

**FCTC**WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL**CONFERENCE OF THE PARTIES TO THE  
WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL****FCTC/COP10(23)  
10 February 2024****Tenth session (resumed)  
Panama City, Panama, 5–10 February 2024**

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## DECISION

**FCTC/COP10(23) Specific guidelines to address cross-border tobacco advertising, promotion and sponsorship and the depiction of tobacco in entertainment media for implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO FCTC**

The Conference of the Parties (COP),

Recalling Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO Framework Convention on Tobacco Control (WHO FCTC);

Recalling also the *Guidelines for implementation of Article 13* of the WHO FCTC adopted by the Third session of the COP in decision FCTC/COP3(12);

Recalling further Article 12 of the WHO FCTC (Education, communication, training and public awareness) and its Guidelines for implementation as adopted by the Fourth session of the COP (FCTC/COP4(7));

Reaffirming the eleventh preambular paragraph of the WHO FCTC, which emphasizes serious concerns about the impact of all forms of advertising, promotion and sponsorship aimed at encouraging the use of tobacco products;

Reaffirming also decision FCTC/COP8(18) on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry in line with Article 5.3 of the WHO FCTC;

Recognizing that tobacco companies and those working to further their interests increasingly use digital communication platforms for tobacco advertising, promotion and sponsorship and to interfere with the setting and implementation of tobacco control measures;

Reaffirming decision FCTC/COP8(22) reminding Parties to apply measures regarding advertising, promotion and sponsorship of novel and emerging tobacco products in accordance with Article 13 of the WHO FCTC;

Reaffirming also decision FCTC/COP7(9) inviting Parties to consider applying regulatory measures such as those referred to in document FCTC/COP/7/11 to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of electronic nicotine delivery systems (ENDS) and electronic non-nicotine delivery systems (ENNDS), as appropriate to their national laws and public health objectives;

Recalling decision FCTC/COP7(5) on Tobacco advertising, promotion and sponsorship: depiction of tobacco in entertainment media, through which the COP to the WHO FCTC requested the Convention Secretariat to establish an Expert Group that provided a report in this regard;

Having considered the recommendations made by the Expert Group on tobacco advertising, promotion and sponsorship: depiction of tobacco in entertainment media in their report referenced in document FCTC/COP/8/7;

Recognizing that the landscape of entertainment media has changed substantially since adoption of the *Guidelines for implementation of Article 13*;

Recognizing also that the access to entertainment media is increasingly digital, and available via the internet, with creation, production, provision and consumption increasingly crossing national borders;

Recognizing further that changes to the media landscape have been accompanied by changes to marketing strategies, with consumers, including young people, interacting in new ways with companies, such that their exposure to, and power of, marketing can be increased;

Acknowledging that in this context, tobacco advertising, promotion and sponsorship now includes a focus on digital marketing channels such as social media which increases adolescent and young people's exposure to tobacco marketing;

Acknowledging also that entertainment media content such as movies, music videos, online videos, television programmes, streaming services, social media posts, video games and mobile phone applications have all been shown to depict and promote tobacco use and tobacco products in ways that may encourage youth smoking uptake;

Recognizing that in this context, commercial communications, including commercial depictions of tobacco products by consumers and other individuals, may be misleadingly presented as legitimate expression as provided for in the *Guidelines for implementation of Article 13* and that making this distinction poses a challenge for the enforcement of tobacco advertising, promotion and sponsorship bans and/or restrictions;

Recognizing also that in some instances, conventional approaches to banning or restricting tobacco advertising, promotion and sponsorship should be strengthened through new domestic laws or stronger implementation of existing laws;

Recognizing further that enforcement of comprehensive cross-border bans or restrictions on tobacco advertising, promotion and sponsorship can best be achieved through international cooperation;

Recalling decision FCTC/COP8(17) on Tobacco advertising, promotion and sponsorship: depiction of tobacco in entertainment media, in which the COP decided to establish an intersessional Working Group to develop specific guidelines, without examining the existing *Guidelines for implementation of Article 13*;

Recalling also that in decision FCTC/COP8(17) the COP determined that the existing *Guidelines for implementation of Article 13* remain fully relevant and should not be examined,

1. DECIDES to adopt the Specific guidelines to address cross-border tobacco advertising, promotion and sponsorship and the depiction of tobacco in entertainment media for implementation of Article 13 of the WHO FCTC contained in the Annex of the present decision;
2. CALLS ON the Parties:
  - (a) to fully implement Article 13 of the Convention, in line with Article 13.2 and 13.3;
  - (b) to ensure that domestic implementation and enforcement of Article 13 keeps pace with changes to the media landscape and marketing methods by monitoring and evaluating the effectiveness of implementation and enforcement;
  - (c) to exchange information in order to assist other Parties with cross-border enforcement, where appropriate, including in the context of digital channels, including by collaborating:
    - (i) to increase the breadth and scope of monitoring of cross-border tobacco advertising, promotion and sponsorship to capture country/region-specific data in accordance with constitutional principles and national laws;
    - (ii) to cooperate in the development of technologies and other means necessary to facilitate the elimination or restriction of cross-border advertising, promotion and sponsorship;
    - (iii) to develop mechanisms for regular notification between the Parties to facilitate the elimination of cross-border tobacco advertising, promotion and sponsorship, particularly where Parties are neighbouring countries, share a common language or otherwise share media content;
    - (iv) to share details of the competent independent authority to monitor and enforce tobacco advertising, promotion and sponsorship laws and entrust it with the necessary powers and resources, as recommended in the existing *Guidelines for implementation of Article 13*; and
    - (v) to monitor advances and changes in communications technology, entertainment media consumption and marketing strategies relating to all tobacco products (including novel and emerging tobacco products), to ENDS/ENNDS and to nicotine products other than approved medicines.
3. FURTHER DECIDES that the Specific guidelines apply in addition to, and do not replace or amend, the *Guidelines for implementation of Article 13*;
4. REQUESTS the Convention Secretariat to continue its efforts to provide technical assistance and materials to support Parties in implementing Article 13.

ANNEX

**SPECIFIC GUIDELINES TO ADDRESS CROSS-BORDER TOBACCO  
ADVERTISING, PROMOTION AND SPONSORSHIP  
AND THE DEPICTION OF TOBACCO IN ENTERTAINMENT MEDIA FOR  
IMPLEMENTATION OF ARTICLE 13 OF THE WHO FCTC\***

TITLE

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\* In accordance with decision FCTC/COP8(17), the *Guidelines for implementation of Article 13* of the WHO FCTC remain fully relevant.

**SPECIFIC GUIDELINES TO ADDRESS CROSS-BORDER TOBACCO  
ADVERTISING, PROMOTION AND SPONSORSHIP AND  
THE DEPICTION OF TOBACCO IN ENTERTAINMENT MEDIA FOR  
IMPLEMENTATION OF ARTICLE 13 OF THE WHO FCTC\***

## INTRODUCTION

1. Article 13 of the WHO Framework Convention on Tobacco Control (WHO FCTC) obliges Parties to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship (TAPS) (Article 13.2) or restrictions where a Party is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles (Article 13.3).

2. Key terms in Article 13 are defined in Article 1 of the Convention. Article 1(c) defines “tobacco advertising and promotion” as “any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”. Article 1(g) defines “tobacco sponsorship” as “any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly”.

3. In 2008, the Third session of the Conference of the Parties adopted the *Guidelines for implementation of Article 13* to assist Parties in meeting their obligations under Article 13. The *Guidelines for implementation of Article 13* identify forms of TAPS that should be covered by comprehensive bans.

4. The *Guidelines for implementation of Article 13* address cross-border TAPS. The Guidelines recommend that internet sales of tobacco be banned as they inherently involve tobacco advertising and promotion (at paragraph 21). More broadly, the Guidelines recommend (at paragraph 52):

“Parties with a comprehensive ban or restrictions on tobacco advertising, promotion and sponsorship should ensure that any cross-border tobacco advertising, promotion and sponsorship originating from their territory is banned or restricted in the same manner as domestic tobacco advertising, promotion and sponsorship. Parties should make use of their sovereign right to take effective actions to limit or prevent any cross-border tobacco advertising, promotion and sponsorship entering their territory, whether from Parties that have restrictions or from non-Parties, recognizing that in some cases effective actions might have to be addressed in a protocol.”

5. With respect to depictions of tobacco in entertainment media, the *Guidelines for implementation of Article 13* recommend (at paragraph 31):

“Parties should take particular measures concerning the depiction of tobacco in entertainment media products, including requiring certification that no benefits have been received for any tobacco depictions, prohibiting the use of identifiable tobacco brands or imagery, requiring

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\* In accordance with decision FCTC/COP8(17), the *Guidelines for implementation of Article 13* of the WHO FCTC remain fully relevant.

anti-tobacco advertisements and implementing a ratings or classification system that takes tobacco depictions into account.”

6. Although Parties to the WHO FCTC have already banned many forms of TAPS – including television, radio, print and outdoor media – TAPS have shifted to alternative channels and methods. These channels and methods may not be as well regulated, for example due to tobacco control laws being insufficiently broadly drafted or interpreted, to cover digital media communication platforms and associated methods, or due to perceived or actual difficulties with monitoring or enforcing compliance in digital media communication platforms.

7. Since the *Guidelines for implementation of Article 13* were adopted, cross-border digital entertainment media has expanded, including through wider internet access, social media, smartphone use, and access to digital video, films and games. These forms of digital media are being used for TAPS. TAPS in digital media have the potential for vast exposure, especially among young people. The power of TAPS is also enhanced through digital media communication platforms because users can create, engage and interact with content, and publicly endorse it.

8. Further, since the *Guidelines for implementation of Article 13* were adopted, novel and emerging tobacco product markets have expanded. Recognizing that some Parties have chosen to prohibit such products, they pose particular challenges to the application of TAPS bans and restrictions. In many jurisdictions, the advertising and promotion of the devices designed mainly (and in most cases, exclusively) for the purpose of enabling the consumption of such tobacco products is widespread and often present on cross-border digital media communication platforms. Any advertising or promotion of a device whose function is to enable the consumption of a tobacco product would have the aim, or the direct or indirect effect, of advertising or promoting that tobacco product.

## PURPOSE

### *Purpose of the Specific guidelines*

9. The purpose of these Specific guidelines is to supplement the *Guidelines for implementation of Article 13* and further support Parties in meeting their obligations under Article 13 of the WHO FCTC. They draw on the best available evidence and the experience of Parties that have successfully implemented effective measures to address TAPS. They give Parties guidance for introducing and enforcing a comprehensive ban on TAPS or, for those Parties that are not in a position to undertake a comprehensive ban owing to their constitutions or constitutional principles, for applying restrictions on TAPS that are as comprehensive as possible. To this end, the Specific guidelines provide guidance on how to effectively and comprehensively ban or restrict TAPS in light of the increasing use of cross-border channels and digital media.

10. Nothing in these Specific guidelines detracts from or modifies the *Guidelines for implementation of Article 13*. These Specific guidelines apply in addition to the *Guidelines for implementation of Article 13*, and do not in any way replace or serve as substitute for them.

## STATEMENT OF PRINCIPLES AND RELEVANT APPLICATION

### *Principles*

11. The effectiveness of efforts to eliminate cross-border TAPS depends first and foremost on the comprehensiveness of TAPS bans and/or restrictions and their enforcement in the territory of each Party in line with Article 13 of the WHO FCTC.

12. Enforcement in the jurisdiction of each Party can be aided by international cooperation given that concerted enforcement action can be more effective and avoid duplication of work, especially when regulating digital entertainment media, which is generally cross-border by nature. Strong enforcement action taken in the source country of TAPS is the most efficient way to eliminate cross-border TAPS.

13. Civil society has a crucial role in ensuring TAPS measures are adequately implemented, upheld, and enforced including through its role in monitoring, identifying and reporting on tobacco depictions in entertainment media and on digital media communication platforms. Conflicts of interest, notably with the tobacco industry or its representatives, should be avoided.

### *Application*

14. Digital media communication platforms include internet-accessible online spaces where users can post, purchase, view, share, create, upload, stream or engage with content that includes any form of electronic media such as digital video, audio, pictures, social media, apps, games, web pages and interactive media.

15. Digital media communication platforms can contain various forms of tobacco depictions that may constitute TAPS in each Party's legal context, including but not limited to in the form of:

- (a) content that is funded directly or indirectly by the tobacco industry or those working to further its interests;
- (b) individuals funded directly or indirectly by the tobacco industry, or those working to further its interests, to promote, or with the likely effect of promoting a tobacco product and/or tobacco use;
- (c) tobacco product and/or tobacco use depictions that constitute TAPS in digital media platform content to any extent (irrespective of whether they have tobacco industry involvement); and
- (d) online advertising or promotion of tobacco products or tobacco use on digital media communication platforms.

## RECOMMENDATIONS

16. In accordance with the Guidelines on implementation of Article 13, any Party whose constitution or constitutional principles impose constraints on undertaking a comprehensive ban should, under Article 13.3 of the Convention, apply restrictions that are as comprehensive as possible in the light of those constraints.

17. Comprehensive bans\* on TAPS should apply to all types of media, including digital media communication platforms, in accordance with national law.
18. Effective enforcement of TAPS bans\* can be enhanced if Parties work collaboratively and systemically to monitor, identify, remove and/or prevent outgoing and incoming cross-border TAPS and TAPS across digital media communication platforms. This should include cooperation among Parties to strengthen bans\* and their enforcement.
19. Parties should develop or further implement legislation, regulations or administrative measures to reduce tobacco depictions in entertainment media.
20. Parties may choose not to provide, or to withdraw existing, tax concessions, production incentives or subsidies for any entertainment product or service that breach national laws on TAPS.
21. Parties are encouraged to consult or work with the media industry to reduce tobacco depictions in entertainment media, particularly in media content that is consumed by youth and adolescents. Engaging stakeholders outside of the health sector will assist in increasing understanding of the impact of tobacco depictions on smoking uptake.
22. Parties should require digital media communication platforms to apply and enforce existing TAPS bans and adopt measures, in accordance with their national laws, to prevent the publication of content that constitutes TAPS through various accounts and channels. This should be applicable to all digital media communication platforms.
23. Comprehensive bans\* on advertising, promotion and sponsorship of novel and emerging tobacco products, should, in accordance with national law, include devices used with them, the function of which is to enable the consumption of such products.
24. Parties should ensure that comprehensive TAPS bans and their enforcement are an integral part of efforts to protect young people online and promote a safer internet.

## MONITORING AND ENFORCEMENT

25. According to the *Guidelines for implementation of Article 13*, Parties should introduce and enforce effective, proportionate and dissuasive penalties. Where not already in place, Parties should designate a competent, independent authority to monitor and enforce the law and entrust it with the necessary powers and resources. Civil society should be involved in the monitoring and enforcement of the law, and have access to justice. Monitoring efforts should also include a focus on advances in communications technology and changes in entertainment media consumption.
26. Recognizing that the *Guidelines for implementation of Article 13* define content hosts as responsible entities, and without detracting from the general legal obligations to be imposed on content hosts in accordance with the *Guidelines for implementation of Article 13*, particular obligations should be imposed, in accordance with national law, on content hosts to identify TAPS and remove TAPS at least when made aware of them.

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\* Or restrictions, where a Party is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, in line with Article 13.3 of the WHO FCTC.



27. *Novel cross-border strategies.* Once monitoring efforts have recognized new communication technologies and widespread changes in entertainment media, additional measures should be considered by Parties to ban\*\* cross-border TAPS. Parties should consider regulating novel strategies/initiatives without prejudice to the application of Article 13 provisions and the *Guidelines for implementation of Article 13* and the Specific guidelines. Parties should promote and facilitate research on the impact of novel cross-border TAPS strategies on normalization of the use of tobacco products, and the influence of such strategies on initiation and consumption with special emphasis on young people and minorities.

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\*\* Or restrict, where a Party is not in a position to undertake a comprehensive ban due to its constitution or constitutional principles, in line with Article 13.3 of the WHO FCTC.

## APPENDIX

*The following is an indicative (non-exhaustive) list illustrating forms of cross-border TAPS in digital media communication platforms and the depiction of tobacco in entertainment media, which may vary between Parties and may be categorized differently in different jurisdictions.*

### **Examples of TAPS across media types**

1. Digital media-sharing platforms provide the tobacco industry an additional platform for promoting their products and undermining tobacco control strategies. TAPS on these sites include:

(a) *Direct product promotion through paid advertisements.* Such direct promotion is often signalled through the inclusion of “Paid Sponsorship”, “Paid Partnership” or #ad.

(b) *Influencer promotions.* Tobacco industry entities, or those working to further their interests, incentivise or sponsor individuals to post content online featuring product brands. Social media influencers often are trained on what brands to promote, when to post for maximum exposure and how to avoid posting content that look like staged advertisements. Tobacco industry entities, or those working to further their interests, organize parties and contests with brand sponsorships and encourage participants to post on their social media accounts. Influencers and individuals are often instructed to include specific hashtags when promoting products on social media posts.

(c) *Commercial promotions of posts by consumers of their own tobacco usage.* Consumers who use tobacco products may share content that depicts tobacco use and may also comment directly on content that advocates tobacco consumption or recommends particular brands or products. Depending on the context, this may constitute legitimate expression. Other parties working in the interests of the tobacco industry can then choose to increase the reach of this content by paying digital media communication platforms to broadcast it to other audiences, turning these personal, legitimate expression posts into commercial promotions.

(d) *Event promotion.* Participants or teams in an event are sponsored by tobacco companies and social media, and audiovisual sharing platforms broadcast the event and/or images from the event. In the case of major sporting events such as motor racing, the reach can be global as these events are widely broadcasted, including in traditional media.

(e) *Corporate and campaign promotions.* Tobacco companies, or those working to further their interests, promote a corporate or campaign brand rather than a tobacco product brand and operate social media accounts that promote the corporate or campaign brand. Corporate promotion campaigns and actions portray tobacco companies as innovative performers and socially responsible actors, and often advance novel tobacco products as less harmful alternatives to traditional cigarettes, often despite a lack of independent scientific evidence to support such claims.

(f) *Tobacco use depictions embedded in commercial content where those depictions are not legitimate expression.* While the bulk of the content on social media is not commercial in nature, commercial content draws a high degree of user traffic (for example, music videos, short films, web series, etc.) or is linked to a content creator that generates revenue from user traffic and users purchasing products featured/reviewed. Music videos, for example, are highly viewed and shared, and they constitute popular content on audio-visual-sharing sites; they are also a major global source of exposure to tobacco depictions.

(g) *Product integration.* Tobacco companies, or those working to further their interests, work with producers, production companies and screenwriters in order to build storylines involving their products and integrate them seamlessly in their productions.

(h) *Sponsored news or infotainment content.* The tobacco industry, or those working to further its interests, offers news/current affairs journalists or editors facility visits, pitch story ideas or sponsor news stories on related or unrelated topics.

(i) *Device advertising promotion and sponsorship.* Advertising or promotion of a device or devices that enable the consumption of tobacco products may directly or indirectly advertise or promote tobacco products themselves.

2. Tobacco companies and those working to further their interests operate social media accounts and websites with content that is broadcast across borders. These sites are frequently used not solely for legitimate expression, but also to promote the corporate brands of a company, to promote specific products or disseminate brand messaging under the guise of providing information to consumers, or as an exercise in corporate social responsibility. Social networking sites and corporate websites are used by the tobacco industry to reinvent itself as a modern, socially responsible, sustainable industry and dissociate itself from the harm caused by its products.

3. Tobacco industry entities and associated third parties may assist in designing, distributing and sponsoring video games, computer games and smart-device applications.

### **Examples of tobacco depictions in entertainment and digital media communication platforms**

4. *Films, movies, television and streaming content* are significant sources of tobacco depictions. Content that is appealing to young people, such as reality television programming, has been found to contain high amounts of tobacco depictions.

5. *Streaming television programmes.* With viewership of traditional television decreasing, and online streaming and paid subscription increasing, streamed content is a growing source of potential tobacco promotions. Globally, young people (aged 18–34) are much more likely to be internet and smartphone users compared with those aged 35 and older; this age-related difference is found at the time of drafting across high- and lower-income countries. Tobacco depictions in popular streamed content are more prevalent than in traditional broadcast or cable programming.

6. *Video/computer games.* Both packaged and online video games are popular among young people and very few controls are in place to protect/prevent users from being exposed to tobacco depictions embedded within games or in-game/in-app purchases. Age restrictions may not take tobacco use into account and are easily skirted by younger payers.

7. *Smartphone applications.* Some smartphone applications, or apps as they are commonly known, show images of cigarette brands or images that resemble existing brands. Pro-smoking apps include a cartoon game and an opportunity to simulate the smoking experience with high-quality, free apps, or apps that facilitate the sale of tobacco products, novel and emerging tobacco products, and devices designed for consuming such products.

(Seventh plenary meeting, 10 February 2024)

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