

Implementation of Articles 9 and 10 of the WHO FCTC (Regulation of contents and disclosure of tobacco products)

This document relates to item 4.4 of the provisional COP agenda and corresponds to documents [FCTC/COP/11/8](#) and [FCTC/COP/11/9](#)

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Key recommendations

- GATC recommends that the draft decision of the Bureau regarding Articles 9 and 10 be adopted without amendment. The draft decision would:
 - focus on implementation of Articles 9 & 10 and the Articles 9 & 10 guidelines, and provide support to Parties for such implementation; and
 - defer the establishment or re-establishment of a Working Group (of Parties) or Expert Group (individual experts acting in an individual capacity) until such future time as COP deems it appropriate.

Key messages

- There has been a low level of implementation by Parties of Articles 9 & 10 and the Articles 9 & 10 guidelines, as outlined in the Report of the Expert Group that considered the reasons for the low implementation ([FCTC/COP/10/6](#)). A focus on implementation, including support to Parties, would benefit Parties and would result in a greater level of implementation of measures in this area.
- When governments adopt measures in this area, the tobacco industry often uses approaches that undermine the measures.
- As the Bureau noted in its Report to COP11 ([FCTC/COP/11/8](#)), and in a prior Report ([FCTC/COP/10/5](#)), the Bureau's consultation with Parties indicates that there is no consensus regarding a potential future mandate of a Working Group for Articles 9 & 10.

What is being proposed

The draft decision of the Bureau would focus on implementation of Articles 9 & 10 and the Articles 9 & 10 guidelines, and provide support to Parties for such implementation. The draft decision would also defer the establishment or re-establishment of a Working Group or Expert Group until such future time as COP deems it appropriate ([FCTC/COP/11/8](#)).

Why this is important

There has been a low level of adoption related to Articles 9 & 10 and the Articles 9 & 10 guidelines. Providing support to Parties would increase the level of implementation and would be beneficial to Parties, by assisting with barriers to implementation, including overcoming tobacco industry interference. Moreover, when measures are adopted by government, often the tobacco industry has used approaches

to undermine the measures, further highlighting the need for effective implementation. Work to support implementation is common at this stage for a treaty.

Background

- The Articles 9 & 10 Working Group, established at COP1 in 2006, was by far the longest running Working Group. Annex 1 to the Bureau Report provides a historical overview of the work of the Articles 9 & 10 Working Group ([FCTC/COP/11/8](#)).
- There is a low implementation of Articles 9 & 10 and the Articles 9 & 10 guidelines, as emphasized by the COP8 decision to establish an Expert Group to examine the reasons for low implementation. There is a clear need to support Parties with implementation, which would be beneficial for Parties.
- The Articles 9 & 10 Working Group began to be inactive after COP8 in 2018. COP8 decided to suspend the Working Group, to ask the Bureau to consult with Parties regarding short-, medium- and long-term work for the Working Group, and to establish an Expert Group to examine the reasons for the low implementation of Art. 9 & 10 and the Articles 9 & 10 guidelines (COP8 Decision [FCTC/COP8\(21\)](#)). The Bureau, after consulting with Parties, would report that there was no consensus on a future work programme for the Working Group ([FCTC/COP/10/5](#)).
- The Report of the Expert Group on low implementation of Articles 9 & 10 and the Articles 9 & 10 guidelines was provided at COP10 ([FCTC/COP/10/6](#)), having originally been provided to COP9 and deferred due to COVID. The Expert Group identified five categories of barriers contributing to low implementation: (a) understanding requirements under Articles 9 and 10 of the WHO FCTC; (b) technical capacity and human resources; (c) financial needs; (d) legal and political challenges; and (e) interference by the tobacco industry.
- At COP10 there was extensive discussion regarding potential mandates for either a Working Group (of Parties) or an Expert Group (individual experts acting in an individual capacity). However, despite extensive discussions (and often confusion regarding the difference between a Working Group and an Expert Group), there was not consensus. Similarly, for COP11, the Bureau states that there is no indication that there would be consensus for a mandate for either an Expert Group or a Working Group, noting the Bureau's prior consultation with Parties as well as the discussions at COP10.
- The wording of Articles 9 & 10 only deals with tobacco products, and does not deal with non-tobacco nicotine products. At COP11, there is a separate agenda item 4.5, "Implementation of measures to prevent and reduce tobacco consumption, nicotine addiction and exposure to tobacco smoke, and the protection of such measures from commercial and other vested interests of the tobacco industry in light of the tobacco industry's narrative on "harm reduction." Therefore, discussion of non-tobacco nicotine products should not take place in agenda item 4.4 regarding Articles 9 & 10, as the products can be discussed under agenda item 4.5.