

Empowering Parties to Implement Article 19 of the WHO FCTC (Tobacco Industry Liability)

This document relates to item 6.5 of the provisional COP agenda and corresponds to documents [FCTC/COP10/P/CONF./2](#) and [FCTC/COP/10/12](#)

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Key recommendations

- GATC acknowledges the draft decision on the Implementation of Article 19 of the WHO FCTC and recognizes the importance of establishing liability as a recurring cross-cutting theme and agenda item for the COP.
- GATC supports the work of providing the COP with recommendations, options, and a methodology to advance liability-related measures.
- GATC acknowledges the need for guidance in developing measures that address all forms of liability including administrative, legislative and judicial measures.
- GATC welcomes the suggested exploration of synergies between Article 19 and Article 5.3.

Key messages

- Liability measures can unlock a source of funding for a wide range of lifesaving tobacco control measures. Liability measures should include not only judicial and legal procedures but administrative procedures as well, in order to maximise opportunities for holding the tobacco industry accountable.
- Measures to address liability can expose, deter or even stop misconduct by the tobacco industry, while at the same time influencing public perception of the industry.
- While Article 5.3 of the convention does not specifically refer to ‘liability’, the Article 5.3 guidelines encourage Parties to use and enforce mechanisms to ensure compliance with the guidelines, including holding the industry to account and potentially, bringing legal action.
- Discussions related to Article 19 could influence, and be influenced by, consideration of liability in other international fora such as the environment and human rights.

What is being proposed

The draft decision reiterates that Parties need to strengthen their measures to hold the tobacco industry to account by adopting or adapting their domestic liability regimes, including administrative systems where applicable; applying effective, and dissuasive sanctions, and exchanging information with other Parties and in international fora including environmental and human rights meetings. It also highlights the

importance of ensuring policy coherence at the global and national levels, and of monitoring tobacco tactics that could undermine public health policy.

Specifically, the draft decision proposes the re-establishment of an Expert Group to:

- Review Parties' current practice in the implementation of Article 19 measures;
- Provide options to Parties for detecting and countering tobacco industry efforts to evade liability, including corporate restructuring; and
- Explore the development of methodologies to quantify costs related to tobacco use that can be used as evidence in litigation.

Why this is important

Article 19 is one of the most powerful yet underutilized articles of the WHO FCTC.¹ The tobacco industry has been attempting to persuade governments and civil society of its 'transformation' through marketing schemes and investments in the pharmaceutical industry,² while continuing to interfere with tobacco control globally and also aggressively targeting low- and middle-income country markets.^{3,4} The cross-cutting nature of liability presents an opportunity for improved policy coherence with other intersectoral treaties, as well as more comprehensive implementation of the WHO FCTC.

The decision, if adopted, could kick start critical work to provide Parties with the ability to unlock the full potential of Article 19 as well as to align with development of liability measures in environmental and human rights treaty international fora. The decision recognizes the intersection of 'accountability' as outlined in Article 5.3 with 'liability' in the context of Article 19 and could strengthen Article 5.3 implementation.

Background⁵

- Article 19 is one of the least-implemented articles by Parties to the WHO FCTC.
- The matter of the implementation of Article 19 was discussed in previous meetings of the COP. This is reflected in decisions COP5(9), COP6(7), COP7(11) and COP8 (18).
- Notably, the COP created an Expert Group comprised of lawyers from various countries who had experience of holding the tobacco industry accountable. The Expert Group met regularly over a four-year period. At COP6, the Expert Group presented a comprehensive report on civil liability for the tobacco industry and at COP7, it presented an on-line Civil Liability Toolkit. The COP adopted the Toolkit and requested the Convention Secretariat to work on resources to assist Parties in their implementation of Article 19 through the creation of a database of legal experts and institutions as well as other relevant resources.
- The Convention Secretariat has also been working, in consultation with the Bureau of the COP, on the development of a digital database of experts and institutions. The database is expected to be available for the use of Parties prior to COP10.

¹ Issues relating to liability, are an important part of comprehensive tobacco control (Guiding Principle Art 4.5).

² Tobacco industry tactics to attract younger generations. 2020. World Health Organization; 2020. [Tobacco: Industry tactics to attract younger generations \(who.int\)](#)

³ Gallien, M., Occhila, G., & Ross, H. An overlooked market: loose cigarettes, informal vendors and their implications for tobacco taxation. *Tobacco Control*. 2023. <http://dx.doi.org/10.1136/tc-2023-057965>

⁴ Nguenha, N., Bialolus, S., Matavel, J., & Lencucha, R. Tobacco Industry Presence and Tactics in Mozambique: A Chaotic but 'worthy' Market. *Tobacco Control*. 2022. DOI: [10.1136/tc-2022-057390](https://doi.org/10.1136/tc-2022-057390)

⁵ FCTC/COP/10/12: <https://storage.googleapis.com/who-fctc-cop10-source/Main%20documents/fctc-cop10-12-en.pdf>