

NOTE FOR THE RECORD

Third meeting of the Expert Group on Implementation of Article 19 of the WHO FCTC on Liability

29 April–2 May 2025

WHO headquarters, Geneva

Opening of the meeting

1. The present report contains a summary of the discussions at the Third meeting of the Expert Group on Implementation of Article 19 of the WHO Framework Convention on Tobacco Control (WHO FCTC) on Liability, held in person at WHO headquarters in Geneva.
2. Opening the meeting, the Head of the Secretariat of the WHO FCTC noted that the Expert Group's work was entering its final stage owing to the Group's commitment to fulfilling the mandate entrusted to it by the Conference of the Parties (COP) to the WHO FCTC in decision FCTC/COP10(13). The three pillars of the Expert Group's mandate were reiterated.

Adoption of the agenda

3. The agenda, contained in the Annex to the present report, was adopted.

Progress of work to date, following next steps agreed at the Second meeting of the Expert Group

4. As decided by the Expert Group at its second meeting, experts had sent in the sections of the report assigned to them and the requested case studies by the end of 2024. A first draft of the report compiled by the Chairperson had been circulated among the experts in early 2025; their comments on the first draft had been submitted in February 2025. Revision of the report had been led by the Chairperson, and the revised draft of the report had been circulated among the experts in April 2025.

Review and validation of the draft report by the Expert Group

5. During the first two days of the meeting, the Expert Group reviewed the revised draft of its report and the comments on it submitted by experts. On the third day of the meeting, the Chairperson and Vice-Chairpersons proposed an updated revised draft of its report, taking into account feedback from the experts. Each section was discussed individually.

Background, Expert Group meetings and summary of previous work undertaken by the Convention Secretariat and the previous Expert Group on Article 19

6. In discussion on the opening sections of the draft report, the Expert Group requested clarification of the number of responses to the questionnaire for the survey on implementation of Article 19 of the WHO FCTC.

7. The Expert Group observed that consistency and concision should be maintained, referring where possible to previous reports on implementation of Article 19 considered by the COP.

Review of practices and policies that have evolved at Party level

8. When discussing this section of the report, members of the Expert Group expressed concern about including text that might appear to interpret the Convention – a role reserved for the Parties. Experts had different views on what types of litigation or action fall under Article 19. It was stressed that the report should be strengthened to indicate that actions under Article 19 should be for the purpose of tobacco control, as articulated in paragraph 1 of this article.

9. Emphasis was placed on ensuring that the scope of criminal litigation aimed at enforcing measures and deterring illegal conduct was adequately reflected, alongside civil actions focused on compensation. Suggestions were made, among others, to include violation of tobacco control measures in the context of criminal matters; to present examples of criminal liability practice (such as cases involving British American Tobacco) possibly in tabular format; and to use bulleted lists for readability.

10. With regard to civil liability, the experts agreed on additional revisions to the section on Canada. The need for updated information and references on other cases, such as those in Nigeria and Brazil, was mentioned.

11. A broader discussion took place on the report's intended audience and the appropriate level of detail. It was emphasized that Article 19, like the Convention itself, requires whole-of-government action, involving departments of justice, treasury and attorneys-general, for which more technical information might be expected. The challenge lies in providing enough substance for legal professionals while remaining understandable enough to prompt action from the treaty focal points, often representing the health sector.

12. Review of the section on administrative measures for establishing liability focused on the rationale for such measures, recognizing their potential value as possibly quicker and less formal alternatives to litigation, particularly for low-income countries and lower-middle-income countries (LMICs). The potential for administrative procedures to denormalize the tobacco industry was also highlighted. It was clarified that this section is focused on administrative processes and should exclude court-based litigation, which was the focus of a separate section.

13. In considering the section on work being done in international fora, examples related to human rights potentially relevant to tobacco control were noted. A suggestion was made to broaden the human rights discussion beyond the "right to health" to encompass social, economic and environmental aspects. When considering the intersection between the environment and tobacco industry liability, some experts emphasized the problem of cigarette waste. In the interest of concision, examples could be cross-referenced to the Convention Secretariat report on implementation of Article 18 (requested by decision FCTC/COP10(14)), possibly from within the section on civil liability. The Expert Group considered whether detailed information on specific sanctions or penalties should be included in the section of its final report on tobacco reporting and disclosures.

14. In the area of technical support and the exchange of information for effective implementation of Article 19, it was suggested that access to foreign courts and the ability to litigate against parent companies

could be highlighted, especially for LMICs.

Development of options for Parties to detect and counter tobacco industry efforts to evade applicable liability regimes or to undermine tobacco control

15. A point raised was that effective implementation of Article 5.3 through a whole-of-government approach can help prevent the tobacco industry from undermining tobacco control efforts. The use of insolvency procedures by tobacco companies as a potential tactic for evading liability was discussed. A range of other tobacco industry tactics were enumerated, including funding-biased research and self-serving corporate social responsibility initiatives. The tobacco industry's investment in the pharmaceutical and wellness sectors was seen as a problem.

16. In considering this section, the experts identified options or solutions for inclusion in the report.

Possible development of a methodology that estimates or quantifies the health-care costs due to tobacco use

17. Following an assessment of all principal methodologies that could be suitable depending on the legal context, the Expert Group agreed that one methodology provided an easy path to providing solid evidence for use in civil liability cases. Also, several other methodologies could be used depending on the goals and objectives of litigation and with a prior evaluation of their suitability to legal systems.

Options for implementation of Article 19

18. The Expert Group considered the general principles and recommendations for implementation of Article 19 contained in the updated draft of its report.

19. Discussions on the general principles addressed the need to consistently ensure throughout the report the scope of actions related to liability to cover “the harms caused by tobacco”, including harms related to tobacco production, manufacture, supply and disposal.

20. Recommendations related to liability actions included reinforcing the whole-of-government approach to meeting Article 5.3 obligations through a number of measures. Further recommendations related to personal liability for directors of companies found to be criminally liable for breaches of tobacco control laws, and provision of effective protections for whistleblowers and those challenging the industry. The use of administrative procedures and tribunals, including existing ones such as environmental or human rights tribunals, was recommended.

21. The Expert Group further refined its recommendations related to information exchange and monitoring, including in respect of information that the tobacco industry should be required to report to the appropriate government authority.

Annex 1 – Non-exhaustive list of annotated Article 19 resources

22. A non-exhaustive list of annotated resources that Parties could refer to for implementation of Article 19 was included in Annex 1 of the draft report, which was circulated to the experts.

Annex 2 – Draft decision for consideration of the COP to the WHO FCTC

23. The Expert Group confirmed that a draft decision would be incorporated in the final draft of the report.

Supplementary documents

(a) collection of information on the practice that has evolved at Party level and options for Parties

24. It was agreed that the template of the questionnaire for the survey on implementation of Article 19 would be published as a supplementary document for COP11.

(b) notes for the record of the first, second and third meetings of the Expert Group

25. The notes for the record of the first and second meetings of the Expert Group had been validated. The note for the record of the third meeting would be validated in due course.

Next steps

26. The Expert Group agreed on the timeline for finalization of the report:

- outstanding text would be sent by experts to the Chairperson and Vice-Chairpersons by 2 May;
- a revised version would be shared by Chairperson and Vice-Chairperson with experts for final review by 12 May;
- specific text amendments, if any, would be received from experts by 15 May; and
- the final document would be sent by Chairperson and Vice-Chairpersons to the Convention Secretariat for processing (non-substantive editing, translation and publishing) by 19 May and to the experts for information.

Closure of the meeting

27. The Chairperson thanked participants for their contributions and closed the meeting.

ANNEX

Provisional agenda

1. Opening of the meeting
2. Adoption of the agenda
3. Progress of work to date, following next steps agreed at the Second meeting of the Expert Group
4. Review and validation of the draft report by the Expert Group
5. Supplementary documents:
 - (a) collection of information on the practice that has evolved at Party level and options for Parties; and
 - (b) notes for the record of the first, second and third meetings of the Expert Group
6. Next steps
7. Any other business
8. Closure of the meeting