

Input for survey on corporate capture



Corporate Europe Observatory (CEO) welcomes the initiative to develop an information note on “preventing ‘corporate capture’” for the UN Working Group on Business and Human Rights. Our input mainly focuses on the measures that States can take to protect democratic decision-making from corporate capture. We will highlight a number pre-existing publications that can help inform the development of the information note.

Corporate interference in political decision-making often strongly undermines the likelihood of adequate legislation being introduced to safeguard human rights. It also undermines the effective enforcement of legislation aimed to protect human rights. This has been extensively documented, for instance when it comes to the ways the tobacco industry and the fossil fuel industry have weakened government decision-making in the public interest and how this has harmed human rights (the right to life, the right to health, etc.). For analysis of the harmful impacts of corporate capture on a wider range of issues, see the report [“Corporate capture in Europe - When big business dominates policy-making and threatens our rights”](#) (published in 2018 by the Alliance for Lobby Transparency and Ethics Regulation in Europe, of which CEO is an active member).

The risk of corporate capture can be reduced when government and public institutions make this a central and explicit objective. This objective can then be achieved via, as the August 2021 concept note for the Virtual Expert Consultation stated, measures to “prevent (or reduce the risk of) undue corporate influence in legislative processes (e.g., lobbying restrictions, transparency, and conflict of interest measures).” For specific examples of such measures and their merits, we refer to pages 111-115 in the report [“Corporate capture in Europe - When big business dominates policy-making and threatens our rights”](#).

We would like to highlight that the Framework Convention on Tobacco Control (FCTC) provides an established international legal precedent for safeguards against corporate capture within the UN system itself. The [tobacco industry has a multi-decade record](#) of manipulating science and political decision-making in order to avoid restrictions on the sales of their deadly products. In response to this, the [FCTC](#) obliges governments to protect public health decision-making from tobacco industry influence. [Article 5.3](#) in the FCTC ([and its accompanying guidelines](#)) instruct governments to avoid tobacco industry influence by reducing contacts to a minimum (limited to only those contacts that are strictly necessary to regulate the sector and its products) as well as securing full transparency of any such contacts. The accompanying guidelines for implementation provide policymakers additional guidance with regard to the specific measures to ensure that policy-making is protected from the interests of transnational corporations. These guidelines include securing transparency, developing codes of conduct for government officials, protecting against conflicts of interest, raising awareness about industry tactics to undermine health, and regulating corporate social responsibility (CSR) activities, among other measures. Both the WHO itself and tobacco control organisations are actively monitoring the implementation of Article 5.3 of the FCTC. This includes governments submitting reports to the WHO about their national-level implementation of Article 5.3 every second year and the Global Tobacco Interference Index (with critical assessments per country) that is published annually by tobacco control NGOs. The success of the FCTC and its strength as a Treaty are a significant testament to the powerful effect that good governance measures such as Article 5.3 can have on regulatory processes and outcomes that threaten to diminish the profits of transnational corporations.

We would also like to highlight the WHO’s International Agency for Research on Cancer (IARC), which is an effective example of how to balance the need for expertise with avoiding potential conflicts of interest (such as financial links to commercial interests) and undue influence. The IARC banned all experts with potential conflicts of interest from its Expert Groups, and instead created a new category of ‘invited specialists’, members who could share their wisdom but were excluded

from drafting text or voting. This ensured political decisions remained in the control of those representing the public interest, while still benefiting from any external knowledge.

Both Article 5.3 of the FCTC and IARC's approach to prevent biased industry input in the decision-making of its Expert Groups provide successful models for preventing undue corporate influence and corporate capture. We believe these models can and should be replicated for other policy issues and in other decision-making fora.

The concept note for the Virtual Expert Consultation mentioned "the relationship between corporate political influence and the climate crisis". For decades the fossil fuel industry has been successfully delaying, weakening and sabotaging greater climate ambition, and as long as it continues to maintain its access to decision-makers and the policy-making process, then it will use that access to obstruct real climate action. [Article 5.3](#) in the FCTC - instructing governments to avoid tobacco industry influence - was introduced because there is a fundamental and irreconcilable conflict of interest between the tobacco industry and public health. Similarly, the public interest in urgent climate action in line with keeping global heating to below 1.5oC is not compatible with the private interests of fossil fuel companies. This is why there is a clear need for strong conflict of interest policy at the UNFCCC, creating a 'firewall' to protect UN climate decision-making from fossil fuel industry influence. In 2016, countries representing almost 70% of the world's population supported the introduction of a [conflict of interest policy at the UNFCCC](#), but regrettably it has so far been blocked by the European Union and other governments. This is despite the European Parliament calling on the EU to [support such a process](#).

An [open letter from civil society groups](#) in the Fossil Free Politics coalition in the run-up to the COP26 climate summit pointed out that since COP21, fossil fuel companies and their lobby groups spent more than €170m on lobbying the EU, securing hundreds of meetings with top level EU Commission staff. The open letter states that "this is part of a broader corporate capture of climate decision-making by the fossil fuel industry that ensures that ambition, and the policies to realise those goals, remains limited. As well as supporting a firewall at the UNFCCC, the EU and UK should ensure climate decision-making is protected from fossil fuel interests at the regional, national and local level. In addition to closing the revolving door, this should involve ending private lobby meetings with the fossil fuel industry, excluding the industry from climate or trade delegations, and refusing to attend fossil fuel-sponsored events." During COP26 it became clear that the fossil fuel industry, with over 500 delegates, had [the largest delegation at the climate summit](#). This, combined with the unwillingness of governments to commit to phasing out fossil fuels, has created new, strong momentum for calls to restrict the access of fossil fuel lobbyists to UN climate talks.

Finally, regarding the question "what less overt or lesser-known forms of undue influence or corporate capture the Working Group should consider," we would like to highlight a recent paper analysing the corporate use of science to undermine government regulation, [published in the Journal FUTURES](#). This paper (Science, the endless frontier of regulatory capture) explores five recent cases of regulatory capture and zooms in on a form of corporate penetration which is based on a strategic use of the image and legitimacy of science. Corporate lobbyists present themselves as upholders of science and of evidence-based policy, intervene directly in the methodological and ethical aspects of science for policy-making, thus imposing their own agenda on the societal functions of science.