

NOTE FOR THE RECORD

Second meeting of the Expert Group on Forward-looking Tobacco Control Measures (in relation to Article 2.1 of the WHO FCTC)

5–7 November 2024

Finnish Institute for Health and Welfare, Helsinki, Finland

Opening of the meeting

1. The present report contains a summary of the discussions at the Second meeting of the Expert Group on Forward-looking Tobacco Control measures, in relation to Article 2.1 of the WHO Framework Convention on Tobacco Control (WHO FCTC), held in person (with virtual participation of one expert).
2. The Chairperson noted that the objective of the meeting was to provide experts with the opportunity to work on the development of the report as specified in decision FCTC/COP10(12), in relation to the three dimensions of the Expert Group's mandate; and to allow experts to discuss and agree on the next steps, including the outline of the report to the Conference of the Parties (COP) to the WHO FCTC, work distribution and the timeline of work. The primary focus of the Expert Group's second meeting would be to review draft evidence briefs for a set of forward-looking tobacco control measures (FLMs) from the longer list of potential FLMs identified during the first meeting of the Expert Group, and further shortened following discussion among the experts in the period between the two meetings.

Adoption of the agenda

3. The provisional agenda was adopted as proposed and is contained in the Annex to the present report. The Expert Group elected two Rapporteurs, to be supported by the Convention Secretariat.

Consideration of matters related to the work of the Expert Group

a. Update on the status of the agreed plan of work

4. The Chairperson noted that the Expert Group was on track with implementing the plan of work agreed at the first meeting of the Expert Group. This included consideration of a set of initially identified FLMs for possible inclusion, a preliminary assessment of these FLMs, and the development of draft evidence briefs for FLMs that have been retained for further elaboration, according to a template agreed by the Expert Group and as assigned within four areas of work: consumer-focused; tobacco supply; institutional structure/market; and tobacco product.

b. Review of draft evidence briefs prepared for the identified forward-looking measures

5. The Expert Group was presented with draft evidence briefs on FLMs and discussed areas that would be further developed in subsequent drafts, as well as gaps and areas needing advice and/or additional content. The Expert Group members also pointed out the possible unintended consequences of the FLMs and challenges to be addressed and discussed approaches to address this matter.

i. Consumer-focused

Increase smoke-free venues and reduce third-hand smoke exposure

6. Expert Group members noted that evidence concerning the incursion of tobacco smoke on private property can be derived by analogy with other areas; that some countries have banned smoking in private cars on the basis of the presence of children or pregnant passengers; and that smoking in multi-user housing (including old people's homes) can best be addressed through local policy measures. It was suggested that the evidence brief consider users of smokeless tobacco and those living in economically depressed areas.

Education/communication campaigns to de-normalize the tobacco industry

7. Expert Group members advised that the brief may be narrowed down and linked more closely to Articles 5.3 and 12, in order to focus on measures that “intensify” approaches to tobacco control and which target the tobacco industry as a whole. The Chairperson recalled the Expert Group had agreed that WHO FCTC measures for which sufficient guidance was provided might not be suitable to be taken forward as FLMs.

Tobacco products only available in pharmacies, either with or without a prescription

8. Expert Group members agreed to merge this FLM with the “Retail reduction” FLM and make a cross-reference to the “Prohibit profit from sale of tobacco” FLM. There was some discussion regarding the ethics and practicalities of doctors being faced with the prospect of prescribing and pharmacies of supplying tobacco products.

ii. Tobacco supply

Retail reduction

9. Expert Group members suggested that the brief should include mention of adult-only shops and internet sales (in line with the *Guidelines for implementation of Article 13* and 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*) and indicate the scale of the retail reduction sought. An incremental approach could be advocated.

Ban on incentives to retailers

10. The Expert Group believed that this FLM should be viewed in the context of Article 13. It may be necessary to look at other consumer products and comparators, such as alcohol and pharmaceuticals (some

countries have banned companies providing incentives to doctors to prescribe). A counterfactual argument could be used to elucidate the impact of a ban on incentives to retailers.

Price controls for tobacco products and devices (minimum price policies)

11. It was agreed that aspects of this FLM are addressed in decision FCTC/COP8(22) and the comprehensive report contained in document FCTC/COP10/10, prepared by the World Health Organization (WHO) for the Tenth session of the COP. It was suggested that the brief take account of recent work done in examining the way in which the tobacco industry manipulates prices to circumvent effective tax policies.

Birth date-based sales restrictions (“tobacco-free generation”)

12. There was interest in this measure, and it was suggested that more country experiences be included and that the New Zealand experience might be included as a case study. Experts identified an unintended consequence of the measure as possibly leading to greater purchasing of alternative products, and they cautioned against implementing the FLM in isolation, rather than as part of a comprehensive approach to tobacco control or as a final measure when nearing the end of the tobacco epidemic.

Increase in minimum legal age for being sold tobacco products

13. Experts agreed that further research needs to be done on the relationship (correlation or causal effect) between increases in the minimum legal sales age (MLSA) and age of initiation. Studies of enforcement are also needed, notably in the context of MLSAs for other products, such as alcohol.

Phase out/ban sales of tobacco products

14. During the discussion of the evidence brief it was suggested that consumer protection laws could be amended so that tobacco products no longer enjoy exemption from having to meet consumer product safety requirements. The Convention Secretariat noted that the Expert Group on Implementation of Article 19 of the WHO FCTC on liability re-established by decision FCTC/COP10(13), in preparing its report for the Eleventh session of the COP (COP11), was considering how consumer protection laws may be used to engage the responsibility of the tobacco industry.

Phase-out of combustible/other tobacco products

15. The Expert Group recommended that this FLM be incorporated into the “Phase out/ban sales of tobacco products” FLM, which would thus cover the phase-out of all tobacco products. Experts discussed the use of the term “phase out”, noting that it represents the strategy for attaining the goal of a ban; specific time frames for such phase-outs would need to be specific to the jurisdiction implementing the measure.

iii. Institutional structure/market

Environmental controls (producer pays)

16. The Convention Secretariat recalled that, pursuant to decision FCTC/COP10(14), a report on the environmental impact of tobacco products for the entire life cycle of the products (in the context of Article 18) was being prepared and would be submitted to COP11, and that environmental aspects were also

considered by the Expert Group on Article 19 as part of their mandate. The United Nations Environment Programme has convened an Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment. The WHO Study Group on Tobacco Product Regulation also submits reports to the WHO Executive Board, and a brief on the polluter-pays principle has been prepared for the Global Tobacco Regulators Forum. The evidence brief would need to take account of all those activities.

Abolish government support for tobacco farming

17. It was pointed out that the evidence briefs for both this FLM and the “Phase out tobacco growing” FLM should be considered in light of the policy recommendations made and previous decisions taken by the COP with regard to Articles 17 and 18 of the Convention.

Phase out tobacco growing

18. The Expert Group considered that this FLM reiterated the need to implement Article 17 of the Convention and a number of policy recommendations, using evidence that is already being collected by the WHO FCTC Knowledge Hub for Articles 17 and 18. While adoption of a phase-out of tobacco growing may be forward-looking, the process leading up to it is not. The Expert Group accordingly decided not to take this FLM forward, in the context of their mandate.

Tobacco supplier profit surtax/health levy/user fee

19. The Expert Group noted that there was considerable confusion and overlap between health levies and tobacco user fees in the draft brief. The ultimate aim of this FLM would be to decrease the profitability of tobacco companies to such a level that they were no longer interested in operating in a jurisdiction; in other words, it should be seen as a system-disrupting measure. The risk of government dependency on revenue from tobacco user fees was raised.

Prohibit profit from sale of tobacco

20. A model of prohibiting profit from sales of tobacco products was discussed.

Quota on tobacco manufacture and imports, and then reduce regularly (sinking lid)

21. Expert Group members noted that the structural changes entailed by this FLM may be more feasible in smaller countries or those with lower smoking prevalence, and that available data should be further considered with a view to enabling the tracking of compliance with a quota.

iv. Product

22. The number of FLMs in the “product” domain was reduced to seven from the preliminarily identified list.

Very low/low nicotine levels in cigarettes/combustibles (VLNCs)

23. Most Expert Group members believed that the measure was indeed forward-looking, in part because of the potential magnitude of its impact, both by preventing initiation and helping smokers quit, based on

evidence from randomized controlled trials and modelling. The group discussed that the research available on very low nicotine tobacco is largely limited to cigarettes only.

Ban nicotine analogues

24. Expert Group members pointed out that nicotine analogues may not be covered by existing national tobacco laws. The Expert Group agreed that the problem was a juridical issue that should be addressed, rather than an FLM. The Expert Group decided not to take this FLM forward, in the context of their mandate.

Ban flavouring agents/additives

25. The FLM focused on a ban of all flavouring agents and additives, with a few exceptions; such a measure would be forward-looking and had only been implemented by a few countries. It was raised that a ban on specific contents or ingredients used to increase palatability, such as sugars, was already articulated in the *Partial Guidelines for implementation of Articles 9 and 10 of the WHO FCTC*, and that available guidance should be taken into account in further considering this topic.

Ban/moratorium on new products

26. The Expert Group considered that a moratorium could be equivalent to a “supply freeze”, covering products that would be new in each party’s market; it could be implemented together with other measures such as bans or phase-outs, notably of duty-free sales of tobacco. Reference should be made to novel and emerging tobacco products, in light of relevant COP decisions and WHO reports.

Ban new brands, variants, packaging; single-presentation requirement

27. Expert Group members stated that new brand variants could be regarded as new products, and also described the multiple ways that product proliferation has interfered with tobacco control measures. The Expert Group proposed that this FLM and the “Ban/moratorium on new products” FLM be merged.

Filter ban

28. The Convention Secretariat noted that the outline of the aforementioned report on Article 18 of the WHO FCTC to be submitted to COP11 included consideration of the environmental impact of filters, and that a filter ban was one of the regulatory options being considered in that report.

Stick/device standards

29. The Convention Secretariat noted that, in decision FCTC/COP8(22), the COP recognized heated tobacco products (HTPs) as tobacco products and called on Parties to “apply, where appropriate, the above measures to the devices designed for consuming such products”; and that two reports on HTPs were submitted to COP10 (FCTC/COP/10/7 and FCTC/COP/10/9). In light of that COP decision that appropriate measures should be applied to such devices, the Expert Group decided not to take this FLM forward, in the context of their mandate. However, in discussing stick standardization, the experts acknowledged Canada’s experience in adding health warnings on cigarette sticks to make these less attractive.

b. Review of additional supporting documentation, including a report from the WHO FCTC Knowledge Hub on Legal Challenges

30. The Chairperson said that the WHO FCTC Knowledge Hub on Legal Challenges has been consulted on the legal aspects related to the adoption of FLMs generally. Two staff members of the Knowledge Hub, participating in the meeting remotely, described the work done to date in that connection. The Convention Secretariat clarified that the Knowledge Hub's findings would inform the work of the Expert Group, and, if appropriate, could be highlighted in the Expert Group's report or as supplementary information.

Next steps

31. The Chairperson presented the context for the set of evidence briefs developed by the experts, *inter alia*, setting out the considerations that the Expert Group took into account for the selection of possible measures for elaboration into evidence briefs.

32. The Expert Group was presented with the proposed outline of the report to COP11, which included the following sections:

- background on the establishment, mandate and meetings of the Expert Group;
- identification and description of forward-looking tobacco control measures and measures that expand or intensify approaches to tobacco control as they apply to tobacco products:
 - o identification:
 - initial list of forward-looking tobacco control measures (per four domains);
 - considerations for the development of a short-list of forward-looking tobacco control measures;
 - o description:
 - final list of forward-looking tobacco control measures contemplated by the Expert Group;
 - brief description, including Party experience and published literature;
- supporting documentation utilized for the evaluation of the forward-looking tobacco control measures (with potential annexes or supplementary information documents);
- limitations;
- conclusions of the Expert Group; and
- action which the COP is invited to take.

33. The Expert Group further discussed the structure, format and presentation of the evidence briefs. It was agreed that the proposed outline and presentation of the report, and the supporting documentation, could further evolve during the drafting of the documents.



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34. The Expert Group discussed the task allocation; it also agreed on its timeline of work, as follows:
- submission of refined evidence briefs by 14 February 2025;
 - circulation to Expert Group members of the draft COP report and of the draft supplementary document by 28 February 2025;
 - finalization of full set of evidence briefs by 4 March 2025;
 - feedback on draft COP report and draft supplementary document by 14 March 2025;
 - circulation of full draft COP report to the Expert Group after addressing comments by 1 April 2025;
 - third meeting of the Expert Group proposed to be held virtually on 8–10 April 2025; and
 - finalization of the Expert Group documentation by 1 May 2025.

Closure of the meeting

35. 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. Consideration of matters related to the work of the Expert Group
 - a. Update on the status of the agreed plan of work
 - b. Review of draft evidence briefs prepared for the identified forward-looking measures
 - c. Review of additional supporting documentation, including a report from the WHO FCTC Knowledge Hub on Legal Challenges
4. Next steps
 - a. Outline of the report to the COP
 - b. Task distribution and work sharing
 - c. Timeline of the work of the Expert Group
 - i. Third meeting of the Expert Group in March 2025
5. Any other business
6. Closure