Conference of the Parties to the
WHO Framework Convention
on Tobacco Control

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Provisional agenda item 8.10

Code of Conduct of the Bureau to the Conference of the Parties and proposed measures to prevent and address potential conflicts of interest (perceived or existing) among the staff of the Convention Secretariat

Report by the Convention Secretariat

Purpose of the document

This report introduces the draft Code of Conduct and Declaration of Interest for members of the Bureau of the Conference of the Parties (COP) and the regional coordinators.

Action by the Conference of the Parties

The COP is invited to provide further guidance and consider adopting the annexed draft decision.

Contribute to the Sustainable Development Goals, if applicable: N/A.
Link to the workplan and budget item 1.2.7.
Additional financial implications if not included in the workplan and budget: None.
Author team(s): Legal, Trade and Protocol.
Related document(s): Code of Conduct and draft decision.
BACKGROUND

1. At its first meeting in April 2017, the Bureau of the Conference of the Parties (COP) was informed of and discussed developments with regard to a former member of the Bureau who, following their term of office on the Bureau, was contracted as a consultant by the tobacco industry. The Bureau was very concerned about this matter and requested the Convention Secretariat to prepare a draft Code of Conduct and Declaration of Interest (DOI) for Bureau members and regional coordinators for consideration at its second meeting.

2. Concerns were raised about the growing challenges Parties are facing in implementing Article 5.3 and its Guidelines and in counteracting tobacco industry strategies opposing the smooth implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC), which raised additional concerns about the need to be vigilant in ensuring that the tobacco industry does not gain access to strategic information from Bureau discussions.

3. As requested, the Convention Secretariat prepared an initial draft Code of Conduct and Declaration of Interest. The documents were prepared on the basis of instruments of a similar nature used by various United Nations agencies, and the WHO Compliance, Risk Management and Ethics Office was consulted in the preparation of the documents to ensure alignment with WHO practices, rules and regulations. The draft was presented to the Bureau of COP at its second meeting in November 2017 at which time the Bureau discussed the document and provided comments.

4. At its third meeting in April 2018, the Bureau discussed a revised version of the Code of Conduct and DOI.

5. It should be noted that the current members of the Bureau of COP and the regional coordinators, by consensus, voluntarily signed the annexed DOI form during the second meeting of the Bureau.

CODE OF CONDUCT

6. The Bureau of the COP decided to submit to the COP for its consideration the Code of Conduct and the DOI form (Annex 1) in order to ensure that the Code of Conduct guides the actions of future Bureau members and regional coordinators and that the DOI is signed by all future members. A draft decision for consideration by the COP is attached (Annex 2).

MEASURES TO PREVENT AND ADDRESS CONFLICT OF INTEREST IN THE CONVENTION SECRETARIAT

7. The staff of the Convention Secretariat is bound by the WHO Staff Regulations and Staff Rules. Following Staff Rule 110.7.1 and 110.7.2, a DOI may be required from the WHO Director-General to staff designated in certain employment categories.

8. In accordance with these Staff Rules, WHO staff at headquarters holding either a continuing, fixed-term or temporary appointment who fall into one of the categories listed below are required to file a DOI form annually: Deputy Director-General; Regional Directors; Assistant Directors-General; Directors; all other staff members at grade P5/P6/D1 and above (inclusive) –referring to the grade of the staff member, not the grade of the post that he or she occupies; and staff members at grade G5 and above who are responsible for the procurement of goods and services, or who otherwise perform procurement functions (other than of a purely routine administrative nature), including on an acting basis. In addition, all staff in the Office of Compliance, Risk Management and Ethics (CRE); all professional staff in the Office of the Legal Counsel (LEG); staff members that form part of a Strategic Advisory Group of Experts (SAGE); and staff members that sit on the Editorial Board Secretariat (EdB), the Research Ethics Review Committee (ERC) and the Guidelines Review Committee (GRC), have been identified as requiring to fill in the Staff DOI form.
9. WHO Staff Regulations and Staff Rules (1 July 2018) do not provide for dedicated measures when a perceived or existing conflict of interest is identified or reported by WHO staff, and it is up to the CRE to recommend on a case-by-case basis the approach to be followed.

10. The Bureau of COP has requested that the Convention Secretariat report to Eighth session of the Conference of the Parties (COP8) about existing WHO arrangements that allow the Convention Secretariat to take measures to prevent and address conflict of interest situations with regards to its staff. Specific measures to complement existing WHO procedures may be required for Convention Secretariat staff, since all WHO FCTC Parties, subsidiary bodies such as the COP Bureau and observers have to comply or work in the spirit of Article 5.3 of the WHO FCTC and its Guidelines protecting public health policies from tobacco industry interference. With the entering into force of the Protocol to Eliminate Illicit Trade in Tobacco Products the spectrum of potential conflicts of interest for the Convention Secretariat staff might also increase.

11. It should be noted that since 2017, in accordance with a policy implemented by the Head of the Secretariat, all staff, consultants and interns working in the Convention Secretariat, have been requested to sign the WHO DOI form at the start of their contract and on an annual basis.

12. So far, the Convention Secretariat has used the WHO DOI form for this staff declaration. However, the WHO DOI form does not necessarily take into account all treaty provisions, relevant guidelines and decisions adopted by the COP.

13. The COP might wish to consider requesting the Convention Secretariat to work in consultation with WHO to develop a DOI form or an appendix to the existing form that addresses the specific issues faced by the Convention Secretariat with regards to the possible interference of the tobacco industry and other industries with vested interests in the WHO FCTC, Guidelines and its Protocols.

14. The COP might also consider requesting the Convention Secretariat to work with WHO to agree on a number of dedicated measures to be taken in case of an actual or potential conflict of interest of a Convention Secretariat staff member with the tobacco industry and its front groups and other vested commercial interests as appropriate.
Annex 1. Code of Conduct for the Members of the Bureau and the Regional Coordinators of the Conference of the Parties to the WHO Framework Convention on Tobacco Control

I. Objective

1. The objective of this Code of Conduct (Code) is to ensure the effective execution of the Bureau’s functions and duties as set out in the Rules of Procedure (Rules 6, 9, 19 and 21–24quater) of the Conference of the Parties (COP).

2. The exercise of these functions should be in line with the objectives and provisions of the WHO Framework Convention on Tobacco Control (hereinafter WHO FCTC), with particular regard to Article 5.3 and the Guidelines for its implementation.

3. To this end, this Code establishes a set of operational principles and ethical standards to guide the functions and duties of the Members of the Bureau and the Regional Coordinators of the COP to the WHO FCTC who participate in theintersessional meetings of the Bureau, in accordance with Rule 24bis of the Rules of Procedure of the COP (hereinafter referred to as “Members”).

4. For the purposes of this text, the reference to “the functions and duties” of the Members, shall be considered to exclusively refer to the functions and duties the Members exercise as Members of the Bureau and as Regional Coordinators, respectively.

II. Guiding principles

5. To achieve the objective of this Code in performing their functions and duties, the Members shall be guided by the purpose, objectives and provisions of the WHO FCTC:

a) Members shall be aware of all efforts of the tobacco industry to oppose and challenge implementation of the WHO FCTC at the national, regional and global levels;

b) Members shall, in accordance with Article 5.3 of the WHO FCTC and its Guidelines, act to protect the setting and implementation of health policies from commercial and other vested interests;

c) Members shall perform their functions and duties in accordance with the objectives of the WHO FCTC as set out in Article 3, namely to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke, while ensuring integrity and loyalty; and

d) Members shall not use their term of office or information gained from their functions as Members of the Bureau and Regional Coordinators for private gain, financial or otherwise, or for the private gain of any third party, including family, friends and those they favour.

III. Duty of the Members

6. In carrying out their functions and duties it shall be the duty of the Members:

a) to protect the implementation of the WHO FCTC against the influence of and interference by commercial and other vested interests of the tobacco industry;

b) to interact with the tobacco industry exclusively when it is strictly necessary for the effective carrying out of their functions;

c) to ensure that there is transparency in their relations and interactions, as required, with the tobacco industry; and

d) to promote, within their respective countries, strong measures to ensure full implementation of Article 5.3 of the Convention and its Guidelines.
IV. Conflict of interest

7. Conflicts of interest include, but are not limited to personal, financial or other interests such as:
   a) having ownership or investment in the tobacco industry;
   b) being a member of the Board of Directors, an officer, employee or consultant of a tobacco corporation, or a partner in a partnership in the tobacco industry; and
   c) receiving a financial contribution from the tobacco industry as set out in Section VII.

8. The Members shall prevent any actual, potential or apparent conflict of interest from arising, which may arise where a Member:
   a) deals with a matter conflicting with the spirit, objectives and provisions of the WHO FCTC, and where he or she is in a position to influence the matter, directly or indirectly;
   b) holds an official position or offers services to another person or private body that is in conflict with the functions of the Bureau as set out in Rules 6, 9, 19 and 21–24 qua tertium and any other relevant rules of the Rules of Procedure; or
   c) accepts any favour, gift or remuneration to influence his or her actions as Member of the Bureau.

V. Declaration of Interest

9. Each Member shall complete and sign the Declaration of Interest (DOI) form upon accepting their appointment and shall commit to adhering to the present Code, informing the Bureau of any links with the tobacco industry that may give rise to an actual or perceived conflict of interest. The Member shall keep the Bureau updated of any changes to their DOI.

VI. Confidentiality

10. Members are responsible for exercising discretion in all matters of official business and must refrain from divulging confidential information. All information and documentation Members have access to by virtue of their tenure are the intellectual property of World Health Organization (WHO) acting in representation of the WHO FCTC Secretariat, and are protected by the immunities and the inviolability of archives granted to WHO under the Convention on the Privileges and Immunities of the Specialized Agencies, relevant host agreements and principles of international law.

11. Confidentiality obligations will surpass the Members appointment with the Bureau and no disclosures may be made, without express and written authorization from the Head of the Secretariat of the WHO FCTC.

VII. Relations with the tobacco industry

12. Members shall not participate in, support, endorse or accept:
   a) a partnership of any kind with the tobacco industry, including initiatives or activities of the tobacco industry described, characterized, implied or likely to be perceived as socially responsible;
   b) any non-binding or non-enforceable agreement, memorandum of understanding, voluntary arrangement or tobacco industry code of conduct in the place of legally enforceable tobacco control measures; and
   c) proposals, drafts or offers of assistance with the development or implementation of any tobacco control policies.
13. Members shall avoid the creation of any perception of partnership or cooperation with the tobacco industry, and shall publicly correct any perception of partnership that may have been created as soon as they become aware of it.

14. Members shall not demand or receive any contribution from the tobacco industry or any partner in a partnership with the tobacco industry for themselves, their families, relatives, friends, or any other persons or organizations. Contributions shall include, but are not limited to, payments, gifts and services, monetary or in kind, research funding, financial aid, policy drafts and legal advice.

VIII. Post-mandate and protection of confidential information

15. Members shall not engage in any relationship with the tobacco industry or with any partner in a partnership with the tobacco industry, including any relationships set out in this Code, whether gainful or not, within 24 months following the end of his or her tenure with the Bureau.

16. Members are advised not to engage in any relationship with the tobacco industry or with any partner in a partnership with the tobacco industry beyond 24 months in the spirit of the treaty and of the relevant functions they exerted in the past as Members.

IX. Breach of Code

17. Any Member who is found to be in breach of this Code:
   a) shall resign from the Bureau or as Regional Coordinator with immediate effect, with provision of Section VIII, Clause 15 applicable; and
   b) may be subject to any penalties as may be provided by the national legislation of the Party that he or she represents.
Declaration of Interest Form for Members of the Bureau and Regional Coordinators of the Conference of the Parties to the WHO FCTC

I hereby declare that I have read and understood the Code of Conduct, and commit to adhere to the fundamental principles, operational principles and ethical standards set out therein.

I confirm that I have

☐ Never
☐ Not within the past ___ years

had any professional relationship with, or received any form of funding or support from, an entity directly involved in the manufacture, wholesale distribution or importation of tobacco products or representing the interests of any such entity. (It should be noted that the notion of “professional relationship” as used in this paragraph should be understood as not including a public officeholder’s interactions with the tobacco industry required for setting and implementing public health policies with respect to tobacco control.)

If you are not a position to make this confirmation, please provide an explanation below:

☐ I also acknowledge that I shall make another Declaration to state any change in any matter contained in this Declaration within one month after the change occurs and shall provide further information on the particulars contained in this Declaration if so required by the Bureau elected by the Conference of the Parties to the WHO Framework Convention on Tobacco Control.

Signed by: (full name and title)

Date:

Signature:
DECLARATION OF INTERESTS FOR DESIGNATED WHO STAFF

In compliance with Staff Rule 110.7 and WHO eManual III 1.2, designated staff are required to complete this form in respect of themselves, their spouses and any dependent children.

What type of interest needs to be declared?
Designated staff must report any interest in (including association with) any entity with which they may be required, directly or indirectly, to have official dealings on behalf of the Organization, or which has a commercial interest in the work of WHO, or a common area of activity with WHO. In addition, as a result of WHO’s strong stance against tobacco use, and the need to ensure impartiality in relation to commercial pharmaceutical entities, it is considered relevant for designated staff to disclose to the Organization whether they, their spouses or dependent children have any relationship with any part of what may be called “the tobacco industry” and/or “the pharmaceutical industry”.

Different types of interests can be envisaged. The following non-exhaustive list is provided for guidance:
1. a proprietary interest in a substance, technology or process (e.g., ownership of a patent), relevant to WHO’s work;
2. a financial interest, e.g., shares or bonds, in a commercial entity with which a staff member may be required, directly or indirectly, to have official dealings on behalf of the Organization, or which has a commercial interest in the work of WHO, or a common area of activity with WHO (except share holdings through general mutual funds or similar arrangements where the staff member has no control over the selection of shares);
3. an employment, consultancy, directorship, or other position or association, whether or not paid, in any entity with which a staff member may be required, directly or indirectly, to have official dealings on behalf of the Organization, or which has a commercial interest in the work of WHO, or a common area of activity with WHO, or an ongoing negotiation concerning prospective employment or other association with such entity;
4. performance of any paid work or research commissioned by an entity with which a staff member may be required, directly or indirectly, to have official dealings on behalf of the Organization, or which has a commercial interest in the work of WHO, or a common area of activity with WHO, and
5. a family interest in which, for example, a spouse or dependent child is employed by an entity from which goods and/or services are purchased on behalf of WHO.

How to complete this Declaration: Please answer questions 1, 2 and 3 of the form and submit under confidential cover, for headquarters staff, to the Office of Compliance, Risk Management and Ethics and for staff members in regional and country offices to the Director, Administration and Finance (DAF).

Assessment and outcome: The Director-General decides on the compatibility of any interest declared by a staff member with Article I of the Staff Regulations, and on any action to be taken. Information disclosed on this Declaration by staff members may be made available to their supervisor when the Director-General considers this to be in the interests of the Organization. This information may be made available to persons outside of WHO only when the objectivity of the work of WHO has been questioned such that the Director-General considers disclosure to be in the best interests of the Organization, and then only after the staff member concerned has had an opportunity to comment.

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1 Nothing in this Declaration should be interpreted as suggesting that serving staff are entitled to be employed by, or have other types of association with, outside entities, when such employment or association might otherwise be prohibited under the Staff Regulations and Rules.

2 For the purposes of this Declaration, “spouse” includes a legally recognized domestic partner (see Information Note 22/2006). “Dependent children” is defined in Staff Rule 310.5.2. As a rule of thumb, if a dependency allowance is receivable for children, they should be included in the Declaration.

3 When identifying entities with which a staff member “may be required” to have dealings, any entities in which it is reasonably possible during the course of the staff member’s official duties that he/she might be called upon to have contact, even though no such contact is immediately foreseen, should be included. Of course, if what was reported as a mere possibility of future contact actually materializes as an impending contact, the staff member should immediately report this fact to the Director-General in advance of undertaking any actual contact.

4 This exception would not apply to funds or similar arrangements which focus on industries which have commercial interests in the work of WHO or common areas of activity with WHO.
Please respond to the following three requests for information:

Declaration:

1) Have you, your spouse or dependent child(ren)\(^5\) any interest in (including association with) any entity with which you may be required, directly or indirectly, to have official dealings on behalf of the Organization, or which has a commercial interest in the work of WHO, or common area of activity with WHO, including any interest in a pharmaceutical company/product?

   Yes: [ ]  No: [ ]  If yes, please give details in the box below.

2) Do you, your spouse or dependent child(ren)\(^6\) have an employment or other professional relationship with any entity: (i) directly involved in the production, manufacture, distribution or sale of tobacco or any tobacco products or pharmaceutical products; or (ii) directly representing the interests of such an entity?

   Yes: [ ]  No: [ ]  If yes, please give details in the box below.

(If additional space is needed, please continue on a separate page.)

<table>
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<tr>
<th>Type of interest, e.g. patent, shares (including number and current market value); employment, association, payment (including details on any compound, work, etc.);</th>
<th>Name of entity</th>
<th>Indicate whether held by you, or your spouse, or your dependent child(ren)?</th>
</tr>
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3) Is there anything else that could affect your objectivity or independence in the performance of your duties for WHO, or the perception by others of your objectivity and independence?

   Yes: [ ]  No: [ ]  If yes, please give details below or on a separate page.

I hereby declare that the disclosed information is correct and complete. I recognize that the completion of this Declaration is without prejudice to my obligations under the WHO Staff Regulations and Rules, in particular Article 1 of the Regulations setting forth the duties, obligations and privileges of staff members. I undertake to update this Declaration in the event of any material change in these circumstances\(^7\) and, in any event, at least annually.

Signature ___________________________ Date ___________________________

Name (please print) ___________________________ Title (please print) ___________________________

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\(^5\) For the purposes of this Declaration, “spouse” includes a legally recognized domestic partner (see Information Note 22/2006). “Dependent children” is defined in Staff Rule 310.5.2. As a rule of thumb, if a dependency allowance is received for children, they should be included in the Declaration.

\(^6\) See footnote 5 above.

\(^7\) The concept of “material change” allows for some flexibility of interpretation, thus in the event of any doubt the staff member should consult the Office of Compliance, Risk Management and Ethics. However, as an example, any change in the companies in which stocks are held should be reported, but it is safe to assume that any change of less than 20% in the number of a stock of a company already held would not be a material change. An increase in the value of stock, without a change in the number, would not by itself be a material change.
Annex 2. Draft decision on the Code of Conduct and Declaration of Interest for the Members of the Bureau and the Regional Coordinators of the Conference of the Parties to the WHO Framework Convention on Tobacco Control and on proposed measures preventing and addressing possible conflicts of interest at the Convention Secretariat

The Conference of the Parties (COP),

Taking into account the 18th preambular paragraph and Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC),

Taking also into account Rules 6, 9, 19, 21–24, 24 bis, 24 ter and 24 quarter of the Rules of Procedure of the Conference of the Parties to the WHO FCTC,

Recognizing the central role Members of the Bureau of COP and Regional Coordinators play during the intersessional periods,

Acknowledging that Members of the Bureau of the COP and Regional Coordinators, by virtue of their role in providing guidance to the Convention Secretariat on the implementation of the workplans and budgets adopted by the COP, have access to privileged information in relation to the work of the Convention Secretariat and the implementation of the WHO FCTC;

Recognizing the central role of the staff members of the Convention Secretariat in supporting the implementation of the WHO FCTC and their access to privileged information needed for this task;

Noting that current Members of the Bureau of the COP and Regional Coordinators have already signed, on a voluntary basis, the Declaration of Interest form,

Having considered the report FCTC/COP/xx submitted by the Convention Secretariat;

1. **URGES** Parties:
   a) to accelerate and strengthen implementation of Article 5.3 of the WHO FCTC and its guidelines;
   b) to remain vigilant of tobacco industry efforts to undermine implementation of the WHO FCTC;
   c) to nominate the candidates to be elected as Members of the Bureau of COP and Regional Coordinators, in line with Article 5.3 and recommendations 4.9 and 8.3 of its Guidelines;

2. **DECIDES**:
   a) to adopt the Code of Conduct for the Members of the Bureau and Regional Coordinators of the COP and the Declaration of Interest form therein contained, as proposed in document FCTC/COP/23;
   b) that upon their election, Members of the Bureau and Regional Coordinators of the COP shall abide by the provisions of the above-mentioned Code of Conduct during all of their tenure;
   c) that upon their election, Members of the Bureau and Regional Coordinators of the COP shall submit, on a mandatory basis, the Declaration of Interest form contained in document FCTC/COP/8/23;

3. **REQUESTS** the Convention Secretariat:
   a) to keep the Parties to the Convention informed on the status of implementation of this decision by members of the Bureau and regional coordinators;
b) to work and consult with the World Health Organization (WHO) on the development of a Declaration of Interest form or appendix to the existing form applicable to all Convention Secretariat staff and personnel and agree on measures to be taken in respect of potential or actual conflicts of interest with the tobacco industry and its front groups and other vested commercial interests as appropriate;

c) to keep records of the submitted Declaration of Interest forms and report to the Bureau any potential conflict of interest emerging from the Declaration of Interest forms;

d) to report to the ninth session of COP, and second session of MOP, on the progress of the implementation of this Decision.

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