



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

Conference of the Parties to the WHO Framework Convention on Tobacco Control

Sixth session
Moscow, Russian Federation, 13–18 October 2014
Provisional agenda item 4.1

FCTC/COP/6/6
29 May 2014

Status of the Protocol to Eliminate Illicit Trade in Tobacco Products

INTRODUCTION

1. The Protocol to Eliminate Illicit Trade in Tobacco Products was adopted by the Conference of the Parties (COP) at its fifth session (Seoul, Republic of Korea, 12–17 November 2012).¹ It is the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC) and a new international treaty in its own right.

2. In accordance with its Article 43, the Protocol was open for signature by all Parties to the WHO FCTC from 10 January 2013 until 9 January 2014.² At the end of that period, the Protocol had been signed by 54 Parties to the WHO FCTC.³ In addition, Nicaragua ratified the Protocol on 20 December 2013, thereby becoming its first Party.

3. The Protocol is subject to ratification, acceptance, approval or accession by States and to formal confirmation or accession by regional economic integration organizations that are Party to the WHO FCTC (Article 44 of the Protocol). To become a Party to the Protocol, Parties to the WHO FCTC that have signed the Protocol need to deposit an instrument of ratification (or acceptance or approval) with the Secretary-General of the United Nations at United Nations Headquarters in New York, the Depository for the Protocol. Parties to the WHO FCTC that have not signed the Protocol need to deposit an instrument of accession in order to become a Party to the Protocol. Model instruments for ratification, acceptance, approval and accession are available on the WHO FCTC website.⁴

¹ Decision FCTC/COP5(1).

² At WHO Headquarters in Geneva from 10 to 11 January 2013, and thereafter at United Nations Headquarters in New York until 9 January 2014.

³ Austria, Belgium, Benin, Botswana, Burkina Faso, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Democratic Republic of the Congo, Denmark, Ecuador, European Union, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guinea-Bissau, Iran (Islamic Republic of), Ireland, Israel, Kenya, Kuwait, Libya, Lithuania, Madagascar, Mali, Mongolia, Montenegro, Myanmar, Netherlands, Nicaragua, Norway, Panama, Portugal, Qatar, Republic of Korea, Slovenia, South Africa, Sudan, Sweden, Syrian Arab Republic, the Former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay and Yemen.

⁴ <http://www.who.int/fctc/protocol/ratification/en/>.

ACTIVITIES SINCE THE ADOPTION OF THE PROTOCOL

4. Following the adoption of the Protocol, the COP requested the Convention Secretariat to conduct a number of activities in preparation for its entry into force.¹ Apart from general awareness-raising, these activities included enhancing cooperation between the Convention Secretariat and international partners, developing instruments to promote Protocol-related work and providing legal and technical assistance.

5. While requesting the Secretariat to carry out activities to promote entry into force of the Protocol, the COP did not assign a specific budget to these activities, except for the convening of the first session of the Meeting of the Parties (MOP) to the Protocol, and the Secretariat was therefore requested to raise funds for Protocol-related activities. Such funds were kindly provided by Australia (AUD 140 000) and the Republic of Korea (US\$ 150 000). In addition, the European Union pledged to support the work of the Secretariat by providing funding for at least one subregional multisectoral workshop in 2014, which will bring together representatives of government sectors of importance for Protocol-related work, such as health, customs, law enforcement and justice.

Promoting ratification and entry into force of the Protocol

6. The Convention Secretariat has carried out a wide range of activities to promote ratification of the Protocol, including face-to-face and online meetings with representatives of Parties to the WHO FCTC, dissemination of ratification instruments, technical documents and other publications, and provision of legal and technical advice.

7. A ceremony at WHO Headquarters was held on 10 January 2013 to mark the opening for signature of the Protocol. More than 50 Parties participated in the event and 12 Parties, representing all six WHO regions, signed the Protocol on the first day.² Signature of the Protocol was also promoted during the United Nations Treaty Event, held in late September – early October 2013 at the United Nations Headquarters in New York, during which 11 Parties to the WHO FCTC signed.³

8. Two notes verbales were sent to all Parties to the WHO FCTC, informing them of the status of the Protocol. In November 2013, on the occasion of the first anniversary of the adoption of the Protocol, the Convention Secretariat renewed the call to all Parties to sign and ratify the Protocol. Following the closure of the signature period, the Convention Secretariat informed Parties of the status of signature and ratification and called upon the Parties to ratify or accede to the Protocol.

Assistance to Parties prior to entry into force

9. The Convention Secretariat has provided assistance to Parties to the WHO FCTC, in cooperation with international partners, by providing legal and technical advice and facilitating multisectoral coordination. This work was carried out at the global, regional, subregional and national levels.

¹ As part of decision FCTC/COP5(16), *Interim performance report for the 2012–2013 workplan and budget*.

² China, France, Gabon, Libya, Myanmar, Nicaragua, Panama, Republic of Korea, South Africa, Syrian Arab Republic, Turkey and Uruguay. In addition, Tunisia signed the Protocol on 11 January 2013 while it was still open for signature in Geneva.

³ Benin, Botswana, Côte d'Ivoire, Ecuador, Finland, Germany, Ghana, Guinea-Bissau, Madagascar, Sudan and United Republic of Tanzania.

10. To reach Parties globally, the Secretariat conducted two series of Protocol-specific interactive webinars (online meetings) in May/June and September 2013, to which representatives of Parties could connect from computers anywhere in the world. During 14 such webinars, held in different languages of the COP, the Secretariat provided detailed information on Protocol provisions and procedures. In addition, several bilateral webinars were held with Parties on request.

11. At the regional level, information about the new treaty, and the importance of acceding to it, were discussed among Parties to the WHO FCTC during four regional meetings on implementation of the WHO FCTC in 2013 and 2014 (for the South-East Asia Region, the Region of the Americas, and the European and the Western Pacific Regions).

12. The Convention Secretariat also utilized forums at subregional levels to promote ratification. These included a symposium organized by the Cooperation Council for the Arab States of the Gulf for representatives of both health and customs sectors, a meeting of the ministers of health of the Caribbean Community, and communication with the West African Economic and Monetary Union. Presentations on the Protocol were also delivered at regional and subregional meetings organized by WHO on related topics.

13. At the national level, there is a growing number of requests to provide assistance in the ratification and accession process. One recent example includes a multisectoral stakeholder meeting that had been requested by the Government of Uganda and in which the Convention Secretariat discussed the Protocol with representatives of health, customs, justice, law enforcement and other sectors, as well as civil society organizations and WHO. Customs officials from the other Member States of the East African Community also participated. Other Parties to the WHO FCTC have requested that similar meetings be held in their countries. In addition, opportunities provided by meetings with Parties at the ministerial and senior official level were also utilized to promote Protocol-related work. Assistance to Parties also continues through online communication on request.

14. Overall, more than half of the Parties to the WHO FCTC have requested and received technical and legal advice through the above-mentioned mechanisms.

International cooperation

15. The Protocol recognizes the need for enhanced cooperation between the Convention Secretariat and the United Nations Office on Drugs and Crime (UNODC), the World Customs Organization (WCO) and other bodies, as appropriate. Similarly, the COP has requested the Secretariat to coordinate with international organizations with expertise in Protocol-related matters.

16. The Convention Secretariat has strengthened its ongoing cooperation with both UNODC and WCO. The Head of the Secretariat held meetings with the Executive Director of UNODC and with the Secretary-General of WCO, which were followed by meetings with senior and technical staff of these organizations, to explore potential mechanisms of cooperation. The Convention Secretariat and WCO have agreed on a framework for cooperation to support entry into force of the Protocol.

17. The Secretariat has promoted the Protocol at high-level global events hosted by partner organizations, namely the 33rd session of WCO's Enforcement Committee¹ and the 23rd session of the Commission on Crime Prevention and Criminal Justice² convened by UNODC. In addition, the Convention Secretariat provided information on the Protocol to participants of regional preparatory

¹ Brussels, Belgium, 17–21 March 2014.

² Vienna, Austria, 12–16 May 2014.

meetings for the 13th United Nations Congress on Crime Prevention and Criminal Justice. Representatives of UNODC and WCO have, in turn, participated in several Protocol-related meetings organized by the Convention Secretariat, including the regional workshops for implementation of the WHO FCTC.

18. Participation in such forums enables awareness to be raised of the important role of customs, law enforcement and other relevant sectors in supporting the work of the Protocol and the complementarity of benefits to public health, economies, crime prevention and security that would result from its implementation.

Development of instruments to promote the Protocol

19. As requested by the COP,¹ a self-assessment checklist for Parties to assess their legal, regulatory and policy frameworks in view of the requirements of the Protocol, and in order to scope Parties' technical assistance and capacity building needs, has been prepared by the Convention Secretariat. The checklist is available in the six official languages of the COP on a dedicated website and Parties are invited to utilize it at their convenience. A note verbale with information on how to access the checklist was sent to Parties on 22 October 2013.²

20. The COP also requested¹⁰ the Convention Secretariat to conduct a study of the basic requirements of the tracking and tracing regime and the global information-sharing focal point. The study, an initial version of which has now been completed, aims at facilitating the future design and operationalization of the global tracking and tracing regime, which will have to be established within five years of entry into force of the Protocol. While the study is meant to support the deliberations of the MOP, Parties to the WHO FCTC may wish to consider whether a satellite event at the sixth session of the COP on this matter could be held for interested Parties.

POSSIBLE WAY FORWARD

21. The Protocol will enter into force on the 90th day following the date of deposit of the 40th instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary.³

22. The convening of the first session of the MOP is subject to the entry into force of the Protocol. Article 33.1 stipulates that the first session of the MOP shall be convened immediately before or after the next regular session of the COP following the entry into force of the Protocol. The earliest possible convening of the first session of MOP would therefore be in conjunction with the seventh session of COP, to be held in late 2016 or early 2017, subject to the decision of the COP.

23. To further support the process, the COP may wish to request the Convention Secretariat to continue its work in promoting the Protocol as outlined in the workplan and budget for 2014–2015 adopted by the COP,⁴ and to take any additional measures that the COP may deem necessary.

24. It will also be important to further raise awareness among relevant sectors of government, such as health, customs, and law enforcement and justice. Coordination among these sectors will need to be

¹ In decision FCTC/COP5(16).

² For access to the self-assessment checklist, Parties are invited to contact the Secretariat.

³ Article 45.1 of the Protocol.

⁴ Decision FCTC/COP5(19).

strengthened if early entry into force is to be achieved. Such coordination should also be promoted at the international level. To that end, advocacy and support by the Parties for the work of the Protocol through appropriate forums of WCO, UNODC and other relevant international organizations of which they are members, would be an important factor.

25. The COP may also wish to encourage Parties to exchange information, experiences and challenges in the process of ratification and preparing implementation of the Protocol, and to that end consider, if necessary, establishing an appropriate intergovernmental mechanism with a view to promoting entry into force of the Protocol and convening the first MOP.

ACTION BY THE CONFERENCE OF THE PARTIES

26. The COP is invited to note this report and provide further guidance, particularly in relation to paragraphs 22–25.

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