflict-of-interest observatory**.

While the protocol is a first major step in raising awareness of the particularities of dealing with TI, it should be noted that this will not be sufficient if there are still pending issues in the Mexican context with respect to the implementation of mechanisms aimed at fighting corruption. Therefore, it is necessary that **the implementation of Article 5.3 be accompanied by reforms to both the laws, including the Administrative Responsibilities and the LGCT, as well as those of the judicial system**.

CSOs are crucial for transparency and accountability in the development and implementation of public tobacco control policies. Therefore, they must participate as watchdogs through processes of constant evaluation and monitoring of the relationships that governments may have with the TI. The organizations and associations that actively take part in the anti-tobacco fight throughout the country need to **develop and strengthen our capacities for monitoring and evaluation of tobacco control actions, as well as constant communication with each other and form alliances**.

Likewise, in order to get the general public actively involved in protecting the health of the population and supporting tobacco control actions, it **is necessary to have informed, aware and responsible societies, not only of the consequences of tobacco consumption, but also of the actions needed to reduce its consumption and its role within public administration**.

¹¹ "4.2 Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards they should meet when dealing with the tobacco industry." (WHO, 2008, p.6)

It is recommended -among the relevant government agencies (Ministry of Health, CONADIC, Cofepris) and allied CSOs- to carry **out actions to raise awareness and facilitate the use of transparency tools (e.g., Open Parliament, the National Anticorruption System, among others) to empower the population regarding:** 1) the measures required to strengthen tobacco control in Mexico, and 2) the role of civil society in the protection of legislative processes. In this way, **public health policies**, such as tax increases, smoke-free spaces and the regulation of electronic devices, **will be under public scrutiny and will have additional support for their implementation and development.**

Likewise, the LGCT establishes **the citizen's complaint as a mechanism of assistance for tobacco control so that verifiers of the Ministry of Health can visit establishments that do not comply with the regulations in force**, in accordance with the procedures established in the General Health Law. This mechanism is available to any citizen through a telephone line set up by the Ministry of Health. Verifiers must follow the procedures set forth in the General Health Law and are subject to administrative liability in accordance with the laws that regulate it.

Finally, it is relevant to highlight that tobacco control experts have agreed on the lack of knowledge or possible "obviousness" that public officials have towards tobacco control policies. We cannot fail to recall that there is an irreconcilable conflict between TI and public health and that the FCTC is an international treaty whose components legally bind governments to comply with the development and implementation of public policies for tobacco control. The cooperation agencies that have developed, supported and promoted it among UN Member States - **WHO and the Pan American Health Organization (PAHO) in the case of Mexico - have the obligation to point out the FCTC violations by governments, thus raising awareness among relevant stakeholders.**

VIII. References

- Cámara de Diputados del H. Congreso de la Unión. 2016. *Ley General de Responsabilidades Administrativas*.
<http://www.senado.gob.mx/comisiones/anticorrupcion/docs/corrupcion/MMH.pdf>
- Celis, Darío. 2020. “El Regalo de La Corte a Philip Morris.” *El Financiero*. 2020.
<https://www.elfinanciero.com.mx/opinion/dario-celis/el-regalo-de-la-corte-a-philip-morris>.
- Comisión Nacional contra las Adicciones (CONADIC). 2020. “A La Opinión Pública Posicionamiento Sobre Cigarros Electrónicos y Productos de Tabaco Calentado.” Gobierno de México. 2020.
<https://www.gob.mx/salud/conadic/documentos/a-la-opinion-publica-sobre-cigarros-electronicos-y-productos-de-tabaco-calentado>.
- Congreso de la Unión. 2008. *Ley General Para El Control Del Tabaco Título Primero Disposiciones Generales Capítulo I Disposiciones Generales*. Ciudad de México: Cámara de Diputados del H. Congreso de la Unión. http://www.diputados.gob.mx/LeyesBiblio/pdf/LGCT_150618.pdf.
- Cruz Martínez, Ángeles. 2012. “Senadores Retrasan Aprobación de Modificaciones a La Ley General Para El Control Del Tabaco, Acusan.” *La Jornada*. 2012.
<https://www.jornada.com.mx/2012/03/08/sociedad/049n1soc>.
- Daen, Arturo. 2020. “Nueva Escuela de Jueces, Evaluación y Cambio de Funciones: La Reforma Planteada Para El Poder Judicial.” *Animal Político*. 2020. <https://www.animalpolitico.com/2020/02/reforma-poder-judicial-puntos-clave/>.
- Drope, Jeffrey, Neil Schluger, Zachary Cahn, Jacqui Drope, Stephen Hamill, Farhad Islami, Alex Liber, Nigar Nargis, & Michal Stoklosa. 2018. *The Tobacco Atlas*. Editado por Jeffrey Drope y Neil Schluger. 6ta Edición. Atlanta, Georgia: American Cancer Society & Vital Strategies. www.tobaccoatlas.org.
- Ethos Laboratorio de Políticas Públicas. 2020. “Regulando El Cabildeo.” Ciudad de México: Ethos Laboratorio de Políticas Públicas. <https://www.ethos.org.mx/wp-content/uploads/2019/08/Posicionamiento-cabildeo-2020.pdf>.
- Jiménez, Horacio. 2017. “Cabilderos. Fuerza Invisible En San Lázaro.” *El Universal*. 2017.
<https://www.eluniversal.com.mx/articulo/nacion/politica/2017/01/3/cabilderos-fuerza-invisible-en-san-lazaro>.
- Indigo Staff. 2020. “SCJN Prohíbe a Sanborns Vender Cigarros Electrónicos.” *Reporte Indigo*. 2020.
<https://www.reporteindigo.com/reporte/scjn-prohibe-a-sanborns-vender-cigarros-electronicos/>.

- Instituto Nacional de Estadística y Geografía (INEGI). 2020. "Censo Nacional de Gobierno, Seguridad Pública y Sistema Penitenciario Estatales 2020. Presentación de Resultados Generales." INEGI. 2020. https://www.inegi.org.mx/contenidos/programas/cngspspe/2020/doc/cngspspe_2020_resultados.pdf.
- Instituto Nacional de Psiquiatría Ramón de la Fuente Muñiz (INPRFM), Instituto Nacional de Salud Pública (INSP), Comisión Nacional contra las Adicciones (CONADIC), y Secretaría de Salud. 2017. Encuesta Nacional de Consumo de Drogas, Alcohol y Tabaco 2016-2017: Reporte de Tabaco. Edited by LM Reynales-Shigematsu, L Zavala-Arciniega, WC Paz-Ballesteros, DS Gutiérrez-Torres, JC García-Buendía, MA Rodríguez-Andrade, J Gutiérrez-Reyes, A Franco-Núñez, M Romero-Martínez, & L Mendoza-Alvarado. Ciudad de México, México: INPRFM. https://encuestas.insp.mx/ena/encodat2017/reporte_encodat_tabaco_2016_2017.pdf.
- Kánter Coronel, Irma. 2020. "Muertes Por Covid-19 En México." *Mirada Legislativa*. Ciudad de México. http://bibliodigitalibd.senado.gob.mx/bitstream/handle/123456789/4927/ML_190.pdf?sequence=1&isAllowed=y
- Luiza da Costa, Vera, Silvia Aguinaga Bialous, y Stella Aguinaga Bialous. 2012. "Technical Resource for Country Implementation of WHO Framework Convention on Tobacco Control Article 5.3 on the Protection of Public Health Policies with Respect to Tobacco Control from Commercial and Other Vested Interests of the Tobacco Industry." Geneva, Switzerland.
- Madrazo-Lajous, Alejandro. 2008. "Sobre La Constitucionalidad de La Regulación Del Tabaco En México." *Salud Pública de México* 50 (SUPPL. 3): 323–33. <https://doi.org/10.1590/s0036-36342008000900009>.
- Melgoza, Alejandro, y Sergio Rincón. 2020. "Falsas Terrazas: Territorio de Humo y Covid-19." *Aristegui Noticias*. 2020. <https://aristeguinoticias.com/1009/mexico/falsas-terrazas-territorio-de-humo-y-covid-19/>.
- O'Neill Institute for National & Global Health Law, apoyado por Campaign for Tobacco Free Kids. 2012. "Estrategia de La Industria Del Tabaco En El Ámbito Judicial Latinoamericano. Guía Para Litigios." Washington, DC. https://oneill.law.georgetown.edu/media/2012_OneillTobaccoLitGuide_SPA.pdf.
- OCDE (2004), Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264104938-en>
- Ochoa, Erick Antonio, Juan Núñez Guadarrama, Patricia Sosa, Juan Zinser Sierra, Eduardo Del Castillo Valadez, Guadalupe Ponciano Rodríguez, Francisco J. López Espino y de Antuñano, et al. 2015. *10 Años Del CMCT: Retos y Perspectivas Del Control Del Tabaco En México. Informe de La Sociedad Civil Sobre Los Avances Del CMCT 2015*. México, D.F.: Fundación InterAmericana del Corazón México.

- Ochoa, Erick Antonio, Juan Núñez Guadarrama, Yahaira Ochoa Ortiz, Javier Zúñiga Ramiro, Belén Sáenz de Miera, Adriana Rocha Camarena, y Sandra Páramo. 2020. *XV Evaluación de La Sociedad Civil Sobre Políticas Públicas Para El Control Del Tabaco En México*. Ciudad de México, México: México Saludable, Códice, Polithink y Salud Justa Mx. https://saludjusta.mx/wp-content/uploads/XV-EVALUACIÓN-DE-LA-SOCIEDAD-CIVIL_VersiónElectrónica.pdf.
- OECD. 2021. "Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service." *OECD/LEGAL/0316*. <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>.
- Organización Mundial de la Salud (OMS). 2005. "Convenio Marco de La OMS Para El Control Del Tabaco." *Organización Mundial de la Salud*. Geneva. Convenio Marco de la OMS para el Control del Tabaco. Disponible en: <https://apps.who.int/iris/bitstream/handle/10665/42813/9243591010.pdf;jsessionid=31B10A67913B905560B944D650A48B0C?sequence=1>
- Organización Mundial de la Salud (OMS). 2007. "Directrices Sobre La Protección Contra La Exposición Al Humo de Tabaco." Ginebra. https://www.who.int/fctc/cop/art%208%20guidelines_spanish.pdf?ua=1
- Organización Mundial de la Salud. 2008. "Directrices Para La Aplicación Del Párrafo 3 Del Artículo 5 Del Convenio Marco de La OMS Para El Control Del Tabaco Sobre La Protección de Las Políticas de Salud Pública Relativas Al Control Del Tabaco Contra Los Intereses Comerciales y Otros Intereses Cr." 2008. https://www.who.int/fctc/guidelines/article_5_3_es.pdf?ua=1.
- Organización Mundial de la Salud (OMS) y Organización Panamericana de la Salud (OPS). 2012. "Interferencia de La Industria Tabacalera: Un Resumen Mundial." Geneva. https://www.paho.org/hq/index.php?option=com_docman&task=doc_view&Itemid=270&gid=24905&lang=es.
- Organización Panamericana de la Salud (OPS). 2013. "6. Protección de Las Políticas de Control Del Tabaco Contra Los Intereses Comerciales y Otros Intereses Creados de La Industria Tabacalera." En *Manual Para Desarrollar Legislación Para El Control Del Tabaco En La Región de Las Américas*, 131–54. Washington, DC, USA. https://www.paho.org/mex/index.php?option=com_docman&view=download&category_slug=technical-documentation&alias=877-667-6&Itemid=493.
- Organización Panamericana de la Salud (OPS). 2020. "Declaración de La OMS: Consumo de Tabaco y COVID-19." PAHO.Org. 2020. <https://www.paho.org/es/noticias/11-5-2020-declaracion-oms-consumo-tabaco-covid-19>.

- Redacción El Financiero. 2018. "En México, 43 Mil Personas Mueren Al Año a Causa Del Tabaco." El Financiero. 2021. <https://www.elfinanciero.com.mx/nacional/en-mexico-43-mil-personas-mueren-al-ano-a-causa-del-tabaco#:~:text=Por%20otro%20lado%2C%20estad%C3%ADsticas%20del,directamente%20al%20consumo%20del%20tabaco.>
- Redacción El Universal. 2020. "México, El Peor País Para Estar Durante La Pandemia de Covid-19: Bloomberg." El Universal. 2020. <https://www.eluniversal.com.mx/mundo/mexico-el-peor-pais-para-estar-durante-la-pandemia-de-covid-19-revela-estudio.>
- Redacción Milenio. 2020. "Presentan Amparos Contra Decreto Que Frena Importación de Cigarros Electrónicos." Milenio. 2020. <https://www.milenio.com/politica/presentan-amparos-decreto-frena-importacion-vapeadores.>
- Reynales-Shigematsu, Luz Myriam, James F Thrasher, Eduardo Lazcano, y Mauricio Hernández. 2012. *Política Pública Para El Control Del Tabaco En México. Instituto Nacional de Salud Pública*. Vol. 54.
- Rincón, Sergio. 2020. "Los Influencers de La Nicotina" Ethos Laboratorio de Políticas Públicas. 2020. <https://www.ethos.org.mx/ethos-publications/los-influencers-de-la-nicotina/>.
- Rincón, Sergio, y Alejandro Melgoza. 2020. "Tabacaleras Apoyan El #Quédateencasa... Pero Fumando" Ethos Laboratorio de Políticas Públicas. 2020. <https://www.ethos.org.mx/ethos-publications/tabacaleras-apoyan-el-quedateencasa-pero-fumando-2/>.
- Saldaña, Nantzin, y Alejandro Melgoza. 2020. "Así Ha Sido La 'Jugada Maestra' de Las Tabacaleras." Ethos Laboratorio de Políticas Públicas. 2020. <https://www.ethos.org.mx/ethos-publications/asi-ha-sido-la-jugada-maestra-de-las-tabacaleras/>.
- Sáenz de Miera Juárez, Belén, y Luz Myriam Reynales-Shigematsu. 2019. *El Consumo de Cigarros Ilícitos En México. Una Estimación Robusta y Transparente Para Apoyar La Toma de Decisiones*. Atlanta: American Cancer Society. <https://saludjusta.mx/wp-content/uploads/Consumo-de-cigarros-WEB-SEP-2019.pdf>.
- Saldaña, Nantzin, y Sergio Rincón. 2021. "Las Ocultas Conexiones Entre La Industria Del Tabaco y Los Voceros a Favor Del Vapeo En México." Ethos Laboratorio de Políticas Públicas. 2021. <https://www.ethos.org.mx/ethos-publications/las-ocultas-conexiones-entre-la-industria-del-tabaco-y-los-voceros-a-favor-del-vapeo-en-mexico/>.
- Secretaría de Salud, y Comisión Federal para la Protección contra Riesgos Sanitarios (COFEPRIS). 2017. "Alerta Sanitaria: COFEPRIS Alerta Que Está Prohibido Comerciar, Vender, Distribuir, Exhibir, Promocionar o Producir Cualquier Objeto Que No Sea Un Producto Del Tabaco, Que Contenga

Alguno de Los Elementos de La Marca o Cualquier Tipo de Diseño o Señal Aud.” Ciudad de México: COFEPRIS.

https://www.gob.mx/cms/uploads/attachment/file/215738/7_Alerta_Sanitaria_cigarrillo_electr_nico__21Abril2017.pdf.

Secretaría de Gobernación (SEGOB). 2020. “DECRETO Por El Que Se Modifica La Tarifa de La Ley de Los Impuestos Generales de Importación y de Exportación.” Diario Oficial de La Federación. 2021. https://www.dof.gob.mx/nota_detalle.php?codigo=5586899&fecha=19/02/2020.

Secretaría de Salud. 2020. “Por Decreto Presidencial, a Partir de Mañana Queda Prohibida La Importación de Cigarros Electrónicos.” Gobierno de México. 2020. <https://www.gob.mx/salud/prensa/por-decreto-presidencial-a-partir-de-manana-queda-prohibida-la-importacion-de-cigarros-electronicos#:~:text=Hoy%20fue%20publicado%20en%20el,mexicanos%2C%20atendiendo%20a%20los%20compromisos>

Secretaría de Salud y Comisión Federal para la Protección contra Riesgos Sanitarios (COFEPRIS). 2017. “Alerta Sanitaria: COFEPRIS alerta que está prohibido comerciar, vender, distribuir, exhibir, promocionar o producir cualquier objeto que no sea un producto del tabaco, que contenga alguno de los elementos de la marca o cualquier tipo de diseño o señal auditiva que lo identifique con productos del tabaco.” Ciudad de México: COFEPRIS. https://www.gob.mx/cms/uploads/attachment/file/215738/7_Alerta_Sanitaria_cigarrillo_electr_nico__21Abril2017.pdf

Suprema Corte de Justicia de la Nación (SCJN). 2020. “Amparo En Revisión 853/2019.” Ciudad de México. https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2020-11/853.pdf.

Tarragona, Renata. 2020. “Batallan a Favor de Vapeadores.” Reforma. 2020. https://www.reforma.com/aplicacioneslibre/preacceso/articulo/default.aspx?_rval=1&urlredirect=https://www.reforma.com/batallan-a-favor-de-vapeadores/ar2095135?referer=7d616165662f3a3a6262623b727a7a7279703b767a783a--.

Torres, Víctor. 2018. “La Lupa Sobre El Cabildeo Legislativo Para Mejorar Su Transparencia.” Arena Pública. 2018. <https://www.arenapublica.com/blog-ethos-laboratorio/la-lupa-sobre-el-cabildeo-legislativo-para-mejorar-su-transparencia>.

Unión Internacional Contra la Tuberculosis y Enfermedades Respiratorias (La Unión). 2020. “Cuando prohibir es lo mejor. Por qué los países de ingresos medios y bajos deben prohibir la venta de cigarrillos electrónicos y productos de tabaco calentados para combatir verdaderamente el consumo de tabaco.” *Documento de Posición Actualizado*, 2020.

https://theunion.org/sites/default/files/2020-08/TheUnion_TobaccoControl_E-CigPaper_Spanish_05.pdf.

Waters, Hugh, Hana Ross, Belén Sáenz de Miera, y Luz Myriam Reynales-Shigematsu. 2012. "Impuestos Al Tabaco En México." *La Economía Del Tabaco y Los Impuestos Al Tabaco En México*. París: Unión Internacional contra la Tuberculosis y Enfermedades Respiratorias. https://www.tobaccofreekids.org/assets/global/pdfs/es/Mexico_tax_summary_es.pdf.

World Health Organization. 2008. "MPOWER : Six Policies to Reverse the Tobacco Epidemic." *WHO Report on the Global Tobacco Epidemic*, 23–41.

Annex 1. Legal Framework Regulating Governmental Strategies for Tobacco Control in Mexico

Tactics	Legal Instrument
Lobbying	<ul style="list-style-type: none"> • Political Constitution of the United Mexican States (last amendment, DOF 24-12-2020) • General Law of Administrative Responsibilities (last amendment, DOF 04-13-2020) • Organic Law of the Federal Public Administration (last amendment, DOF 11-01-2021) • General Law for Tobacco Control (last amendment, DOF 15-06-2018) • General Health Law (last amendment, DOF 07-01-2021) • Organic Law of the General Congress of the United Mexican States (last amendment, DOF 08-05-2019) • Rules of Procedure of the Chamber of Deputies (last amendment, DOF 22-12-2020) • Rules of Procedure of the Senate of the Republic (last amendment, DOF 20-03-20) • Rules of Procedure for the Internal Government of the General Congress of the United Mexican States (last amendment, DOF 12/24/2010) • Regulation on Transparency, Access to Public Information and Protection of Personal Data of the Chamber of Deputies of the Congress of the Union. (DOF 08-05-2018) • Code of Ethics of the Chamber of Deputies of the Honorable Congress of the Union. (DOF 10-05-2016) • Code of Ethics of the Senate of the Republic. (26-09-2019) • Rules of Procedure of the Senate of the Republic (DOF 29-03-2019)
Voluntary agreements with governments	<ul style="list-style-type: none"> • Political Constitution of the United Mexican States (last amendment, DOF 24-12-2020) • Organic Law of the Federal Public Administration (last amendment, DOF 11-01-2021) • General Law of the National Anticorruption System (last amendment, (DOF 18 - 07-2016). • General Law of Transparency and Access to Public Information (last amendment, DOF 13-08-2020)

	<ul style="list-style-type: none"> • Code of Conduct of the Federal Commission for the Protection of Health Risks (August 19, 2019, was published on the site "Ethics and Integrity in COFEPRIS"). • Regulation of the General Health Law on Advertising.
Political financing	<ul style="list-style-type: none"> • General Law of Transparency and Access to Public Information (last amendment, DOF 13-08-2020) • Federal Law of Transparency and Access to Public Information (last amendment, DOF 27-01-2017)
Social Responsibility	<ul style="list-style-type: none"> • General Law for Tobacco Control (last amendment, DOF 15-06-2018)
Philanthropy	<ul style="list-style-type: none"> • General Law for Tobacco Control (last amendment, DOF 15-06-2018) • Federal Civil Code (last amendment, DOF 11-01- 2021)
Public Relations	<ul style="list-style-type: none"> • Regulation of the General Health Law on Advertising (last amendment, DOF 14-02-2014)
Create alliances and support groups	<ul style="list-style-type: none"> • General Law of Administrative Responsibilities (last amendment, DOF 04-13-2020) • General Health Law (last amendment, DOF 07-01-2021)
Research and University Funding	<ul style="list-style-type: none"> • General Law of Administrative Responsibilities (last amendment DOF 13-04-2020) • Regulation of the General Health Law on Health Research (last amendment, DOF 02-04-2014).
Smuggling	<ul style="list-style-type: none"> • General Law for Tobacco Control (last amendment DOF 15-06-2018)
	<ul style="list-style-type: none"> • Code of Ethics of the Chamber of Deputies (DOF, 10-05- 2016). • Code of Conduct of the Federal Commission for the Protection of Health Risks (August 19, 2019, was published on the site "Ethics and Integrity in COFEPRIS"). • Operational Guide for the Social Comptrollership 2020 (Published on October 16, 2020). • Code of Ethics for Public officials of the Federal Government (Last amendment published in DOF March 11, 2020). • Code of Ethics and Conduct of Administrative Public officials of the Chamber of Senators (Published in December 2017). • Special Tax Law on Products and Services • Federal Fiscal Code • Miscellaneous Tax Ruling for 2018

Litigation, Intimidation and Pre-emption	<ul style="list-style-type: none"> ● Political Constitution of the United Mexican States (last amendment, DOF 24-12-2020) ● Amparo Law, Regulatory of Articles 103 and 107 of the Political Constitution of the United Mexican States (last amendment, DOF 15-06-2018). ● Organic Law of the Judiciary of the Federation (last amendment, DOF 04-13-2020) ● Code of Ethics of the Federal Judiciary (Approved by the Plenary of the Supreme Court of Justice of the Nation and the Federal Judiciary Council, and by the Superior Chamber of the Electoral Tribunal of the Federal Judiciary in August 2004).
---	---