

Overview of Key FCTC Articles and their Implementing Guidelines

The World Health Organization Framework Convention on Tobacco Control (FCTC) is the first coordinated global effort to reduce tobacco use. The FCTC entered into force on February 27, 2005 and requires Parties to implement evidence-based measures to reduce tobacco use and exposure to tobacco smoke. When effectively implemented, the FCTC is a fundamental tool to reduce the devastating global consequences of tobacco products on health, lives, economies and environments. With 181 Parties as of August 2017, the FCTC is one of the most widely adopted treaties in the United Nations system.

Introduction to FCTC Articles and their Implementing Guidelines

The FCTC contains a broad framework of obligations and rights and requires Parties to implement effective tobacco control measures covering a range of topics. Parties are encouraged to implement measures beyond those required by the FCTC (FCTC Art. 2.1). To date, Parties to the FCTC have adopted implementing guidelines for several FCTC articles listed below and adopted the Protocol on Illicit Trade in Tobacco Products to increase international cooperation to fight tobacco smuggling and better control the legal tobacco trade.

Adopted by consensus, the guidelines to the FCTC were developed to assist Parties to meet their FCTC legal obligations. The guidelines contain principles, definitions, and key legislative elements the Parties have agreed are necessary to provide effective implementation of the treaty. To perform their treaty obligations in good faith, as required by Article 26 of the Vienna Convention on the Law of Treaties, Parties must take the FCTC guidelines into account when determining the content and scope of their FCTC obligations.

Brief Summary of FCTC Articles and Key Provisions of their Implementing Guidelines

ARTICLE 5.3 requires Parties to protect their public health policies from commercial and other vested interests of the tobacco industry.

Article 5.3 obligations apply to officials, representatives, and employees of any government body that contributes or could contribute to developing or implementing public health policies related to tobacco control. Article 5.3 Guidelines urge Parties to implement the following broad measures in order to protect their public health policies against tobacco industry interference:

- Interact with the tobacco industry only when and to the extent strictly necessary to enable Parties to effectively regulate the tobacco industry and tobacco products and conduct any necessary interactions with full transparency.
- Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.
- Reject any assistance with or any proposed tobacco control legislation or policy drafted by or in collaboration with the tobacco industry.
- Prohibit tobacco industry involvement in any youth, public education, or other tobacco control initiatives.
- Prevent tobacco-related conflicts of interest for government bodies, officials, and employees involving occupational activities by government officials, employees, and contractors with both government and the tobacco industry, tobacco holdings by government institutions or their officials or

employees, tobacco industry political contributions, payments, or gifts to government officials or employees or contributions to government institutions or bodies, and tobacco industry representatives or any entity acting on its behalf from serving on any government committee.

- Require the tobacco industry to publicly report periodically on its activities and practices including information about tobacco production, manufacture, market share, marketing expenditures, revenues, lobbying, political contributions, philanthropy, and other interference activities.
- Denormalize and regulate purported “socially responsible” activities carried out by the tobacco industry.
- Prohibit incentives, privileges, benefits or exemptions for the tobacco industry.
- Ensure that any investment in the tobacco industry does not prevent Parties with a State-owned tobacco industry from fully implementing the FCTC.

ARTICLE 6 of the FCTC recognizes that price and tax measures are an effective and important means of reducing tobacco consumption. The treaty requires that Parties consider tax and price policies as a part of their overall national health objectives and adopt tax policies to contribute to these objectives aimed at reducing tobacco consumption.

Article 6 guidelines establish that effective tax and price policies reduce tobacco consumption, represent an important source of government revenue, are economically efficient and reduce health inequities and should be protected from vested interests. The guidelines recommend that countries:

- Implement the simplest, most efficient excise tax system to meet health and fiscal needs. Specific or mixed excise with minimum specific floor are recommended over purely ad valorem systems.
- Make tobacco products less affordable over time, adjusting taxes regularly for inflation and income growth.
- Establish coherent long-term tax policies in order to achieve their health and fiscal objectives.
- Tax all tobacco products in comparable ways and ensure systems are designed to minimize incentives for users to shift to cheaper products.
- Design tax administration system to collect taxes efficiently and effectively.
- Consider dedicating revenue to tobacco control programs. Tobacco taxes can provide a source of funding for tobacco control.

ARTICLE 8 requires Parties to adopt effective national legislation, and actively promote effective sub-national legislation (where possible), that requires 100% smoke-free environments in all indoor public places, indoor workplaces, on all means of public transport, and, as appropriate, other public places.

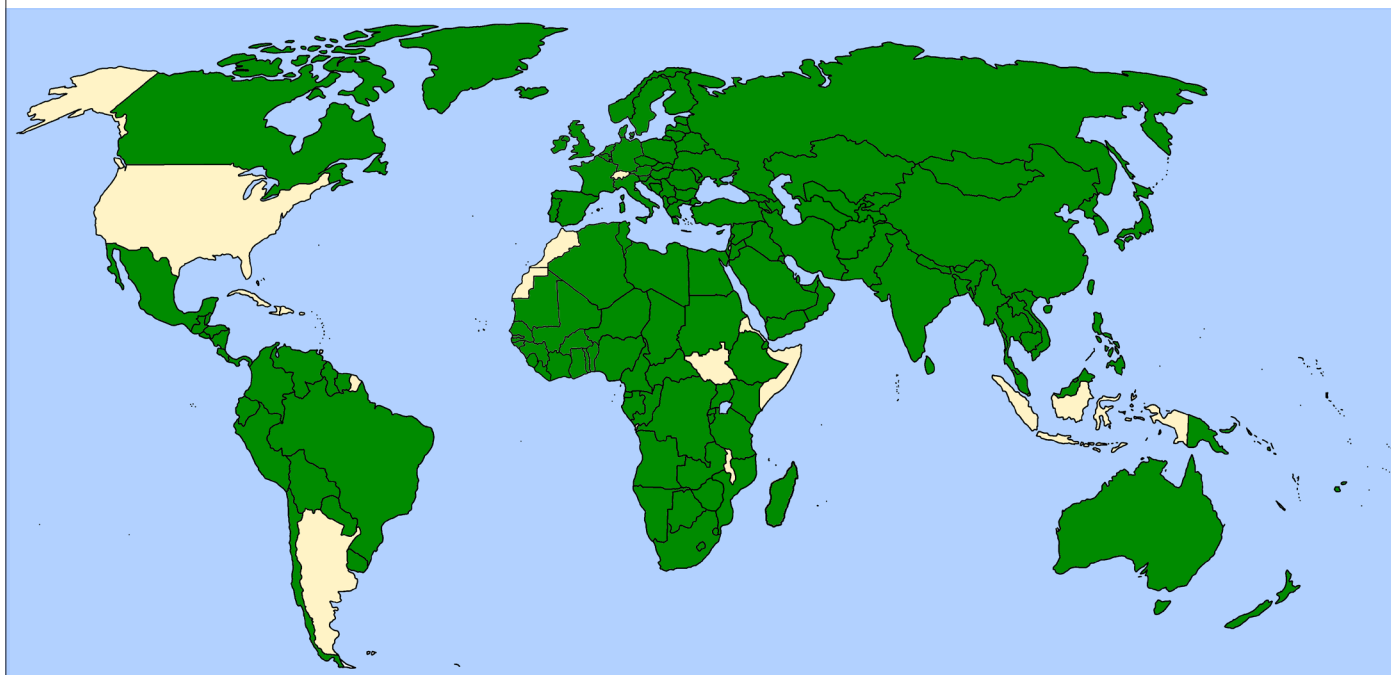
The Article 8 Guidelines urge Parties to also create 100% smoke-free environments in outdoor or quasi-outdoor spaces where a hazard exists due to tobacco smoke exposure. Parties agree that approaches other than 100% smoke-free environments, including ventilation and air filtration technology and the use of designated smoking areas, do not provide effective protection and, thus, conflict with the mandate of Article 8.

ARTICLE 9 and ARTICLE 10 require Parties to regulate the contents and emissions of tobacco products, tobacco product disclosures, and the methods by which they are tested and measured.

The Articles 9 and 10 (partial) Guidelines call on Parties to require manufacturers and importers to disclose information to governmental authorities about ingredients, design features, company information, and sales volume. Parties are also urged to prohibit or restrict ingredients that may be used to increase palatability in tobacco products, that have certain coloring properties, or that may create the impression that they have a health benefit, including being associated with energy and vitality. A working group will further elaborate and draft guidelines on addictiveness and toxicity to be submitted to a future session of the Conference of the Parties.

ARTICLE 11 requires Parties, within three years after entry into force of the FCTC for that Party, to adopt and implement effective measures to: 1) prohibit misleading tobacco packaging and labeling; 2) ensure that tobacco

As of August 2017, there are 181 Parties to the FCTC.



product packages carry large, clear, rotating health warnings and messages that cover 50% or more, but not less than 30%, of principal display areas and that are in the Parties' principal language(s); and 3) ensure that that packages contain prescribed information on the tobacco products' constituents and emissions.

The Article 11 Guidelines draw upon lessons learned from Parties' experiences and seek to counter known tobacco industry tactics for circumventing tobacco packaging and labeling regulation. Under the terms of the treaty and the Article 11 Guidelines, Parties should:

- Prohibit packaging and labeling that promotes a tobacco product by means that are false, misleading, deceptive, or likely to create an erroneous impression about its characteristics, health effects, hazards, or emissions, including through the use of the terms (e.g., "low tar," "light," and any similar language) and any other figurative signs, colors, or other packaging or labeling design.
- Require that unit (e.g., individual packages) and outside packaging (e.g., cartons) of all tobacco products carry rotating pictorial and text health warnings or messages that are as large as possible and displayed on the top of each principal display area.
- Require that unit and outside packaging carry descriptive information on constituents and emissions (as determined by the appropriate government entity), without any yield figures.
- Consider adopting plain or standardized packaging measures, which may increase the noticeability and effectiveness of health warnings and messages and prevent the tobacco industry from continuing to use packaging and labeling to mislead consumers and promote its products.

ARTICLE 12 provides for education, communication, training, and public awareness measures.

The Article 12 Guidelines define specific actions that Parties should take to effectively implement Article 12, including the following:

- Establish an infrastructure and build capacity to raise public awareness of tobacco control issues and promote social change through international collaboration, involvement of civil society, and all other available means.
- Ensure that education, communication, and training programs include a wide range of information on the tobacco industry, its strategies, and its products.
- Monitor and evaluate their related measures nationally and internationally.
- Use the FCTC and its monitoring instruments to raise awareness of tobacco control and its use as an effective international tobacco control strategy.

ARTICLE 13 requires that Parties, in accordance with their constitutions and constitutional principles, comprehensively ban all tobacco advertising, promotion and sponsorship (APS) within five years of the treaty's entry into force for that Party. A Party not in a position comprehensively ban tobacco APS due to its constitution or constitutional principles nevertheless must apply restrictions on all tobacco APS that are as comprehensive as legally possible. The comprehensive ban (or restrictions, where applicable) should apply to both domestic and cross-border tobacco APS.

- The Article 13 Guidelines make it clear that a "comprehensive ban" as required by Article 13 applies to all tobacco APS without exception, recognizing that restrictions or a ban on only some forms of tobacco APS have a limited effect and that in the absence of a complete ban, tobacco companies will shift their vast resources to promotional means that are not banned. As a result, a complete ban on all forms and means of direct and indirect tobacco APS is necessary, subject to some very limited communications such as legitimate journalistic or political commentary or information published in the tobacco trade press. The Appendix to the Guidelines provides an indicative, non-exhaustive list of numerous forms of tobacco APS falling within the scope of a comprehensive ban.

ARTICLE 14 requires Parties to take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.

Parties recognize that tobacco use is highly addictive, that implementing tobacco dependence measures should occur in conjunction with other effective tobacco control measures required by the FCTC, and that treatment should be accessible and affordable. Further, Parties agree that implementing measures should be protected from all commercial and vested interests of the tobacco industry and, to the extent possible, use and strengthen existing healthcare systems. The Article 14 Guidelines identify numerous specific actions that Parties should take to effectively implement Article 14, including the following:

- Develop an infrastructure to support tobacco cessation and tobacco dependence treatment by conducting a national situation analysis and developing a national tobacco cessation strategy and tobacco dependence treatment guidelines based on the best available scientific evidence and practices.
- Establish population-level approaches such as mass communication programs and quitlines in addition to more intensive individual treatment services, accessible and affordable medications, and other novel approaches to cessation and treatment.
- Monitor and evaluate all related strategies and programs.

ARTICLE 15 requires Parties to take measures to eliminate the illicit trade of tobacco products, including smuggling, illicit manufacturing, and counterfeiting.

Article 15 encourages Parties to consider developing a practical tracking and tracing regime, and adopt and implement further measures, such as licensing, in order to prevent illicit trade. Additionally, Article 15 specifically obligates Parties to:

- Enact or strengthen legislation to prohibit illicit trade in tobacco products, with appropriate penalties and remedies.
- Require that tobacco product packages carry effective markings to assist authorities in determining the origin of the product and whether the product is legally for sale.
- Monitor, document, and control the movement of tobacco products and their legal status, in accordance with other laws.
- Promote cooperation among relevant domestic agencies, as well as between regional and international agencies, as appropriate.

ARTICLE 16 requires Parties to prohibit sales of tobacco products to and by minors, which may include banning the sale of tobacco products directly accessible at points of sale, restricting accessibility of vending machines, prohibiting the manufacture and sale of toys or candy in the form of tobacco products, prohibiting free distribution of tobacco products, and banning the sale of cigarettes individually or in small packets.

Guidelines for Article 16 have not yet been developed.

ARTICLE 17 requires Parties to promote, as appropriate, economically viable alternatives for tobacco workers, growers, and possibly individual sellers. **ARTICLE 18** recognizes that Parties agree to have due regard to the protection of the environment and to health with respect to tobacco cultivation and manufacture.

Parties have adopted Policy Options and Recommendations on Economically Sustainable Alternatives to Tobacco Growing (in relation to Articles 17 and 18 of the WHO FCTC).

ARTICLE 19 requires Parties to consider taking action to deal with criminal and civil liability, including compensation where appropriate and to afford one another related legal assistance. Parties must cooperate with each other in exchanging certain information.

Guidelines for Article 19 have not yet been developed.

ARTICLE 20 requires Parties to establish national, regional and global health surveillance programs, to initiate, cooperate, and promote tobacco control-related research and the exchange of tobacco control-related information, including information regarding practices of the tobacco industry, among other things.

Guidelines for Article 20 have not yet been developed.

THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS (ITP) was adopted by the Parties to the FCTC in November 2012. The ITP will not enter into force until 90 days after the 40th ratification by Parties to the FCTC. The ITP complements and expands Parties' obligations under Article 15 of the FCTC. In general, the ITP will obligate Parties to:

- Identify, verify, and license players in the tobacco supply chain, or equivalent systems.
- Track and trace products throughout the supply chain, and prevent the diversion of tobacco into the illicit market.
- Enforce record-keeping requirements for the tobacco industry and government.
- Regulate sales by Internet, phone, and other new technologies, as well as sales in tax- and duty-free zones.
- Establish and implement criminal laws to combat illicit trade by specifying liability for violations, search and seizure procedures, and procedures for destroying confiscated illegal products and equipment.
- Ensure international cooperation — including information sharing and coordination — between law enforcement, prosecutors, scientists, administrators, and other officials and agencies.

Role of Civil Society

The treaty and its implementing guidelines adopted by the Parties recognize that the participation of civil society is essential to achieve the objectives of the FCTC and its protocols (FCTC Art. 4.7). Now comprising of nearly 500 groups from more than 100 countries, the Framework Convention Alliance (FCA) plays a key role in educating policymakers and strengthening cooperation across borders.