

## **Briefing 11: Reporting and exchange of information**

**Third session of the Conference of the Parties to the  
WHO Framework Convention on Tobacco Control  
17-22 November 2008, Durban, South Africa**

### **Recommendation**

**The third session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control should decide to:**

- **request the Convention Secretariat, under the guidance of the Bureau and with the assistance of relevant experts, to revise the step by step instructions for completion of the Group 1 questions – taking into account, in particular, the decisions of the Conference of the Parties with respect to guidelines, including the decisions of the third session of the Conference of the Parties in relation to the draft guidelines and progress reports submitted for its consideration – and to make the revised instructions available for use by Parties not later than three months after the conclusion of the third session of the Conference of the Parties;**
- **request the Convention Secretariat, under the guidance of the Bureau and with the assistance of relevant experts, to revise the draft Group 2 questions and to elaborate accompanying step by step instructions for their completion – taking into account, in particular, the decisions of the Conference of the Parties with respect to guidelines, including the decisions of the third session of the Conference of the Parties in relation to the draft guidelines and progress reports submitted for its consideration – and to complete this work not later than six months after the conclusion of the third session of the Conference of the Parties;**
- **request the Bureau to review the revised Group 2 questions and accompanying step by step instructions, and, as appropriate, to decide on their provisional use by Parties, pending a decision of the fourth session of the Conference of the Parties; and**
- **request that, as envisaged in decision FCTC/COP1(14) of the first session of the Conference of the Parties, a detailed assessment of the effectiveness of the current reporting arrangements, and elaboration of recommendations with respect to enhancing the effectiveness of the reporting arrangements, be undertaken and presented for consideration by the fourth session of the Conference of the Parties.**

## Background

Under Article 21 of the WHO Framework Convention on Tobacco Control (FCTC), each Party is required to submit periodic reports on its implementation of the Convention in a format and frequency determined by the Conference of the Parties (COP).

These reports are required to include information on various matters specified in Article 21 including: legislative, executive, administrative or other measures taken to implement the Convention; constraints or barriers encountered in implementation of the Convention and the measures taken to overcome these barriers; financial and technical assistance provided or received for tobacco control activities; surveillance and research undertaken; and other specified matters relating to taxation on tobacco products, tobacco advertising, promotion and sponsorship, illicit trade in tobacco products, the health effects of tobacco consumption and exposure to tobacco smoke, and legislation, regulation and pertinent jurisprudence.

Under Article 23, the COP is mandated to keep the implementation of the FCTC under regular review and take the decisions necessary to promote effective implementation. Towards this end, the COP is required, inter alia, to promote and facilitate the exchange of information pursuant to Article 21, and to consider Parties' periodic reports and adopt regular reports on the implementation of the Convention.

The submission and consideration of reports on implementation are critical to the success of the FCTC. As the Secretariat's note for the first session of the COP (COP-1), 'Reporting and exchange of information in accordance with Article 21 of the WHO Framework Convention on Tobacco Control',<sup>1</sup> explains, reporting 'fulfils a number of functions' (para 5), including:

- assisting the COP 'in the assessment of implementation of the treaty, and identification of problems encountered by the Parties as well as possible gaps in the treaty's provisions, and on that basis, consideration of appropriate response measures';
- assisting Parties in monitoring the status of implementation of their commitments under the treaty, facilitating adoption of appropriate measures at the national or Party level;
- where reports are publicly available, 'help[ing] relevant actors (for example, intergovernmental agencies, specialist nongovernmental organizations and scientific bodies) to formulate focused strategies and programmes to assist Parties, individually or collectively, with implementation of the treaty provisions';
- allowing Parties 'to gain an insight into the implementation measures of other Parties', facilitating the identification of common issues to be addressed and the development of regional initiatives for implementation.

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<sup>1</sup> 'Reporting and exchange of information in accordance with Article 21 of the WHO Framework Convention on Tobacco Control' (World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, first session, provisional agenda item 5.1, A/FCTC/COP/1/INF.DOC./2, 9 January 2006).

COP-1 recognized that Parties' periodic reporting will form the basis for consideration on implementation of the Convention in accordance with Article 23, and will enable Parties to understand and learn from each other's experience in implementing the Convention by providing details of the progress being made in implementation.<sup>2</sup>

Considering these objectives, COP-1 decided to establish graduated reporting arrangements, based on three 'groups of issues':

- *Group 1*, comprising questions relating to 'core items of data, legislation, taxation and funding for implementation activities' and selected optional questions, to be reported on by each Party within *two* years of the entry into force of the FCTC for that Party, as required under Article 21 (with the first reports to be submitted by 27 February 2007);
- *Group 2*, comprising more complex or detailed questions, to be reported on by each Party within *five* years of the entry into force of the FCTC for that Party (with the first reports to be submitted by 27 February 2010); and
- *Group 3*, comprising more complex or detailed questions, to be reported on by each Party within *eight* years of the entry into force of the FCTC for that Party (with the first reports to be submitted by 27 February 2013).

### 1. Group 1 reporting

COP-1 provisionally adopted a format for the submission of reports on Group 1 questions, pending further consideration by the COP at its second session (COP-2). COP-2 decided to mandate the Convention Secretariat to revise the format, while maintaining the content of the questionnaire.<sup>3</sup> The revised format for submission of reports on Group 1 questions was provisionally adopted by the Bureau of the COP and made available for use by Parties, together with a set of instructions for completion of the questionnaire, in May 2008, pending a decision by the third session of the COP (COP-3). The revised questionnaire (Document FCTC/COP/3/15) has been submitted to COP-3 for its consideration. The 'Step by step instructions for the completion of the revised Group 1 questions of the WHO FCTC reporting instrument' have not been submitted to the COP but are available on the website of the Convention Secretariat at [http://www.who.int/fctc/reporting/reporting\\_instrument\\_instructions\\_en.pdf](http://www.who.int/fctc/reporting/reporting_instrument_instructions_en.pdf).

The Framework Convention Alliance (FCA) considers that COP-3 should request revision of the step by step instructions for completion of the Group 1 questions, to be completed and made available for use by Parties not later than three months after the conclusion of COP-3. In section 1 on 'Revision of the step by step instructions for completion of Group 1 questions' at pages 5-11 below, FCA identifies critical definitions in the instructions that should be

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<sup>2</sup> 'Reporting and exchange of information' (World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, first session, decision FCTC/COP1(14)).

<sup>3</sup> 'Reporting and exchange of information' (World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, second session, decision FCTC/COP2(9)).

improved in order to assist Parties in completing Group 1 questions in a manner that both reflects the content of the FCTC and facilitates comparability of responses between Parties, and recommends that additional guidance be included in the instructions, drawing on the decisions of the COP with respect to guidelines for implementation of the Convention.

## 2. Group 2 reporting

COP-1 decided that the format for reporting on Group 2 questions would be elaborated at COP-2. COP-2 decided to mandate the Convention Secretariat to elaborate a draft of the Group 2 questions, which has been submitted to COP-3 for its consideration (Document FCTC/COP/3/16).

FCA considers that COP-3 should request revisions to the draft Group 2 questions and elaboration of accompanying step by step instructions for their completion. This work should be completed within six months of the conclusion of COP-3 and submitted to the Bureau for consideration of provisional adoption for use by Parties, pending a decision by the fourth session of the COP (COP-4). In section 2 on 'Revision of the draft Group 2 questions' at pages 11-35 below, FCA: makes detailed recommendations about improvements that should be made to particular questions; identifies particular questions that should be revised in light of decisions of COP-3 in relation to the draft guidelines and progress reports submitted for its consideration; and recommends changes to the instructions provided in the questions to ensure that Parties are clearly requested to attach supporting documentation and provide brief summaries and further details in relation to affirmative responses.

## 3. Group 3 reporting

COP-1 anticipated that the format for reporting on Group 3 questions would be elaborated at COP-2. Taking into account 'that protocols and guidelines are currently under development, which may make it difficult to consider Group 3 questions at [COP-3]', COP-2 decided to defer consideration of Group 3 questions until COP-4. FCA agrees that the process for elaboration of Group 3 questions should not be begun by COP-3. This matter is briefly considered in section 3 on 'Elaboration of Group 3 questions' at pages 35-36 below.

## 4. Independent assessment of the reporting arrangements

Pursuant to the COP-1 decision on reporting and exchange of information, an independent assessment of the reporting arrangements is to be conducted in 2009, and the matter of reporting is to be further considered by the COP in 2010. Noting the critical role played by reporting in allowing the COP to fulfil its central function of reviewing and promoting effective implementation of the Convention, FCA considers that COP-3 should request a detailed assessment of the effectiveness of the current reporting arrangements to be undertaken and presented to COP-4. Section 4 on 'Undertaking of an independent assessment of the reporting arrangements' at pages 36-37 below outlines the process and criteria by which FCA recommends that the assessment be undertaken.

## **1. Revision of the step by step instructions for completion of Group 1 questions**

Document FCTC/COP/3/15 contains the provisional revised format for Group 1 questions. The revisions were undertaken by the Convention Secretariat – under the guidance of the Bureau and with technical support from WHO's Tobacco Free Initiative (WHO TFI) – pursuant to its mandate from COP-2, which included, while maintaining the content of the questionnaire:

- resolving technical problems related to the completion of the questionnaire;
- creating additional data-entry boxes where necessary;
- standardizing the reporting format throughout the questionnaire; and
- providing the instructions to assist Parties in a separate document.

FCA congratulates the Secretariat on its excellent work in revising the format of the Group 1 questionnaire. FCA considers that the revised format is considerably more user-friendly, both for the provision of information and for the analysis and understanding of information provided.

FCA considers, however, that the step by step instructions, which contain very important information to be used by Parties in completing the questionnaire, including definitions of key terms, need to be substantially improved if they are to assist Parties in completing the questionnaire in a manner that both reflects the content of the Convention and facilitates comparability of responses between Parties.

FCA notes that COP-2 acknowledged in its decision on reporting and exchange of information that the fact that 'protocols and guidelines are currently under development' presents difficulties in the process of elaborating and revising aspects of the COP reporting instrument. The lessons learned and understanding developed through the process of developing guidelines, and the content of guidelines once adopted by the COP, will be of significant assistance to Parties in evaluating their own progress in implementing the Convention and learning from the experiences of other Parties. FCA therefore considers that efforts should be made to ensure that, as far as possible, Parties' reporting on implementation is informed by guidelines elaborated for implementation of the Convention.

FCA recommends that COP-3 request that the step by step instructions for completion of Group 1 questions be given further consideration by the Secretariat, under the guidance of the Bureau and with the assistance of relevant experts, taking into account the decisions of the COP with respect to guidelines, including the decisions of COP-3 in relation to the draft guidelines and progress reports submitted for its consideration.

## Revision of definitions

FCA considers that the following definitions provided in the step by step instructions for completion of Group 1 questions require revision:

### 'Complete' and 'Partial': Question 5.1(b)

Question 5.1(b) deals with Parties' implementation of Article 8 (Protection from exposure to tobacco smoke), asking Parties to indicate whether they provide 'complete', 'partial' or 'none' protection from exposure to tobacco smoke in particular places. The step by step instructions state that:

- A smoking ban is "*complete*" if smoking is not allowed at any time in any indoor area under any circumstance, including prohibition of separate smoking rooms.
- The ban is "*partial*" if smoking is allowed in specific areas of those environments/settings.
- "*None*" should be checked if there is no legislation or other measure in force regulating the use of tobacco products.

FCA notes that the terms 'complete' and 'partial' are not used in Article 8 itself, but considers that their use in the questionnaire will assist in determining whether Parties have fulfilled their obligation to implement 'effective' measures providing for protection from exposure to tobacco smoke, and, if not, their progress in moving towards the provision of effective protection.

FCA considers that the definitions provided in the step by step instructions should be revised, as follows:

- The definition of "*complete*" should be revised so that it refers to the comprehensiveness of the protection without referring to the kind of environment or setting (ie 'indoor' or 'outdoor'). Question 5.1(b) asks about protection from exposure to tobacco smoke in indoor workplaces, public transport and indoor public places – only two of these settings are limited to 'indoor' spaces. Further, Article 8 requires Parties to implement effective measures providing for protection from exposure to tobacco smoke, 'as appropriate', in 'other public places' (ie outdoor public places). While no question is asked in the Group 1 questions about protection in outdoor public places, FCA considers that such a question should be included in the Group 2 questions. The definition of 'complete' used in the step by step instructions should be suitable for questions about implementation of all elements of Article 8. FCA recommends the following:

A smoking ban is "complete" if smoking is not allowed at any time ~~in any indoor area~~ under any circumstance, including ~~in prohibition of~~ separate smoking rooms *or other designated areas*.

- The definition of “*partial*” should be revised to ensure that it is sufficiently broad to encompass any qualifications on or exemptions to a prohibition on smoking, not only exemptions for specific areas. FCA recommends the following:

The ban is “partial” if *there are any qualifications on or exemptions to the prohibition, for example, if smoking is allowed in specific areas or at particular times of these environments/settings.*

- The explanation of when “*none*” should be checked should be revised to ensure that it specifically and clearly asks about implementation of Article 8. FCA recommends the following:

“None” should be checked if there is no *prohibition or restriction on smoking legislation or other measure in force regulating the use of tobacco products.*

#### ‘Comprehensive ban’: Question 5.2(c)

Question 5.2(c) deals with Parties’ implementation of Article 13 (Tobacco advertising, promotion and sponsorship), asking Parties whether they have adopted and implemented legislative, executive, administrative or other measures instituting a comprehensive ban of all tobacco advertising, promotion and sponsorship. The step by step instructions provide that:

For the use in this section, also with reference to Article 1, the following definitions apply: A *comprehensive ban* of all tobacco advertising, promotion and sponsorship applies to all marketing and promotional categories with respect to tobacco products. Such a ban covers, inter alia, television and radio advertising, newspapers, magazines, billboards, the internet, sponsorship of events, brand stretching, product placement, direct mail, price discounts or free samples of tobacco. *Partial bans* only restrict marketing activities by the tobacco industry, but do not usually cover indirect or alternative forms of marketing and promotion, such as sponsorship of events.

The term ‘comprehensive ban’ is central to Article 13, which requires Parties to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship within a period of five years after entry into force of the FCTC (unless prevented from undertaking a comprehensive ban by their constitution or constitutional principles, in which case they are required to apply restrictions on all tobacco advertising, promotion and sponsorship). The meaning of this term is therefore critical to Parties’ understanding of, and reporting on, their obligations under Article 13.

The measures necessary for effective implementation of Article 13 have been considered in detail by a working group of Parties, which has presented draft guidelines for implementation of Article 13 for consideration by COP-3. FCA notes that these draft guidelines contain detailed recommendations with respect to the scope of a comprehensive ban on tobacco advertising, promotion and sponsorship, including an

indicative (non-exhaustive) list of forms of tobacco advertising, promotion and sponsorship. To avoid the situation in which Parties completing questions on implementation of Article 13 are guided by instructions that do not reflect the guidance provided by the COP, FCA considers that it is critical that the definition of 'comprehensive' in the step by step instructions be revised in light of the decision of COP-3 in relation to the draft guidelines.

It is not clear why the instructions include a definition of the term 'partial ban'. The term is not used in either Article 13 or the questions relating to its implementation, and defining it in the step by step instructions will provide no assistance at all to Parties in completing question 5.2(c). When the instructions are revised in light of the COP's decision in relation to the draft guidelines for implementation of Article 13, FCA recommends that the definition of 'partial ban' be deleted.

'Protection': Question 6.1(a)(viii)

Question 6.1(a)(viii) deals with Parties' implementation of Article 5.3 (Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry), asking Parties whether their tobacco control strategies, plans and programmes cover protection of policies from the commercial and other vested interests of the tobacco industry. The step by step instructions state that:

This question, in accordance with Article 5.3, refers to any *formal policy* adopted by a Party, which is aimed at preventing interference by the tobacco industry with public health policies with respect to tobacco control. Details on such a policy can be provided in the data-entry field 6.1(f).

Noting that Article 5.3 requires Parties, in setting and implementing their public health policies with respect to tobacco control, to '*act to protect* these policies from commercial and other vested interests of the tobacco industry', FCA considers that the explanation of the meaning of question 6.1(a)(viii) given in the instructions may, by limiting the question to 'formal polic[ies]', be too narrow to allow Parties to give accurate information regarding their implementation of Article 5.3. Parties' measures to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry may include a wide range of legislative, executive, administrative and/or other measures.

FCA considers that the guidance provided in the step by step instructions with respect to question 6.1(a)(viii) should be revised, as follows:

This question, in accordance with Article 5.3, refers to any *legislative, executive, administrative and/or other measures* ~~formal policy~~ adopted *and implemented* by a Party, ~~which is aimed at preventing interference by the tobacco industry with~~ *to protect* public health policies with respect to tobacco control *from commercial and other vested interests*

of the tobacco industry. Details on such legislative, executive, administrative and/or other measures ~~a policy~~ can be provided in the data-entry field 6.1(f).

'Wide range': Question 6.1(b)(iv)

Question 6.1(b)(iv) deals with Parties' implementation of Article 12 (Education, communication, training and public awareness), asking Parties whether their tobacco control strategies, plans and programmes cover public access to a wide range of information on the tobacco industry. The step by step instructions provide that:

In this question, with reference to Article 12(c), the term "wide range" refers to, *inter alia*, information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including but not limited to, lobbying, philanthropy, political contributions and all other activities not prohibited, or not yet prohibited, under Article 13 of the Convention.

FCA notes that this explanation of what Parties should understand to be included within the 'wide range' of information to which they are required to promote public access under Article 12(c) is drawn from the draft guidelines for implementation of Article 5.3, which have been submitted to COP-3 for its consideration.<sup>4</sup> FCA further notes that the promotion of public awareness and provision of access to information on the tobacco industry have been considered by a working group of Parties elaborating guidelines for implementation of Article 12, which has submitted a progress report to COP-3 presenting an outline of draft guidelines, including guidance on access to information on the tobacco industry. FCA therefore considers that the explanation of the term 'wide range' in the step by step instructions should be revised in light of the decision made by COP-3 in its consideration of the adoption of guidelines for implementation of Article 5.3 and of the progress report on the elaboration of guidelines for implementation of Article 12.

'Guideline': Question 6.1(c)(i)

Question 6.1(c)(i) deals with Article 14 (Demand reduction measures concerning tobacco dependence and cessation), asking Parties whether their tobacco control strategies, plans and programmes cover developing and disseminating appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices. The step by step instructions provide that:

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<sup>4</sup> Recommendation 5.2 of the Draft guidelines for implementation of Article 5.3 of the Convention on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry (Document FCTC/COP/3/5) provides: 'Parties should require the tobacco industry and those working to further its interests to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13'.

In this question, with reference to Article 14, the term “*guideline*” means a statement or other indication of policy or procedure by which to determine a course of action. (<http://www.thefreedictionary.com/guideline>) Guidelines may be developed by government agencies at any level, institutions, professional societies, governing boards, or by the convening of expert panels. (<http://www.biologyonline.org/dictionary/Guidelines>)

FCA considers that the definition provided – and the sources from which it is drawn – are too general to effectively guide Parties in providing accurate information regarding the development and dissemination of guidelines dealing with treatment of tobacco dependence pursuant to Article 14. FCA considers that the definition should be revised, drawing on sources more specific to the development of clinical guidelines,<sup>5</sup> as follows:

In this question, with reference to Article 14, the term “*guideline*” means a *systematically developed statement adopted by a Party to assist government agencies, health care organizations, health care practitioners and patients make decisions about appropriate treatment of tobacco dependence* or other indication of policy or procedure by which to determine a course of action. (<http://www.thefreedictionary.com/guideline>) Guidelines may be developed by government agencies at any level, institutions, professional societies, governing boards, or by the convening of expert panels. (<http://www.biologyonline.org/dictionary/Guidelines>)

### **Provision of additional guidance**

As noted above, FCA considers that efforts should be made to ensure that, as far as possible, Parties’ reporting on implementation is informed by guidelines elaborated for implementation of the Convention. FCA considers that the step by step instructions for completion of Group 1 questions should be revised with a view to the provision of further guidance, taking into account the decisions of the COP with respect to guidelines, including the decisions of COP-3 in relation to the draft guidelines and progress reports submitted for its consideration. Such further guidance may include, for example, information about terms used and examples of measures which may be relevant.

Based on the guidelines for implementation of Article 8 adopted by COP-2, for example, useful further guidance for inclusion in the step by step instructions on questions relating to protection from exposure to tobacco smoke under question 5.1(b) would include definitions of the terms ‘smoking’, ‘indoor’,

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<sup>5</sup> See the definition of ‘clinical practice guideline’ adopted by the US Institute of Medicine (MJ Field and KN Lohr (eds), *Clinical Practice Guidelines: Directions for a New Program* (1990) 38): ‘Clinical practice guidelines are systematically developed statements to assist practitioner and patient decisions about appropriate health care for specific clinical circumstances’. Note that this definition is widely used by government healthcare agencies and institutions: see, for example, National Guideline Clearinghouse, Agency for Healthcare Research and Quality, US Department of Health and Human Services, ‘Inclusion criteria’, at <http://www.guideline.gov/about/inclusion.aspx>; Hong Kong Special Administrative Region Department of Health, ‘Professional development and quality assurance: Evidence based medicine – Glossary’, at [http://www.pdqa.gov.hk/english/ebplatform/ebm/ebm\\_glossary.php](http://www.pdqa.gov.hk/english/ebplatform/ebm/ebm_glossary.php).

‘public places’, ‘public transport’, and ‘workplace’, which are all provided for in the guidelines.

In respect of the definitions of ‘public places’ (which includes ‘all places accessible to the general public or places for collective use, regardless of ownership or right to access’ (para 18)), ‘public transport’ (which includes ‘any vehicle used for the carriage of members of the public, usually for reward or commercial gain’ (para 18)), and ‘workplace’ (which includes ‘any place used by people during their employment or work’ (para 20)), FCA considers that the instructions should provide guidance on the overlapping content of the terms.

Most, if not all, public transport vehicles and public places are also workplaces, either at all times at which they are open to the public, or for periods of, for example, cleaning or other maintenance. For this reason, some jurisdictions have introduced smokefree laws by reference to ‘workplaces’ without separately mentioning ‘public transport’ or ‘public places’. Where all three terms are used, as they are in Article 8 and in the reporting instrument, and examples of particular venues are provided, there will inevitably be some arbitrariness about the category within which a particular venue is placed – a restaurant, for example, could be described as both a public place and a workplace. To avoid any confusion, particularly for Parties that implement Article 8 domestically by reference only to ‘workplaces’, and may find the taxonomy used in the questionnaire difficult, FCA recommends that the step by step instructions note the overlap between the three terms and request that Parties respond to the questions, as far as possible, using the categories and examples provided, while noting that particular examples could have been included in different categories.

## **2. Revision of the draft Group 2 questions**

Document FCTC/COP/3/16 contains the draft Group 2 questions. The draft questions were elaborated by the Convention Secretariat – under the guidance of the Bureau, and with the assistance of competent entities within WHO, including WHO TFI, and other international experts – pursuant to its mandate from COP-2, which requested that the draft address, in particular:

- increasing comparability of national data over time;
- provision of data in a standardized way;
- clear definitions and standards;
- level of detail and comprehensiveness of documentation to be provided;
- data entry formats (for example, replacement of textual answers with quantitative/multiple choice/yes-no questions, supported by documentation);
- harmonization, synergies and avoidance of duplication with other data collection initiatives (for example, prevalence or demographics); and
- development of indicators to measure gender-sensitive policies.

FCA congratulates the Secretariat on its excellent work in elaborating the draft Group 2 questions, which add depth and detail to the content of the Group 1 questions and will facilitate a more detailed understanding of Parties' measures implementing the Convention, and of their progress in implementation in the three years following submission of their initial reports. FCA is pleased to see that the elaboration of the draft Group 2 questions has been informed by the guidelines for implementation of Article 8 adopted by COP-2 and the draft guidelines elaborated by working groups for implementation of Articles 5.3, 11 and 13, which are to be considered by COP-3. To ensure that the questions properly reflect the guidance provided by the COP, FCA considers that COP-3 should request the Secretariat, under the guidance of the Bureau and with the assistance of relevant experts, to revise the questions dealing with Articles 5.3, 11 and 13 in light of the COP's decisions in relation to the draft guidelines.

FCA notes that the draft Group 2 questions refer to a 'step-by-step instructions booklet', which is not yet available. FCA is concerned that, like the step by step instructions for the completion of the revised Group 1 questions, it appears that the step-by-step instructions booklet for the draft Group 2 questions is intended to contain very important information to be used by Parties in completing the questionnaire, including definitions of key terms. FCA considers that COP-3 should request the Secretariat, under the guidance of the Bureau and with the assistance of relevant experts, to elaborate the step-by-step instructions booklet having regard to relevant guidance available in COP documents, including, in particular, guidelines adopted by the COP. FCA requests that its comments above in respect of the revision of definitions and the provision of additional guidance in the Group 1 instructions also be considered in the elaboration of the Group 2 step-by-step instructions booklet.

To assist COP-3 in its consideration of the draft Group 2 questions, FCA offers the following specific recommendations:

## **Section 2: Tobacco consumption and related health, social and economic indicators**

### Question 2.1: Prevalence of tobacco use

The questions in question 2.1 (and throughout Section 2) ask Parties to provide information on different kinds of tobacco products in separate categories. FCA agrees that it is useful to ask separate questions in relation to different kinds of tobacco products, but considers that the method of categorization proposed in the draft questions – particularly the distinction between 'smoking tobacco products', 'smokeless tobacco products' and 'other tobacco products' – requires revision.

Questions 2.1.1 and 2.1.2 request information about 'smoking prevalence' (including 'all smoking tobacco products'). As cigarettes are the most

widely used smoking tobacco product globally, FCA considers that it would be useful to separate smoking prevalence data into 'cigarettes (including hand-rolled cigarettes)' and 'other smoking tobacco products' (which may include, for example, cigars, pipes, bidis and water pipe tobacco). To allow for provision of this information, FCA recommends that the tables in 2.1.1. and 2.1.2 contain three columns: 1) Prevalence of cigarette smoking (*please include hand-rolled cigarettes in prevalence data*); 2) Prevalence of smoking of other tobacco products (*please include all non-cigarette smoking tobacco products in prevalence data, including, e.g., cigars, pipes, bidis and water pipe tobacco*); and 3) Average number of the most-consumed smoking tobacco product smoked per day (*please specify the product and unit, e.g., cigarette stick*).

Question 2.1.6 requests information about prevalence of tobacco use among young persons, distinguishing between 'smoking tobacco', 'smokeless tobacco' and 'other tobacco (e.g., waterpipe)'. FCA considers that this categorization should be revised. As all tobacco products are either smoked or smokeless, it is difficult to comprehend what the term 'other tobacco products' refers to. The example provided is waterpipe, but this is a smoking tobacco product. FCA considers that the intention in dividing the questions into three categories may be to elicit information that distinguishes between smoking and smokeless tobacco products, and, within the category of smoking tobacco products, between different kinds of smoking tobacco products. FCA considers that this would be a useful division and should be included in the questions. FCA recommends that the three categories be amended to: 'Cigarettes (including hand-rolled cigarettes)', 'Other smoking tobacco products' and 'Smokeless tobacco products'.

### Question 2.3: Tobacco-related mortality

FCA considers that the provision of information on tobacco-related mortality will be very useful. FCA recommends that an additional question be inserted into the questionnaire, following question 2.3, concerning information on tobacco-related *disease and disability*. FCA notes that Parties recognize in the preamble to the Convention 'that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability', and that the questions in this section are asked with reference to Article 19.2(a) (which requires the provision of information on the health effects of the consumption of tobacco products and exposure to tobacco smoke), and Articles 20.2 and 20.3 (which require surveillance of the consequences of tobacco consumption and exposure to tobacco smoke).

### Question 2.5: Supply of tobacco and tobacco products

As discussed in relation to prevalence data in question 2.1 above, FCA recommends that the categories used for data on licit supply of tobacco products in question 2.5.1 be amended to: 'Cigarettes (including hand-rolled cigarettes)', 'Other smoking tobacco products' and 'Smokeless tobacco products'. FCA further recommends that an additional column be added to the table in question 2.5.1, following 'Domestic production', for 'Domestic sales'. FCA considers that the provision of information on sales, as well as production, exports and imports, will facilitate a full picture of tobacco supply in and from a Party's jurisdiction.

Question 2.5.2 asks Parties to 'provide information on the volumes of duty-free sales (e.g. product, unit, quantity), if available'. Noting that question 2.5 is asked with reference to Article 15.5, which requires Parties to provide information collected pursuant to their obligation to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within their jurisdiction, FCA considers that an additional question should be included, following question 2.5.2, asking Parties to provide information on volumes of tobacco products *held or moving under suspension of taxes or duties* within a Party's jurisdiction.

### Question 2.6: Seizures of illicit tobacco products

As above, FCA recommends that the categories used for data on seizures of illicit tobacco products in question 2.6.1 be amended to: 'Cigarettes (including hand-rolled cigarettes)', 'Other smoking tobacco products' and 'Smokeless tobacco products'.

Questions 2.6.2, 2.6.3 and 2.6.4 ask for information with respect to 'smuggled' tobacco products, and question 2.6.5 for information with respect to 'illicit or smuggled tobacco products'. FCA considers that each of these questions should be asked with respect to '*illici*' rather than 'smuggled' tobacco products. Questions relating to Article 15 should be broad enough to cover all kinds of illicit tobacco products, including smuggled, counterfeit and illicitly manufactured products. The term 'smuggled', which generally refers to goods moved illicitly across borders, but not to within border illicit activity, is not broad enough to cover all kinds of illicit tobacco products.

### Question 2.7: Tobacco-growing

For Parties that have tobacco growing in their jurisdiction, questions 2.7.2 and 2.7.3 ask for information on the number of workers involved and on the share of the value of tobacco leaf production in the national gross domestic product. Noting that Article 20 requires Parties to cooperate in research for identification of alternative crops and to promote and facilitate

exchange of information regarding the cultivation of tobacco, FCA recommends that the questions request additional information.

In question 2.7.2, FCA considers that it would be useful to distinguish between workers employed full-time and part-time, and to identify how many of these workers are employed only seasonally, in order to obtain a more accurate picture of the true size of the tobacco growing workforce. FCA recommends the following amendment: 'If available, please provide this figure broken down by gender *and into full-time, part-time and seasonal.*'

In question 2.7.3, FCA considers that it would be useful to obtain information not only on the 'share', as currently asked, but on the actual value of tobacco leaf production. FCA recommends the following amendment: 'Please provide, if available, *the value of tobacco leaf production* and the share of the value of tobacco leaf production in the national gross domestic product.'

FCA also recommends the inclusion of an additional question, following question 2.7.3, asking Parties for information, if available, on the area of land under tobacco cultivation within their jurisdiction.

#### Question 2.8: Taxation of tobacco products

FCA considers that goods and services tax should be added to the example provided in question 2.8.1, as follows: 'What proportion of the retail price of the most popular price category of tobacco products consists of taxes (e.g., sum of excise, sales and import duties (if applicable) and VAT/GST)?'

As above, FCA recommends that the categories used for data on taxation of tobacco products in question 2.8.3 be amended to: 'Cigarettes (including hand-rolled cigarettes)', 'Other smoking tobacco products' and 'Smokeless tobacco products'.

In question 2.8.3, footnote 4 provides that: 'If the tax is expressed as an amount (e.g., specific tax), the base of the tax is the volume (number of pieces or tonnes of tobacco) of goods that is taxed.' FCA recommends that this text be broadened as follows: '... the base of the tax is the volume (*for example*, number of pieces or tonnes *or kilograms* of tobacco) of goods that is taxed'.

FCA notes that, in some jurisdictions, taxes on tobacco products are regularly adjusted to take into account increases in the cost of living. FCA recommends that additional questions be included to elicit information about such adjustment.

Following question 2.8.3, FCA recommends the inclusion of the following questions:

‘Do you adjust taxes on tobacco products to take into account increases in the cost of living?’

If you answered “Yes” to [the above question], please provide details, including the frequency of such adjustments and the procedure by which they occur, in the space below.’

In question 2.8.4, FCA recommends the inclusion of an additional request for information that gives context to trends in taxation for tobacco products, as follows:

Please briefly describe the trends in taxation for tobacco products in the past 3 years or since submission of your last report in your jurisdiction. *Please include information that relates these trends to changes in the cost of living over this period.*

#### Question 2.9: Price of tobacco products

As above, FCA considers that it would be useful to include a third column for provision of data on price of tobacco products in question 2.9.1 to allow for separate information on price of ‘cigarettes (including hand-rolled cigarettes)’ and ‘other smoking tobacco products’.

Question 2.9.1 asks Parties to ‘provide the retail prices of the three most widely sold brands of domestic and imported tobacco products at the most widely used point of sale in your capital city’. Because retail prices of tobacco products can vary widely between different kinds of outlets within a Party’s jurisdiction, FCA considers that asking Parties to provide retail prices at only one ‘most widely used’ point of sale could lead to the provision of responses that are not representative of retail prices generally across a Party’s jurisdiction. FCA recommends that Parties be asked to provide retail prices at both the most widely used *medium-priced* point of sale and the most widely used *discount* point of sale (for example a supermarket or equivalent high-volume outlet). The ‘Retail price’ column in the table where Parties are requested to respond to question 2.9.1 should be amended to include two columns: ‘Medium-priced outlet’ and ‘Supermarket or equivalent high-volume outlet’.

In question 2.9.3, FCA considers that the words ‘if known’ should be deleted from the second sentence, to read ‘Please provide the exchange rate of this currency to US dollars, ~~if known~~, as well as the date of this exchange rate’. FCA considers that provision of the exchange rate to US dollars will significantly assist in comparison of Parties’ data. It should not be unduly burdensome for all Parties to provide this information, particularly given the ease with which exchange rates can be calculated using online tools. To assist Parties in accessing this information, the step-by-step instructions booklet could provide a link to such a tool or tools, for example <http://www.x-rates.com/calculator.html> or <http://www.oanda.com/convert/classic>.

### Section 3: Legislation, regulation and policies

The initial instructions for the majority of the questions in this section provide:

Have you adopted and implemented legislative, executive, administrative or other measures or have you implemented programmes on any of the following:

(Please check “Yes” or “No”. For affirmative answers, you may provide a brief summary in the space provided at the end of the sections or send the relevant documentation to the Secretariat. Please provide documentation in one of the six official languages, if available.)

FCA considers that these instructions require amendment. As most of the provisions of the Convention dealt with in these questions require Parties to adopt and implement effective legislative, executive, administrative and/or other measures, without referring separately to ‘programmes’, FCA considers that the words ‘or have you implemented programmes’ may lead to confusion about Parties’ obligations and should be deleted from these instructions. As the implementation of programmes falls within the broader wording as an ‘other measure’, Parties wishing to provide information about relevant programmes implemented may still do so.

FCA is concerned that the instructions do not expressly request that Parties provide explanations for affirmative answers and attach relevant documentation to their reports. FCA notes that the equivalent instructions in the revised Group 1 questionnaire provide: ‘Please check “Yes” or “No”. For affirmative answers, please provide a brief summary in the space provided at the end of Section 5 and attach the relevant documentation. Please provide documentation in one of the six official languages, if available and please specify sections of your legislation related to each “Yes” response.’

Under the current wording, Parties may either simply check ‘yes’ or ‘no’, without providing an explanation of an affirmative answer and/or attaching relevant documentation, or attach large volumes of documentation without explanation. In either case, it would be exceedingly difficult to understand the reasons behind Parties’ responses. This would not facilitate effective monitoring of implementation or assist Parties in learning from each other’s experiences.

FCA considers that the instructions for each of the questions in this section should read as follows:

Have you adopted and implemented legislative, executive, administrative *and/or* other measures ~~or have you implemented programmes~~ on any of the following:

(Please check “Yes” or “No”. For affirmative answers, you *should* ~~may~~ provide a brief summary in the space provided at the end of the sections, *list all relevant laws, regulations and/or policies*, ~~or send and~~

*attach the relevant documentation to the Secretariat. Please provide documentation in one of the six official languages, if available, and please specify sections or parts of the documentation related to each affirmative answer.)*

FCA notes that many of the questions in this section do not provide adequate space for the provision of ‘a brief summary’ or further details for affirmative responses. Recommendations in relation to the provision of additional spaces in particular questions are made below. To encourage and facilitate provision of information that will assist in understanding any negative responses, FCA recommends that the instruction in each question to ‘provide a brief description of the progress made in implementing Article [X] in the past three years or since submission of your last report’ include the words ‘*including any significant barriers encountered in implementation*’.

### Question 3.1: General obligations

#### *Question 3.1.1 – Article 5 (General obligations)*

Question 3.1.1 asks Parties about their implementation of general obligations under Articles 5.1 and 5.2. FCA considers that question 3.1.1 should also address Parties’ implementation of Articles 5.5 and 5.6, which contain very important commitments with respect to international cooperation for the achievement of the objectives of the Convention. Following question 3.1.1.5, an additional question should be included, asking:

Have you taken measures to cooperate:

- with intergovernmental organizations to achieve the objectives of the Convention?
- with other bodies to achieve the objectives of the Convention?
- with other Parties to raise financial resources for implementation of the Convention?
- with intergovernmental organizations to raise financial resources for implementation of the Convention?
- with other bodies to raise financial resources for implementation of the Convention?

If you answered “Yes” to any of the above questions, please provide a brief description of the nature of the cooperation and the organizations, bodies and/or Parties involved.

#### *Question 3.1.2 – Article 5.3 (Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry)*

As noted above, FCA considers that the COP should request the Secretariat to revise the questions dealing with protection of public health policies with respect to tobacco control from commercial and other vested

interests of the tobacco industry in light of the decision made by COP-3 in its consideration of the adoption of guidelines for implementation of Article 5.3.

Depending on the content of the COP decision, it may be useful for question 3.1.2.1 to be expanded to include a range of examples of measures which Parties are recommended to take to protect their public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. A list of measures against which Parties could indicate 'yes' or 'no', followed by spaces for provision of brief explanations, would facilitate the provision of detailed, comparable information about Parties' implementation of this important obligation.

Question 3.1.2.2, which is drawn from the draft guidelines, should also be revised in light of the COP decision. This question should refer specifically to any information on the tobacco industry to which Parties are recommended to ensure public access for the purposes of Article 5.3. Promotion of public access to information under Article 12(c) should be dealt with in question 3.2.6, which asks for information about Parties' implementation of Article 12 (Education, communication, training and public awareness).

### Question 3.2: Measures relating to the reduction of demand for tobacco

#### *Question 3.2.1 – Article 6 (Price and tax measures to reduce the demand for tobacco)*

FCA considers that, as questions 3.2.1.2 and 3.2.1.3 contain multiple concepts, they may be difficult for Parties to respond to. FCA recommends that the questions be amended to read:

##### 3.2.1.2

- prohibiting sales to international travellers of tax- and duty-free tobacco products?

##### 3.2.1.3

If you answered "No" to question 3.2.1.2, restricting sales to international travellers of tax- and duty-free tobacco products?

##### 3.2.1.4

- prohibiting imports by international travellers of tax- and duty-free tobacco products?

##### 3.2.1.5

If you answered "No" to question 3.2.1.4, restricting imports by international travellers of tax- and duty-free tobacco products?

To encourage and facilitate the provision of information that will assist in understanding affirmative responses to the 'yes/no' questions in question 3.2.1, FCA recommends that an additional question be added, following the above questions, as follows:

If you answered “Yes” to any of the questions in [numbered questions under question 3.2.1], please provide details in the space below.

*Question 3.2.2 – Article 8 (Protection from exposure to tobacco smoke)*

As noted above in relation to the revised Group 1 questions, the definitions of ‘complete’ and ‘partial’, which will be provided in the step-by-step instructions booklet, are an important part of the questions dealing with protection from exposure to tobacco smoke in the draft Group 2 questions. FCA considers that COP-3 should request the Secretariat to include the amended definitions recommended above (for the step by step instructions for completion of Group 1 questions) in the step-by-step instructions booklet for completion of Group 2 questions. FCA further recommends, as suggested above in relation to the Group 1 instructions, that COP-3 request the Secretariat to include further guidance in the Group 2 instructions drawing on the guidelines for implementation of Article 8, including definitions of the terms ‘smoking’, ‘indoor’, ‘public places’, ‘public transport’, and ‘workplace’.

FCA considers that further detail should be added to question 3.2.2.2, regarding indoor workplaces. Following ‘health-care facilities’, FCA recommends the inclusion of additional bullet points for ‘*mental health facilities*’ and ‘*prisons and jails*’. FCA recommends that ‘educational facilities’ be separated into two bullet points: ‘*primary and secondary educational facilities*’, and ‘*tertiary or other higher educational facilities*’. Following ‘private workplaces’, FCA recommends the inclusion of an additional bullet point for ‘*motor vehicles used as places of work (e.g. ambulances, delivery vehicles)*’, which are currently dealt with in question 3.2.2.4, regarding public transport. FCA notes that the guidelines for implementation of Article 8 recognize that ‘motor vehicles used as places of work (for example, taxis, ambulances or delivery vehicles)’ are indoor workplaces (para 26). While taxis are recognized as both indoor workplaces and means of public transport, FCA considers that it is preferable that Parties report on protection from exposure to tobacco smoke in taxis in question 3.2.2.4, regarding public transport.

As noted above, FCA recommends that the current bullet point for ‘motor vehicles used as places of work (for example, taxis, ambulances or delivery vehicles)’ in question 3.2.2.4 (regarding public transport) be amended to ‘*taxis*’. FCA further recommends that an additional bullet point be included for ‘*ferries, ships and other watercraft*’.

FCA considers that further detail should be added to question 3.2.2.6, regarding indoor public places. FCA recommends the inclusion of additional bullet points for ‘*cafes*’, ‘*shops*’, ‘*shopping centres*’, ‘*hotels*’, ‘*stadiums and sports facilities*’, and ‘*indoor waiting areas for public transport*’. Further guidance should also be provided in the step-by-step instructions booklet, including, in particular, a definition of the term ‘cultural

facilities' (which should include at least museums, theatres, cinemas and similar locations).

Noting that Article 8 requires Parties to adopt and implement measures not only in indoor workplaces, public transport and indoor public places, but also 'as appropriate, other public places' (ie outdoor public places), FCA recommends the inclusion of additional questions following question 3.2.2.6, as follows:

#### 3.2.2.7

- protection from exposure to tobacco smoke in outdoor public places?

#### 3.2.2.8

If you answered "Yes" to question 3.2.2.7, how comprehensive is the protection from exposure to tobacco smoke in the following outdoor public places:

- outdoor areas of bars, nightclubs, restaurants and cafes
- outdoor cultural facilities
- outdoor stadiums and sports facilities
- outdoor waiting areas for public transport
- outdoor areas adjacent to public buildings
- outdoor markets
- playgrounds
- parks
- beaches
- other (please specify: field to be inserted)

As for questions 3.2.2.2, 3.2.2.4 and 3.2.2.6, the options 'Complete', 'Partial' and 'None' should be provided for the questions in question 3.2.2.8.

In question 3.2.2.7 (which should become question 3.2.2.9), 'Protection from exposure to tobacco smoke in outdoor public places' should be added as a fourth bullet point.

FCA notes that Article 8 requires Parties to adopt and implement effective measures providing for protection from exposure to tobacco smoke in 'areas of existing national jurisdiction' and 'to actively promote' the adoption and implementation of effective measures at other jurisdictional levels. This is a particularly important obligation in Parties where the adoption and implementation of laws and policies providing for protection from exposure to tobacco smoke occurs either in part or primarily at the sub-national level. FCA therefore considers that questions should be added asking about Parties' promotion of the adoption and implementation of measures at sub-national level, to the extent that the adoption and implementation of measures to provide protection from exposure to tobacco smoke do not fall within areas of existing national jurisdiction. FCA recommends the addition of the following questions:

#### 3.2.2.10

Are there any aspects of the provision of protection from exposure to tobacco smoke pursuant to Article 8 that do not fall within your national jurisdiction?

#### 3.2.2.11

If you answered “Yes” to question 3.2.2.10, have you taken action to promote, at other jurisdictional levels, the adoption and implementation of effective measures providing for protection from exposure to tobacco smoke?

#### 3.2.2.12

If you answered “Yes” to question 3.2.2.11, please provide a brief summary of action taken to promote adoption and implementation in sub-national jurisdictions of effective measures providing for protection from exposure to tobacco smoke.

#### *Question 3.2.3 – Article 9 (Regulation of the contents of tobacco products)*

To encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions in 3.2.3.1-3.2.3.4, FCA recommends that an additional question be added, following question 3.2.3.4, as follows:

If you answered “Yes” to any of the questions in 3.2.3.1, 3.2.3.2, 3.2.3.3 or 3.2.3.4, please provide details in the space below.

#### *Question 3.2.4 – Article 10 (Regulation of tobacco product disclosures)*

As for question 3.2.3 above, FCA recommends the inclusion of an additional question following question 3.2.4.2: ‘If you answered “Yes” to any of the questions in 3.2.4.1 or 3.2.4.2, please provide details in the space below’.

#### *Question 3.2.5 – Article 11 (Packaging and labelling of tobacco products)*

As noted above, FCA considers that the COP should request the Secretariat to revise the questions dealing with packaging and labelling of tobacco products in light of the decision made by COP-3 in its consideration of the adoption of guidelines for implementation of Article 11, and to elaborate the step-by-step instructions booklet in accordance with that COP decision.

FCA notes that question 3.2.5.1 should be revised in light of the decisions taken by COP-3 in its consideration of the adoption of guidelines on both Article 11 and Article 13 (Tobacco advertising, promotion and sponsorship). Both sets of draft guidelines recommend the adoption of measures to require plain packaging of tobacco products – in respect of

Article 11, in order to ‘increase the noticeability and effectiveness of health warnings and messages, prevent the package from detracting attention from these and address industry design techniques that may suggest that some products are less harmful than others’ – and in respect of Article 13, in order to eliminate advertising and promotion on packaging (and on ‘individual cigarettes or other tobacco products’). Question 3.2.5.1 should be revised to ensure that it clearly and specifically refers to Parties’ implementation of Article 11. As presently drafted, it uses language that relates to Article 13, rather than Article 11.

Noting that the obligations in Article 11.1(b) and 11.2 apply to ‘each unit pack and package of tobacco products’, and ‘any outside packaging and labelling of such products’ (defined in Article 11.4 as applying ‘to any packaging and labelling used in the retail sale of the product’, which would include, for example, cartons) – and that Parties may apply different requirements to these two categories of packaging and labelling – FCA recommends that questions 3.2.5.3-3.2.5.13 be amended to facilitate the provision of full and accurate responses in relation to both categories.

FCA considers that questions 3.2.5.3 and 3.2.5.12 should each be separated into two questions, as follows:

3.2.5.3

- requiring that ~~packaging and labelling~~ *each unit pack and package of tobacco products* carry health warnings describing the harmful effects of tobacco use?

3.2.5.[X]

- *requiring that any outside packaging and labelling of tobacco products carry health warnings describing the harmful effects of tobacco use?*

3.5.5.12

- requiring that ~~packaging and labelling~~ *each unit pack and package of tobacco products* contain information on relevant constituents and emissions of tobacco products?

3.2.5.[X]

- *requiring that any outside packaging and labelling of tobacco products contain information on relevant constituents and emissions of tobacco products?*

Questions 3.2.5.4-3.2.5.11 should follow question 3.2.5.3 (with respect to health warnings on unit packs and packages), preceded by the additional instruction, ‘If you answered “Yes” to question 3.2.5.3’. The same questions, preceded by the same additional instruction, should be repeated for the second question (with respect to health warnings on outside packaging and labelling).

Question 3.2.5.13, which applies to health warnings on both unit packs and packages and outside packaging and labelling (dealt with in questions 3.2.5.3-3.2.5.11), and information on relevant constituents and emissions

on both unit packs and packages and outside packaging and labelling (dealt with in question 3.2.5.12), should be separated into four questions. The first, following question 3.2.5.8 (with respect to health warnings on unit packs and packages), should state:

- 'requiring that the health warnings appear in the principal language or languages of the country?'

This question should be repeated following repeated and renumbered question 3.2.5.8 (with respect to health warnings on outside packaging and labelling).

The third question, following question 3.2.5.12 (with respect to information on unit packs and packages), should state:

- 'If you answered "Yes" to question 3.2.5.1.2, do you require that the information appear in the principal language or languages of the country?'

This question should be repeated following repeated and renumbered question 3.2.5.12 (with respect to information on outside packaging and labelling).

FCA recommends the inclusion of an additional question to request more detailed information relating to the size of required health warnings than can be provided in response to questions 3.2.5.7 and 3.2.5.8. Following question 3.2.4.8 (with respect to unit packs and packages), FCA recommends that the following question be added:

- 'If you answered "Yes" to question 3.2.5.7 or question 3.2.5.8, please specify the percentage of the principal display areas required to be occupied by the health warnings'.

This question should be repeated following repeated and renumbered question 3.2.5.8 (with respect to outside packaging and labelling).

FCA recommends that an additional question be added, following question 3.2.5.13, to encourage and facilitate the provision of information that will assist in understanding affirmative responses to the 'yes/no' questions in 3.2.5.1-3.2.5.13 and the additional questions recommended above:

- If you answered "Yes" to any of the questions in [3.2.5.1-3.2.5.13 and above], please provide details in the space below.

In elaborating the step-by-step instructions booklet, useful further guidance for the completion of the questions under question 3.2.5 could include:

- guidance with respect to the forms of packaging covered by the terms 'unit pack and package' and 'outside packaging and labelling' (note, for example, that the draft guidelines refer to 'many different types of tobacco product packaging', including 'tins, boxes, pouches, flip-tops, slide and shell packages, cartons, transparent wrappers, clear packaging or packages containing one product unit' (para 37);

- in relation to question 3.2.5.2, guidance about what may be false, misleading, deceptive or likely to create an erroneous impression – this should include the wording of Article 11.1(a) (that this includes ‘any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other products’, including, for example, ‘terms such as “low tar”, “light”, “ultra-light”, or “mild”’); and any additional guidance provided in guidelines (note, for example, that the draft guidelines include: recommendations on additional terms that might mislead consumers (para 43); a recommendation that the display of figures for emission yields is misleading and should be prohibited (para 44); and a recommendation that Parties should consider requiring plain packaging, which will ‘address industry package design techniques that may suggest that some products are less harmful than others’ (para 46));
- in relation to question 3.2.5.5, guidance on the measures that Parties may require to ensure rotation of warnings (note, for example, that the draft guidelines recommend (paras 19-22) that Parties consider using both of two specified types of rotation: ‘having multiple health warnings and messages appearing concurrently’; and ‘setting a date after which the health warning and message content will change’);
- in relation to question 3.2.5.6, guidance on the measures that Parties may require to ensure that health warnings are clear, visible and legible (note, for example, that the draft guidelines contain recommendations on implementing this commitment by: locating warnings on both the front and back of packages and at the top of principal display areas (para 8); ensuring that warnings are not obstructed (para 10); and using plain packaging to increase the noticeability of warnings (para 46));
- in relation to question 3.2.5.12, further information on the form of requirements for display of information on constituents and emissions (note that the draft guidelines recommend that ‘Parties should require that relevant *qualitative* statements be displayed on each unit packet or package about the emissions of the tobacco product’ (para 33)).

*Question 3.2.6 – Article 12 (Education, communication, training and public awareness)*

Noting that educational and public awareness programmes may be ongoing over a number of years, FCA considers that the bracketed words ‘Please refer to programmes implemented since submission of your last report’ in question 3.2.6.1 may be unduly limiting on Parties reporting on implementation of Article 12(a) by omitting programmes commenced before submission of 2-year reports but continuing into the following 3-year period. FCA recommends that these words be deleted from the question.

FCA recommends that the first bullet point in question 3.2.6.4 be amended to reflect the full content of Article 12(a), as follows: ‘health risks *including addictive characteristics* of tobacco consumption?’. Noting that Article 12(f) requires promotion of public awareness of the adverse health consequences of tobacco production, FCA recommends the inclusion of an additional bullet point in question 3.2.6.4 for ‘*adverse health consequences of tobacco production?*’.

Following question 3.2.6.4, FCA considers that three additional questions should be added. First, to encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions in 3.2.6.1-3.2.6.4, the following question should be included:

- If you answered “Yes” to any of the questions in 3.2.6.1-3.2.6.4, please provide details in the space below.

Second, a question asking about Parties’ implementation of their obligations to adopt and implement effective measures to promote public access to information under Articles 12(c) and 12(f) should be added. Article 12(c) is currently dealt with in question 3.1.2.2, which deals with protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry pursuant to Article 5.3. While it may, in light of the decision taken by COP-3 in its consideration of adoption of guidelines on Article 5.3, be appropriate to include a question on public access to information on the tobacco industry in the section on implementation of Article 5.3, a question should also be included in the section on Article 12, where the obligation is expressly stated. FCA recommends the inclusion of the following question:

- public access to:
  - a wide range of information on the tobacco industry?
  - information on the adverse health consequences of
    - tobacco production?
    - tobacco consumption?
  - information on the adverse economic consequences of
    - tobacco production?
    - tobacco consumption?
  - information on the adverse environmental consequences of
    - tobacco production?
    - tobacco consumption?

Third, to encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions suggested above, the following question should be included:

- If you answered “Yes” to any of the questions in [listed above], please provide details in the space below.

FCA considers that question 3.2.6.5 is not sufficiently broad to accurately reflect the requirements of Article 12(e). This question should seek information on Parties’ implementation of their obligation to ‘adopt and

implement effective legislative, executive, administrative or other measures to promote awareness and participation of public and private agencies and nongovernmental organizations not affiliated with the tobacco industry in developing and implementing intersectoral programmes and strategies for tobacco control'. This question should not depend on the provision of an affirmative response to question 3.2.6.1, which refers to Parties' obligations with respect to educational and public awareness programs under Articles 12(a), 12(b), and 12(f). FCA recommends that the introductory part to 3.2.6.5 be redrafted as follows:

- awareness and participation of the following agencies and organizations in development and implementation of intersectoral programmes and strategies for tobacco control:

FCA recommends that the term 'private organizations' in the third bullet point in this question be further defined, and suggests that additional guidance on the kinds of private organizations which may be relevant for the purposes of this question be provided in the step-by-step instructions booklet.

Finally, FCA recommends that question 3.2.6.6, which refers broadly to research, monitoring, and evaluation in respect of all education, communication, training and public awareness programs implemented by Parties in accordance with Article 12, be moved to follow the final substantive question in this section, question 3.2.6.7 (which deals with Article 12(d), and should be included in Parties' responses to question 3.2.6.6).

*Question 3.2.7 – Article 13 (Tobacco advertising, promotion and sponsorship)*

As noted above, FCA considers that the COP should request the Secretariat to revise the questions dealing with tobacco advertising, promotion and sponsorship in light of the decision made by COP-3 in its consideration of the adoption of guidelines for implementation of Article 13, and to elaborate the step-by-step instructions booklet in accordance with that COP decision.

FCA notes that the draft guidelines for implementation of Article 13 contain detailed recommendations with respect to all elements of Article 13, including the scope of a comprehensive ban on tobacco advertising, promotion and sponsorship. The draft guidelines include a discussion of 'aspects that could pose special challenges for regulators in introducing a comprehensive ban', but that are regarded as falling within the scope of a 'comprehensive ban', and an indicative (non-exhaustive) list of forms of tobacco advertising, promotion and sponsorship. The key question under question 3.2.7, question 3.2.7.1 – which asks whether Parties have instituted a 'comprehensive ban on all tobacco advertising, promotion and sponsorship' – should be asked in light of the guidance provided by the COP in its decision on the draft guidelines.

FCA is seriously concerned that the draft questions, read as a whole, interpret ‘comprehensive ban’ in an inappropriate way. If a Party answers ‘yes’ to the key question as to whether it has instituted a comprehensive ban on all tobacco advertising, promotion and sponsorship, it is requested to proceed to question 3.2.7.3, which asks whether the ban covers a range of matters: display and visibility of tobacco products at points of sale; the internet; brand stretching and/or brand sharing; product placement as a means of advertising or promotion; the depiction of tobacco use in entertainment media products; tobacco sponsorship of international events or activities and/or participants therein; contributions from tobacco companies to any other entity for ‘socially responsible causes’ and/or any other activities implemented under the umbrella of ‘corporate social responsibility’ by the tobacco industry; and cross-border advertising, promotion and sponsorship originating from its territory. The implication is that a Party could have a comprehensive ban, yet not have banned some (or indeed any) of these forms of advertising, promotion and sponsorship. This approach to a ‘comprehensive ban’ is inconsistent with the terms of Article 13, which requires a comprehensive ban on ‘all tobacco advertising, promotion and sponsorship’, broadly defined in accordance with Article 1 of the Convention, and with the recommendations in the draft guidelines.

FCA is also concerned that questions 3.2.7.4-3.2.7.9 – which relate to implementation of Article 13.4 – are asked only of Parties that indicate that they do not have a comprehensive ban, whereas the draft guidelines, in the section on ‘Obligations related to Article 13.4 of the Convention’, recognize that ‘some very limited forms of relevant commercial communication, recommendation or action might continue to exist after a comprehensive ban has been implemented’ (para 37), meaning that Parties that have implemented comprehensive bans may still be required to meet obligations under Article 13.4.

FCA considers that, to reflect all elements of Article 13.4(d), additional questions should be added following question 3.2.7.9, as follows:

If you answered “Yes” to question 3.2.7.9, please provide the figures in the space below.

If you answered “Yes” to question 3.2.7.9, do you make these figures available to the public?

FCA considers that question 3.2.7.12 is more narrowly expressed than it should be, considering that the obligation in Article 13.6 is to ‘cooperate’, and is not confined to cooperation regionally or with ‘neighbours’. FCA recommends that the question be amended as follows:

~~‘promoting cooperation with your neighbours to develop the development of technologies and other means necessary to facilitate the elimination of cross-border advertising’.~~ *cooperating with other Parties in your region or with your neighbours to develop the development of technologies and other means necessary to facilitate the elimination of cross-border advertising’.*

FCA notes that the draft guidelines contain a section on ‘Consistency’, which provides recommendations on covering cross-border tobacco advertising, promotion and sponsorship as part of a comprehensive ban. FCA considers that questions 3.2.7.13 and 3.2.7.14 should be revised in light of the COP’s decision in its consideration of the adoption of the draft guidelines. For consistency with the language of Article 13.7, FCA recommends that question 3.2.7.14 be amended as follows:

*‘imposing penalties for cross-border advertising, **promotion and sponsorship entering your territory** equal to those applicable to domestic advertising, promotion and sponsorship originating from your territory in accordance with national law?’*

Finally, FCA notes that, following revision of the draft questions in light of the COP’s decision on the draft guidelines, care should be taken to ensure that the questionnaire provides adequate spaces for Parties to provide details for each affirmative answer.

*Question 3.2.8 – Article 14 (Demand reduction measures concerning tobacco dependence and cessation)*

In questions 3.2.8.6 and 3.2.8.7, which ask about programmes for the diagnosis and treatment of tobacco dependence, FCA recommends the inclusion of an additional bullet point for ‘*telephone quitlines*’.

FCA further recommends that, for each of the core questions in question 3.2.8, an additional question be added to encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions. FCA recommends that, following questions 3.2.8.2 (in respect of questions 3.2.8.1-3.2.8.2); 3.2.8.3; 3.2.8.9 (in respect of questions 3.2.8.3-3.2.8.9); and 3.2.8.12 (in respect of questions 3.2.8.10-3.2.8.12); the following question be added:

If you answered “Yes” to any of the questions in [question number/s above], please provide details in the space below.

### Question 3.3: Measures relating to the reduction of the supply of tobacco

*Question 3.3.1 – Article 15 (Illicit trade in tobacco products)*

For consistency with the language of Article 15.2, FCA recommends that question 3.3.1.1 be amended and separated into two questions, as follows:

- require marking of ~~packaging~~ *all unit packs and packages of tobacco products* to assist in determining the origin of the products?
- *require marking of any outside packaging of tobacco products to assist in determining the origin of the products?*

FCA considers that questions 3.3.1.2 and 3.3.1.3, which ask about Parties' implementation of Article 15.2(a), should be condensed into a single question, as follows:

- requiring that unit packets and packages of tobacco products for retail and wholesale use that are sold on the domestic market carry:
  - the statement: "Sales only allowed in (insert name of the country, subnational, regional or federal unit)"
  - any other marking indicating the final destination of the product
  - any other marking which would assist authorities in determining whether the product is legally for sale on the domestic market

For consistency with the language of Article 15.3, FCA recommends that question 3.3.1.5 be amended as follows:

- requiring that marking is presented in legible form *and/or* appears in the principal language or languages of the country?

Following question 3.3.1.7, FCA recommends the inclusion of an additional question to ask about Parties' implementation of Article 15.4(b), as follows:

- providing appropriate penalties and remedies against illicit trade in tobacco products, including counterfeit and contraband cigarettes?

FCA notes that question 3.3.1.8 appears to confuse Article 15.4(c), which is intended to be dealt with in this question, and Article 15.4(e), which is dealt with in question 3.3.1.10. Question 3.3.1.8 should be amended as follows:

- requiring that confiscated ~~proceeds~~ *manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products* are destroyed, using environmentally-friendly methods where feasible, or disposed of in accordance with national law?

For consistency with the wording of Article 15.6 and to facilitate provision of accurate responses, FCA recommends that question 3.3.1.11 be redrafted as follows:

- promoting, with a view to eliminating illicit trade in tobacco products, cooperation in investigations, prosecutions and proceedings:
  - between your national agencies and the national agencies of other Parties
  - between your national agencies and the national agencies of other Parties in your region
  - between your national agencies and intergovernmental organizations
  - between intergovernmental organizations

For consistency with the wording of Article 15.7 and to facilitate provision of accurate responses, FCA recommends that question 3.3.1.12 be separated into two questions, as follows:

- licensing ~~or other actions~~ to control or regulate production and distribution in order to prevent illicit trade?
- *other measures to control or regulate production and distribution in order to prevent illicit trade?*

Finally, to encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions, FCA recommends that an additional question be added, following question 3.3.1.12, as follows:

If you answered “Yes” to any of the questions in 3.3.3.1-3.3.1.12, please provide details in the space below.

*Question 3.3.2 – Article 16 (Sales to and by minors)*

FCA considers that question 3.3.2.3 is drafted incorrectly, suggesting that Article 16.1(a) requires Parties to place an obligation on purchasers to provide appropriate evidence, rather than on sellers to request it. FCA recommends that the question be amended as follows:

- requiring that, in case of doubt, each *seller of tobacco products request that the purchaser* provide appropriate evidence of having reached full legal age?

To encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions, FCA recommends that an additional question be added, following question 3.3.2.11, as follows:

If you answered “Yes” to any of the questions in 3.3.2.1-3.3.2.11, please provide details in the space below.

FCA notes that, for the purposes of responding to question 3.3.2.9, Parties may require guidance on what constitutes a ‘small packet’. FCA recommends that such guidance be provided in the step-by-step instructions booklet.

*Question 3.3.3 – Article 17 (Provision of support for economically viable alternative activities)*

Noting that Article 17 requires Parties to promote, as appropriate, economically viable alternatives for ‘tobacco workers’, which may include a range of workers beyond just ‘tobacco manufacturing workers’, FCA recommends that the second bullet point in question 3.3.3.1 be amended as follows: ‘tobacco manufacturing workers’.

To encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions, FCA recommends that an additional question be added, following question 3.3.3.1, as follows:

If you answered “Yes” to any of the questions in 3.3.3.1, please provide details in the space below.

#### Question 3.4: Other measures and policies

##### *Question 3.4.1 – Article 18 (Protection of the environment and the health of persons)*

FCA recommends that the second bullet point in both question 3.4.1.1 and question 3.4.1.2 be amended as follows: ‘*the protection of the health of persons in relation to the environment*’.

Noting that some Parties may not have tobacco cultivation or tobacco manufacturing in their territory, FCA recommends that, as for the questions relating to Article 17, the questions relating to Article 18 include a third column, following ‘Yes’ and ‘No’, for ‘*Not applicable*’.

To encourage and facilitate the provision of information that will assist in understanding affirmative responses to the ‘yes/no’ questions, FCA recommends that an additional question be added, following question 3.3.4.2, as follows:

If you answered “Yes” to any of the questions in 3.3.4.1-3.3.4.2, please provide details in the space below.

##### *Question 3.4.2 – Article 19 (Liability)*

To properly reflect the content of Article 19 and facilitate provision of accurate responses, FCA recommends that question 3.4.2.1 be separated into two questions, as follows:

- for the purpose of tobacco control, taking legislative action to deal with:
  - criminal liability?
  - civil liability?
- for the purpose of tobacco control, promoting existing laws to deal with:
  - criminal liability?
  - civil liability?

Following question 3.4.2.1, FCA recommends the inclusion of an additional question, as follows:

If you answered “Yes” to any of the questions in 3.4.2.1, please provide details in the space below.

FCA considers that the instruction ‘If you answered “Yes” to question 3.4.2.1’ should be deleted from questions 3.4.2.2 and 3.4.2.3, as the matters dealt with in these questions do not depend on a Party having undertaken the specific actions referred to in question 3.4.2.1. For

example, a person within a Party's jurisdiction may have launched a liability action using existing general laws, without the Party having taken additional legislative action or measures to promote existing laws.

Following question 3.4.2.2, FCA recommends the inclusion of an additional question, as follows:

If you answered "Yes" to question 3.4.2.2, please provide a brief summary of the action/s and describe the outcome of the action/s.

FCA considers that question 3.4.2.3 requires amendment to ensure that its scope is sufficiently broad to allow for provision of information about executive, administrative, or other action Parties may take for reimbursement of costs related to tobacco use. Parties may, for example, take action for reimbursement of such costs through court proceedings rather than through legislative action. FCA recommends the following:

Have you taken, ~~as appropriate,~~ any legislative, *executive, administrative and/or other* action against the tobacco industry for full or partial reimbursement of medical, social and other relevant costs related to tobacco use in your jurisdiction?

Following question 3.4.2.3, FCA recommends the inclusion of an additional question, as follows:

If you answered "Yes" to question 3.4.2.3, please provide a brief summary of the action/s and describe the outcome of the action/s.

Finally, FCA recommends the inclusion of additional questions to ask about implementation of Article 19.3, about which no question is currently proposed. FCA recommends the following:

Have you afforded, to any other Party, assistance in legal proceedings relating to civil and criminal liability consistent with the Convention?

If you answered "Yes" to [the above question] please provide details in the space below.

*Question 3.4.3 – Article 20 (Research, surveillance and exchange of information)*

To reflect the content of Article 20.1(a), FCA recommends that the introductory part of question 3.4.3.1 be amended as follows:

- *developing and/or* promoting research that addresses:

FCA recommends that the third bullet point under question 3.4.3.1 be amended as follows:

- ~~related~~ social and economic indicators *related to tobacco consumption?*

and that the fifth bullet point be separated into two, as follows:

- ~~the determinants and consequences~~ of exposure to tobacco smoke?

- *consequences of exposure to tobacco smoke?*

FCA further recommends that, following question 3.4.3.1, two additional questions be included, as follows:

If you answered “Yes” to any of the questions in 3.4.3.1, has any of the research been coordinated:

- at the regional level?
- at the international level?

If you answered “Yes” to any of the questions [in 3.4.3.1 and above], please provide details in the space below.

Following question 3.4.3.2, FCA recommends the inclusion of an additional question to allow for the provision of further information in relation to an affirmative response, as follows:

If you answered “Yes” to question 3.4.3.2, please provide details in the space below.

To reflect the content of Article 20.2, as well as 20.3(a), FCA recommends that the fourth bullet point under question 3.4.3.3 be amended as follows:

- ~~related~~ social, economic and health indicators *related to tobacco consumption?*

and that the fifth bullet point be separated into three, as follows:

- *patterns of exposure to tobacco smoke?*
- *determinants of exposure to tobacco smoke?*
- *consequences of exposure to tobacco smoke?*

FCA further recommends that, following question 3.4.3.3, two additional questions be included, as follows:

If you answered “Yes” to any of the questions in 3.4.3.3, have any of your tobacco surveillance programmes been integrated into:

- national health surveillance programmes?
- regional health surveillance programmes?
- global health surveillance programmes?

If you answered “Yes” to any of the questions in [3.4.3.3 and above], please provide details in the space below.

In question 3.4.3.4, FCA recommends that, to reflect the content of Articles 20.4 and 20.3, additional bullet points be included for ‘*information on the manufacture of tobacco products*’, ‘*data on tobacco consumption*’, and ‘*data on social, economic and health indicators related to tobacco consumption*’. Following question 3.4.3.4, an additional question should be included to allow for the provision of further information in relation to affirmative responses, as follows:

If you answered “Yes” to any of the questions in 3.4.3.4, please provide details in the space below.

In question 3.4.3.5, FCA recommends that, to reflect the content of Articles 20.4(a) and 20.4(b): the second bullet point be amended to include '*regulations*' on tobacco control, as well as laws; and an additional bullet point be included for '*data from programmes for surveillance of tobacco consumption and related social, economic and health indicators*'. Following question 3.4.3.5, an additional question should be included to allow for the provision of further information in relation to affirmative responses, as follows:

If you answered "Yes" to any of the questions in 3.4.3.5, please provide details in the space below.

#### **Section 4: International cooperation and assistance**

To ensure that it is of sufficiently broad scope to appropriately cover Article 22.1(e), FCA recommends that the words 'including comprehensive treatment of nicotine addiction' be deleted from question 4.5. Comprehensive treatment of nicotine addiction is one area of 'identification of methods for tobacco control' in which assistance may be provided or received. Details such as this may be provided in response to question 4.8, which requests that Parties 'provide information about any assistance provided or received in the space below'.

FCA considers that question 4.9 – which states: 'If you have not received or provided assistance in any of the aforementioned areas, please identify any financial or technical assistance that may be under consideration, if appropriate' – is very important to the achievement of the goal of this section, as noted below the heading, 'to assist the Convention Secretariat in matching available skills and resources with identified needs'. To encourage and facilitate useful responses to this question, FCA recommends that it be given greater prominence. Instead of appearing as a separate question, it should appear as a third column for responses to questions 4.1-4.6: *Assistance requested/considered*. This will allow Parties that have sought assistance but not yet received it, and Parties that are considering providing assistance but have not yet done so, to clearly indicate this in their responses.

### **3. Elaboration of Group 3 questions**

According to the graduated reporting arrangements established by COP-1, Parties' third reports on implementation will cover more complex and detailed questions, to be elaborated in the 'Group 3' questionnaire. Group 3 reports are to be submitted within eight years of the entry into force of the FCTC for each Party.

COP-1 anticipated that the format for reporting on Group 3 questions would be elaborated at COP-2. COP-2, taking into account 'that protocols and guidelines are currently under development, which may make it difficult to consider Group 3 questions at [COP-3]', decided to defer consideration of Group 3 questions until COP-4.

FCA agrees that there is much to be learned through the processes of guideline and protocol development currently underway, as well as through the process of elaborating the Group 2 questions, which are not likely to be ready for adoption in final format until COP-4. Taking into account that the development of Group 3 questions needs to be informed by these processes, and noting that the first Group 3 reports are not due to be submitted until February 2013, FCA recommends that COP-3 not decide to begin the process of elaboration of Group 3 questions. The process for development of Group 3 questions should be considered by COP-4.

#### **4. Undertaking of an independent assessment of the reporting arrangements**

According to the COP-1 decision on reporting and exchange of information, the COP is to conduct an independent assessment of the reporting arrangements in 2009, and further consider the matter of reporting in 2010.

To facilitate informed consideration by the COP of the reporting arrangements, COP-3 should request that a detailed objective assessment of the reporting arrangements be carried out and presented to COP-4. FCA recommends that the assessment consider the effectiveness of the reporting arrangements so far adopted by the COP and make recommendations with respect to enhancing the effectiveness of these arrangements.

The criteria against which the assessment should be conducted are the key functions of reporting identified in the COP-1 decision:

- providing a basis for the COP to fulfil its role as set out in Article 23.5 – to regularly review the implementation of the Convention, and, in light of this review, to take the decisions necessary to promote effective implementation. It may be noted that the Secretariat's note for COP-1 on reporting and exchange of information, which sets out the central characteristics and purpose of reporting under the FCTC, identifies this as the first key function of reporting ('it assists the Conference in the assessment of implementation of the treaty, and identification of problems encountered by the Parties as well as possible gaps in the treaty's provisions, and on that basis, consideration of appropriate response measures');
- enabling Parties to understand and learn from each other's experience in implementation of the Convention. This key function was also highlighted in the Secretariat's note, which noted that periodic reports

‘can help Parties to gain an insight into the implementation measures of other Parties’, facilitating ‘identif[ication] of common issues to be addressed’ and development of common initiatives to respond to these issues; and

- facilitating identification of constraints or barriers to implementation of the Convention, needs for assistance in implementation, and coordination of available skills and resources with identified needs. As explained in the Secretariat’s note, this function applies to: individual Parties (for which the process of reporting can facilitate evaluation of the status of their implementation and consideration of appropriate response measures); the COP, supported by the Secretariat (for which the reporting process assists in the identification of problems encountered by Parties in implementation and in the development of appropriate response measures); and other ‘relevant actors (for example, intergovernmental agencies, specialist nongovernmental organizations and scientific bodies)’ (for which the reporting process assists in the formulation of ‘strategies and programmes to assist Parties, individually or collectively, with implementation of the treaty provisions’).

The assessment should include a comprehensive survey of Parties and accredited observers about the effectiveness of the reporting arrangements and should draw on the lessons learned and challenges encountered in reporting under other international agreements, such as those in the environmental and human rights fields. In particular, it should evaluate the role played by dedicated subsidiary bodies in achieving the above functions of reporting under existing multilateral agreements, and consider the desirability of the establishment of such a body by the COP.