



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

CONFERENCE OF THE PARTIES TO THE
WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

FCTC/COP/10/5
21 June 2023

Tenth session
Panama City, Panama, 20–25 November 2023
Provisional agenda item 6.1

Implementation of Articles 9 and 10 of the WHO FCTC

Report by the Bureau

Purpose of the document

In accordance with decision FCTC/COP9(2), the present report is submitted to the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC). The report contains the recommendations of the Bureau with respect to the Working Group on the implementation of Articles 9 and 10 of the WHO FCTC, in accordance with decision FCTC/COP8(21).

Action by the Conference of the Parties

The COP is invited to note the present report and consider adopting the annexed draft decision.

Contribution to the Sustainable Development Goals (SDGs): All SDGs; in particular, Target 3.a and SDG 3.

Link to Workplan and Budget item: 4.2.5.

Additional financial implications if not included in the Workplan and Budget: None.

Related document(s): None.

BACKGROUND

1. In decision FCTC/COP8(21), the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) suspended (until the Ninth session of the COP(COP9)) the mandate of the Working Group established through decision FCTC/COP1(15) and amended through subsequent decisions, to elaborate guidelines for the implementation of Articles 9 and 10 of the WHO FCTC. Further, in decision FCTC/COP8(21), the COP requested the Bureau: (a) to consult the Parties with respect to future work of the Working Group on the implementation of Articles 9 and 10, on a long-term plan for developing further guidance on these articles, a possible short and medium-term programme of work, and the appropriate working methods for the working group; and (b) to report on the matter to COP9.
2. In decision FCTC/COP9(2), in light of restrictions made necessary as a result of the COVID-19 pandemic, the COP deferred the report by the Bureau with respect to the Working Group until the Tenth session of the COP (COP10), with the understanding that the mandate of the Working Group would remain suspended until COP10.
3. The present report was prepared by the Bureau elected by COP9 and was informed by the work of the Bureau elected by the Eighth session of the Conference of the Parties (COP8).

CONSULTATION WITH PARTIES WITH RESPECT TO THE WORKING GROUP

4. Under the guidance of the COP8 Bureau, and to assist the Bureau in completing its mandate, the Convention Secretariat conducted two survey-based consultations with the Parties to the WHO FCTC with respect to the future of the Working Group on Articles 9 and 10. The Regional Coordinators elected by COP8 provided support in that process.
5. The first consultation took place in January/February 2020. Thirty-two Parties responded: two from the African Region (AFR); seven from the Region of the Americas (AMR); five from the Eastern Mediterranean Region (EMR); 10 from the European Region (EUR); one from the South-East Asia Region (SEAR); and seven from the Western Pacific Region (WPR).
6. The second consultation, based on an updated questionnaire, took place in early 2021. Forty-nine Parties submitted their responses: three from AFR; 13 from AMR; six from EMR; 15 from EUR; three from SEAR; and nine from WPR. Forty-three Parties responded to all questions, while six responded to some questions. Nineteen Parties provided responses in both consultations.
7. The outcomes of the consultations were reported to and discussed at the third and fourth meetings of the COP8 Bureau, as well as the second meeting of the COP9 Bureau. The main observations made in those reports are highlighted in the following paragraphs.
8. In the first round of consultations, 60% of the Parties that responded indicated that they would like the Working Group to continue its work.

9. In the second round of consultations on the future of the Working Group (whose mandate was suspended):

- (a) twenty-three Parties preferred that the Working Group be replaced. Of these:
 - (i) eighteen Parties wished to see it replaced by an advisory group of experts and relevant partners (including the World Health Organization (WHO)), invited by the Convention Secretariat; and
 - (ii) five Parties wished to see it replaced with an expert group (a subsidiary body established by the COP), as mandated by the COP.
- (b) twenty-six Parties preferred that the mandate of the Working Group be reactivated. Of these:
 - (i) seventeen Parties wished that the mandate of the Working Group be reactivated but that the Working Group be complemented with an expert group (a subsidiary body established by the COP) or an advisory group of experts and relevant partners (invited by the Convention Secretariat) that would do the preliminary work and report to the Working Group, which would then submit the proposals to the COP for adoption; and
 - (ii) nine Parties wished that the mandate of the Working Group be reactivated:
 - seven Parties would suggest that its membership be open for change; and
 - two Parties would not suggest a change in the membership.

10. The answers received suggest little support at present for the reactivation of the mandate of the Working Group.

11. In addition, 40 Parties saw a role for an expert group (a subsidiary body established by the COP) or an advisory group of experts and relevant partners (invited by the Convention Secretariat) to engage in work on Articles 9 and 10 going forward.

12. The relatively low rate of responses from Parties increased somewhat from the first to the second round of consultations. However, the responses and views expressed by the Parties were very divergent in relation to the options provided in the questionnaires and there was no clear trend in the preferences expressed by Parties in respect of the future of the Working Group.

13. Based on the two inconclusive rounds of consultations, the COP9 Bureau was of the view that launching another round of consultations with all Parties was unlikely to be effective in leading to a consensus. The COP9 Bureau decided that the matter could best be brought to COP10, as the most appropriate platform to engage fully with Parties and build consensus.

14. Having agreed that the work of the COP8 Bureau could provide a partial foundation on which the COP9 Bureau could prepare its report to COP10, the Bureau requested the Convention Secretariat to collect additional information from Parties with experience in the implementation of Articles 9 and 10, which would provide further insight for the completion of the Bureau's report to COP10. Several Parties with experience in the implementation of Articles 9 and 10 were consulted on their view of the prospects for future progress to be made by the Working Group on developing further guidance on Articles 9

and 10, and the anticipated timeline for that progress. In addition, those Parties were consulted on a suitable approach that could be undertaken to advance work on Articles 9 and 10 and continue to provide guidance and support to Parties on these technical matters, particularly should the mandate of the Working Group remain suspended.

RECOMMENDATIONS BY THE BUREAU

15. Following consultations with Parties undertaken during the mandate of the COP8 Bureau, as well as additional considerations and consultation with Parties undertaken under the mandate of the COP9 Bureau, the Bureau recommends that:

- (a) in light of the lack of consensus in relation to a possible reactivation of the mandate of the Working Group in the short term but a positive view of the prospects in the medium and longer term for developing further guidance on Articles 9 and 10, the mandate of the Working Group should remain suspended until otherwise decided by the COP at a future session;
- (b) an expert group be established to consider and make recommendations to the COP at a future session on pertinent issues and evidence concerning the regulation of contents and disclosure of tobacco products, with a view to developing further guidance on Articles 9 and 10; and
- (c) the expert group be established under the guidance of the Bureau and in collaboration with WHO to benefit from WHO technical expertise, including that of the WHO Study Group on Tobacco Product Regulation (TobReg) and the WHO Tobacco Laboratory Network (TobLabNet).

ACTION BY THE CONFERENCE OF THE PARTIES

16. The COP is invited to note the present report and consider adopting the annexed draft decision.

ANNEX

**DRAFT DECISION:
IMPLEMENTATION OF ARTICLES 9 AND 10 OF THE
WHO FCTC (REGULATION OF CONTENTS AND DISCLOSURE OF
TOBACCO PRODUCTS, INCLUDING WATER PIPE, SMOKELESS
TOBACCO AND HEATED TOBACCO PRODUCTS)**

The Conference of the Parties (COP),

Recognizing the Parties' obligations set out in Article 9 (Regulation of the contents of tobacco products) and Article 10 (Regulation of tobacco product disclosures) of the WHO Framework Convention on Tobacco Control (WHO FCTC);

Recalling decision FCTC/COP1(15) to establish a Working Group to elaborate guidelines for implementation of Articles 9 and 10 of the WHO FCTC, and decision FCTC/COP2(14) to extend the work of the Working Group to include product characteristics, such as design features, to the extent that they affect the objectives of the WHO FCTC;

Recalling also decision FCTC/COP4(10) to adopt partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC and to mandate the Working Group to continue its work in elaborating guidelines in a step-by-step process, and to submit draft guidelines on addictiveness and toxicity to future sessions of the COP for consideration;

Noting decision FCTC/COP5(6) to adopt further partial guidelines;

Recalling decision FCTC/COP7(14) to, among other actions, adopt further partial guidelines;

Recalling also decision FCTC/COP8(21), in which the COP suspended the mandate of the Working Group established through decision FCTC/COP1(15) and amended through subsequent decisions, to elaborate guidelines for implementation of Articles 9 and 10, until the Ninth session of the COP (COP9);

Noting that in decision FCTC/COP8(21), the COP requested the Bureau to consult the Parties with respect to the Working Group on the implementation of Articles 9 and 10, on a long-term plan for developing further guidance on these Articles, a possible short and medium-term programme of work, and the appropriate working methods for the Working Group, and to report back to COP9 for its consideration;

Recalling decision FCTC/COP9(2), in which the COP decided to defer to the Tenth session of the COP (COP10) the report by the Bureau with respect to the Working Group on the implementation of Articles 9 and 10 of the WHO FCTC, with the understanding that the mandate of the Working Group remains suspended until COP10;

Noting document FCTC/COP/10/5, containing the report of the Bureau on implementation of Articles 9 and 10 of the WHO FCTC,

1. DECIDES:

- (a) to maintain the suspension of the mandate of the Working Group established to elaborate guidelines for implementation of Articles 9 and 10 of the WHO FCTC until otherwise decided by the COP at a future session;
- (b) to establish an expert group on Articles 9 and 10 of the WHO FCTC;
- (c) to mandate the expert group:
 - to keep the COP up to date on relevant developments in relation to the regulation of contents and disclosure of tobacco products;
 - to consider and make recommendations to the COP at a future session on pertinent issues and evidence concerning the regulation of contents and disclosure of tobacco products, with a view to developing further guidance on Articles 9 and 10;
 - to prepare a report on the above to be submitted to the Eleventh session of the COP;

2. REQUESTS the Convention Secretariat:

- (a) under the guidance of the Bureau, to set out the terms of reference of the expert group in accordance with the above mandate and to facilitate the establishment of the expert group, to be composed of:
 - up to 12 members, with appropriate technical experience relevant to the mandate of the expert group and ensuring regional balance to as great an extent as possible; and
 - up to two observers with relevant expertise that represent civil society organizations that are accredited observers to the COP;
- (b) in the establishment of the expert group, to collaborate with WHO to benefit from WHO technical expertise, including that of the WHO Study Group on Tobacco Product Regulation (TobReg) and the WHO Tobacco Laboratory Network (TobLabNet);
- (c) to make the necessary arrangements, including budgetary arrangements, for the expert group to complete its work using electronic means of communication to as great an extent as possible.

(XXX plenary meeting, XX November 2023)

= = =