

# Tobacco control policy-making in Portugal: vested interests or public health?

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## INTRODUCTION

Tobacco use remains a threat to global health and socio-economic development<sup>1</sup>. In order to curb the tobacco epidemic, the World Health Organisation (WHO) developed the Framework Convention on Tobacco Control (FCTC), which aims to protect populations from tobacco consumption and exposure to tobacco smoke<sup>2</sup>. The FCTC binds its ratifying parties, such as the European Union (EU) and the EU Member States (MS), to implement evidence-based tobacco control (TC) policies<sup>2</sup>. Although FCTC policies are implementable at the EU and MS level, Europe still ranks first regarding smoking prevalence among WHO regions<sup>1</sup>

## PORTUGAL AND TOBACCO CONTROL

Portugal, on which this article focuses, has low TC activity<sup>3</sup>. Notably, limited TC awareness and poor capacity building amongst healthcare professionals (HCPs), governments, policy makers and civil society, as well as the interference of the tobacco industry, are major barriers to FCTC-implementation<sup>4</sup>. The knowledge of tobacco industry tactics, as well as health impact assessment, are crucial advocacy tools<sup>4,6</sup>. In Portugal, TC research on these aforementioned tools is limited, while HCPs' engagement and leadership in TC is poor, undermining potential capacity building and tobacco use denormalisation<sup>6-9</sup>.

An analysis of internal industry documents concerning Portugal and Spain reveals a detailed strategic plan to influence economic groups, the media, journalists /opinion leaders; governments, politicians/political parties; scientific societies; the public health community and health authorities<sup>10</sup>. Moreover, Portugal is among the countries of the WHO European region with industry sponsorship involving municipalities, culture, arts and music festivals, as well as social responsibility projects and charitable contributions<sup>11-13</sup>. Such activities are noted as effective ways to promote the social

acceptance of the tobacco industry and interfere in policy-making<sup>4,14</sup>.

Currently, the EU has a window of opportunity to advance TC: the implementation of the Tobacco Products Directive (TPD)<sup>15</sup>. The challenge now facing EU MS is its transposition into national legislation, effective enforcement and subsequent monitoring.

The weaknesses of loopholes in tobacco control policy-making are well documented<sup>4,16-17</sup>. Following FCTC ratification by Portugal in 2005, a new tobacco law was approved in 2007 and came into force in January 2008<sup>18</sup>. Cunha-Filho et al., using the case of the Portuguese 2007 tobacco legislation<sup>18</sup>, discussed the complex interaction among the social actors that intervene in public health decision-making, underlining this practice as being far from transparent<sup>19</sup>. Prevailing vested interests indicate a forceful interference in policy-making leading to legal loopholes which promote exemptions and undermine the implementation and enforcement of TC legislations<sup>4,16,19-22</sup>.

Regarding the Portuguese TC legislation<sup>18</sup>, several authors report underfunding, poor implementation and enforcement; a lack of public health campaigns; limited HCPs' leadership and capacity building; inconsistent smoke-free policy support and non-assertiveness from health authorities, regardless of the robust scientific and legal evidence in its support<sup>8,19-22</sup>. While breaches and ineffective enforcement of the legislation were announced in the media, limited media coverage of NGOs' initiatives and media barriers to TC awareness are common<sup>19-20,22</sup>. Important public persons, who should be role models, were involved in ban breaches and were not fined<sup>19-20,23-24</sup>. All these facts have undermined the effectiveness of the smoking ban<sup>19-20,22</sup>.

## PORTUGAL AND THE TPD

In March 2013, following the decision of the parliamentary committee for European Affairs<sup>25</sup>,

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the Portuguese National Parliament unanimously approved a resolution against the TPD, claiming that it violates the subsidiary principle because its goals are not better pursued by an EU action than by internal measures<sup>25</sup>. Additionally, most Portuguese members of the European Parliament did not fully support the TPD. Several parliamentarians had demonstrated against packaging and other TPD measures, demanding for the need to protect the Azores' tobacco industry and stating that "... *Portugal expressed its position by the members of the parliamentary committee for European affairs; they did not hide the need to protect somehow the tobacco industry ... This position is always conveyed by the national parliament whenever a new law is discussed in Europe .... The TPD interferes with national matters violating the principles of "subsidiarity" and "proportionality" .... and would have a negative economic impact which would not be curbed by the health gains ... some of the TPD measures are arbitrary and punitive; there is no indication that they reach the public health goals*<sup>26-27</sup>.

The Portuguese government and policy-makers' arguments to reject the TPD were the same advocated by several tobacco companies which participated in a joint hearing by the parliamentary committee for European Affairs, the health committee and the economy and public works committee<sup>25</sup>. The interference of the tobacco industry in the national parliament counteracting the opinion of the Health Committee, targeting key parliamentarians in political parties and non-health committees and disseminating negative messages to the press regarding the legal consistence and enforcement of the TPD is well documented<sup>25-27</sup>.

In June 2013, at the Council of the EU, the representative of the Portuguese government declared the following legislative deliberations: "*Portugal expresses reservations regarding the TPD ...*" "*...Portugal cannot accept the minimum dimensions of tobacco products packaging and labeling included in TPD...*", and "*... supports the introduction of health warnings occupying only 50% of the package ....*" "*banning menthol in tobacco products is excessive...*" "*...Portugal can only accept the traceability measures until the first trader...*"<sup>28</sup>. In March 2014, Portugal approved the TPD, when the majority of the European Council had already voted in favor. It should be emphasised that decision-makers did not take into account the position of non-governmental organisations (NGOs) which struggled to promote support for a strong directive<sup>29</sup>, nor the multiple surveys which have shown that most Portuguese/EU citizens support comprehensive smoke-free legislations and TPD measures<sup>30-31</sup>. During the TPD negotiations, the European Parliament witnessed the massive tobacco industry

lobby that successfully delayed or undermined the adoption of comprehensive measures on packaging, flavoring and e-cigarettes<sup>32-34</sup>. The tobacco industry attempts to influence marketing regulation are extensively documented<sup>4,16-19, 34-35</sup>. The key arguments employed are recurrent and relate to potential loss of jobs and other economical negative impacts; poor effectiveness and legal inconsistency of the measures; intellectual property rights; illicit trade risk; violation of trade agreements and subsidiary/proportionally principles<sup>4, 16-19, 34-35</sup>. There is unequivocal evidence that these statements are intentionally designed to avoid or delay the implementation of effective measures to curb tobacco use<sup>4, 17, 35</sup>. As such, the positions taken by the Portuguese Governments and policy-makers deviate from public health science; do not represent the expressed will of the majority of EU/Portuguese citizens; and denote a clear violation of FCTC article 5.3 which binds the parties to protect public health policies from "*commercial and other vested interests of the tobacco industry in accordance with national law*"<sup>2, 4</sup>. Moreover, those positions overestimate economic issues upon public health and welfare, jeopardizing the fundamental right to health protection enshrined in Article 64 of the Portuguese Constitution<sup>36</sup>, in Article 35 of the Charter of Fundamental Rights of the EU<sup>37</sup> and in the Treaty on the Functioning of the EU adopted in 2009<sup>38</sup>. Therefore, any positions counteracting these instruments seriously challenge Portugal's commitment to democracy, WHO and EU principles.

## CONCLUSIONS

In sum, the Portuguese case clearly shows that tobacco industry interference at the national level, as well as poor capacity building, can undermine the impact of FCTC and EU regulations. It should also be emphasised that international cooperation, according to FCTC goals, should be a key strategy supporting countries with poor capacity building in order to advance TC in Europe.

The debate prior to the passing of the TPD through the EU parliament raised awareness of tobacco industry lobbying among decision-makers and civil society. This urges the need for effective measures that promote transparency during interactions with the tobacco industry to protect future legislations from attempts to weaken essential public health policies. Currently, advocacy activities and tools concerning transparency are under development, following the 9th Conference of the Parties to the FCTC which focused on Article 5.3<sup>39</sup>.

The aim is to timely denounce, publicly expose and effectively prevent tobacco industry interference on health

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policy, both at the national and international level. This should be objectively monitored.

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