Meeting of the Parties to the
Protocol to Eliminate Illicit Trade
in Tobacco Products

First session
Geneva, Switzerland, 8–10 October 2018

Provisional agenda item 5.6

24 July 2018

Mutual administrative and legal assistance
(Articles 28 and 29)

Report by the Convention Secretariat

Purpose of the document

This report outlines the requirements of the Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) for mutual administrative assistance (Article 28) and mutual legal assistance (Article 29).

Action by the Meeting of the Parties

The Meeting of Parties to the Protocol is invited to provide further guidance and consider adopting the annexed draft decision.

Contribute to the Sustainable Development Goals (SDGs): SDGs 3 and 16. Targets: 3.a, 16.3, and 16.4
Link to the workplan and budget item: 2018–2019: 1.3(c) and 2020–2021: 1.3(c)
Additional financial implications if not included in the workplan and budget:
Author team(s): Legal, Trade and Protocol Team
Related document: FCTC/MOP/1/9
BACKGROUND

1. The implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) will require the Parties to the Protocol to provide each other with mutual administrative assistance and mutual legal assistance.

2. Article 28 of the Protocol requires the Parties, in line with their domestic legal and administrative systems, to provide each other with mutual administrative assistance and to help ensure the proper application of customs and other relevant laws in the prevention, detection, investigation, prosecution and combating of illicit trade. Such information may include new customs and other enforcement techniques of demonstrated effectiveness; new trends, means or methods of engaging in illicit trade; goods known to be the subject of illicit trade; or any other data that would assist designated agencies in risk assessment for control and other enforcement purposes.

3. Article 29 of the Protocol requires the Parties to provide each other with mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences established in accordance with Article 14 as well as to the offences for which legal persons may be held liable in accordance with Article 15 of the Protocol in the requesting Party.

4. Mutual legal assistance may be requested for any of the following purposes: (a) taking evidence or statements from persons; (b) effecting service of judicial documents; (c) executing searches and seizures, and freezing; (d) examining objects and sites; (e) providing information, evidentiary items and expert evaluations; (f) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; (g) identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; (h) facilitating the voluntary appearance of persons in the requesting Party; and (i) any other type of assistance that is not contrary to the domestic law of the requested Party.

5. While Articles 28 and 29 of the Protocol are extensive in their obligations to the Parties, the obligations are, however, not unique to the Protocol. Therefore, the Meeting of the Parties (MOP) to the Protocol might wish to consider mandating the Convention Secretariat to develop and to provide the Parties with a report that contains readily available information on mutual administrative and legal assistance provided by other relevant international and regional organizations. The report should include, among other things, information on action taken by bodies similar to the MOP in matters related to mutual administrative and legal assistance; most notably from the United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC).

6. The implementation of these provisions should also benefit from the existing experiences in implementing Article 19 of the WHO Framework Convention on Tobacco Control (WHO FCTC) as well as South–South and Triangular cooperation mechanisms.

7. Recognizing that mutual administrative assistance and mutual legal assistance will be crucial to the successful achievement of the Protocol’s objective, the Panel of Experts on the Protocol suggested that the First Meeting of the Parties (MOP1) to the Protocol might wish to consider establishing a mechanism mandated to discuss means of implementing mutual administrative assistance (Article 28) and mutual legal assistance (Article 29).

8. Alternatively, MOP1 could consider first mandating the Convention Secretariat to collate existing information from experiences and best practices in mutual administrative assistance and mutual legal
assistance in line with paragraph 5 and establish a mechanism to enable discussions on Articles 28 and 29 after the submission of the report at the Second session of the Meeting of the Parties.

**ACTION BY THE MEETING OF THE PARTIES**

The MOP is invited to provide further guidance and consider adopting the annexed draft decision.
Annex 1. Draft decision on mutual administrative assistance and mutual legal assistance

The Meeting of the Parties (MOP),

Considering the report prepared by the Convention Secretariat contained in document FCTC/MOP/1/14,

Noting with satisfaction and appreciation the outcome of the work of the Panel of Experts on the Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) and welcoming the report and supplementary documents contained in document FCTC/MOP/1/9,

Recognizing that mutual administrative and mutual legal assistance is crucial to the successful achievement of the objectives of the Protocol,

DECIDES:

(1) to establish a mechanism to propose future work required for the development and implementation of mutual administrative and mutual legal assistance in accordance with Articles 28 and 29 of the Protocol; such mechanism could be either a working group to develop draft guidelines or an expert group to further elaborate on next steps;

(2) to mandate the Bureau of the MOP to establish the respective mechanism based on the terms of reference attached to this decision;

(3) to request the established mechanism:
   (a) to utilize the report of the Panel of Experts on the Protocol when developing its proposals;
   (b) to mandate the Convention Secretariat to develop a report of readily available information of other similar mechanisms;
   (c) to report on the outcome of its work to the second session of the MOP;

(4) to request the Convention Secretariat to make the necessary arrangements, including budgetary arrangements, for the selected mechanism to complete its work;

(5) to adopt the terms of reference for the mechanism set out in annex attached to this decision.
Annex 2. Draft terms of reference for a mechanism on mutual administrative and mutual legal assistance

Background

Articles 28 and 29 of the Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) require that Parties should cooperate with each other on mutual administrative and legal assistance. This involves the exchange of information and assistance in investigations, prosecutions and judicial procedures. Both articles set the requirements for mutual assistance by the Parties, with the extent of such assistance subject to further discussion and guidance of the mechanism for mutual assistance.

Option 1. Meeting of the Parties (MOP) decides to establish a working group on mutual administrative and legal assistance

Objective

To develop comprehensive draft guidelines on the implementation of a system of the exchange of information for the benefit of mutual administrative assistance (Article 28) and for the mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences (Article 29).

Composition and selection of the members of the working group

The working group will be limited to 18 members.

The World Health Organization (WHO) regions shall nominate up to two members representing the Parties in their respective regions through their regional coordinators to ensure equal regional participation. One non-Party to the Protocol from the Region that is a Party to the WHO FCTC can also be selected by the regions themselves to participate and contribute to the process. Additionally, the Convention Secretariat can invite up to three additional members of the group representing nongovernmental organizations (NGOs) that are observers to the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) or the Meeting of the Parties (MOP) to the Protocol and up to three additional members of the group representing international intergovernmental organizations (IGOs) that are observers to the COP/MOP, based on their relevant expertise and sound knowledge of matters related to the implementation of the Protocol.

Parties willing to act as key facilitators should identify themselves at any time during the process.

Other Parties to the Protocol that would like to take part in the process can join the working group as observers and participate in the deliberations at their own expense.

Assistance from the Convention Secretariat

Pending availability of funds, at least two face-to-face meetings of the working group are envisaged between first and second sessions of the MOP; in addition, the group shall use web-based technologies for communication during the conduct of its work and for consulting the other Parties to the Protocol on the draft guidelines that the group has developed.

For participation in the meetings of the working group, the COP travel policy shall apply.
**Timetable**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Timeframe</th>
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<tbody>
<tr>
<td>Develop the draft guidelines, as requested, accessible by the Parties for their comments</td>
<td>At least six months before the Second session of the Meeting of the Parties</td>
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<tr>
<td>Submission to the Convention Secretariat for editing and translation</td>
<td>At least three months before the Second session of the Meeting of the Parties</td>
</tr>
<tr>
<td>Circulation to the Meeting of the Parties</td>
<td>At least 60 days before the opening day of the Fourth session of the Meeting of the Parties (Rule 8, Rules of Procedure of the Conference of the Parties)</td>
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**Option 2. MOP decides to establish an Expert Group on mutual administrative and legal assistance**

**Objective**

To prepare a report with further recommendations for the implementation of a system for the exchange of information for the benefit of mutual administrative assistance (Article 28) and for the mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to criminal offences (Article 29).

**Composition and selection of the members of the Expert Group**

The Expert Group on the Protocol will have 12 members selected by the Convention Secretariat, under the guidance of the Bureau elected by the MOP, ensuring regional balance. In addition, at least one representative of NGOs that are observers to COP and at least one representative of IGOs that are observers to COP should also be selected by the Convention Secretariat.

The Bureau shall confirm the members of the Expert Group after having discussed the proposal of the Convention Secretariat. The selected members will be notified upon the decision of the MOP Bureau. Once the group is established, its members will act as independent experts.

The Expert Group will elect its chairperson and vice-chairperson at its first meeting.

**Assistance from the Convention Secretariat**

Pending availability of funds, at least two face-to-face meetings of the Expert Group are envisaged between the first and second sessions of the MOP; in addition, the group shall use web-based technologies for communication during the conduct of its work and for consulting the Parties to the Protocol on the draft report that the group has developed.

For participation in the meetings, the COP travel policy shall apply.

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