



This document relates to item 4.2 of the provisional agenda

Sixth Session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control,
13-18 October 2014, Moscow

FCA Policy Briefing Article 6 draft guidelines

Key recommendations

- The draft Article 6 guidelines proposed by the drafting group should be adopted without change at COP6.
- The draft guidelines fully respect national sovereignty.
- Parties should give thought to the data collection and technical assistance needs for implementation of Article 6, as well as to possible changes to the FCTC reporting instrument; the Secretariat should be requested to work further on these topics, for example via an expert report.

Introduction

As noted in the “guiding principles” of the draft guidelines, tobacco tax policies “are widely recognised to be one of the most effective means of influencing the demand for and thus the consumption of tobacco products”. In fact, it is hard to think of any jurisdiction that has substantially reduced tobacco use prevalence without significant increases in tobacco prices. Parties have been discussing Article 6 in detail since COP3, when they requested a “comprehensive technical report” on tax and price policies from WHO’s Tobacco Free Initiative. (Decision FCTC/COP3(8).)

This technical report was duly produced (see document FCTC/COP/4/11) and presented at COP4, where Parties decided to set up a working group to draft Article 6 guidelines (decision FCTC/COP4(13)). From the outset, this working group was designed to include both tax and public health experts, and in the end, had roughly equal representation from Health and Finance ministries. The working group had the highest attendance of any working group in FCTC COP history.

The draft guidelines presented at COP5 (FCTC/COP/5/8) were, in the opinion of the FCA and of many Parties, generally excellent but required some editing and simplification. This editing task was delegated to an open-ended working group, which met in parallel to the main committees through much of COP5. This group made valiant efforts but was unable to complete drafting of complete guidelines in the time available. Accordingly, the working group proposed, and Parties accepted, immediate adoption of a “Set of Guiding Principles and Recommendations” on Article 6 (decision FCTC/COP5(7)), as well as the establishment of a drafting group to complete the rest of the editing task.



It is the report of this drafting group, attended by 40 Parties, which has been sent to COP6 for consideration and, it is hoped, unanimous approval.

Ample input from Parties and experts

The negotiating history of the draft Article 6 guidelines is important because it demonstrates that Parties have had multiple opportunities to discuss the matters dealt with in the draft guidelines, including:

- At COP4, when the TFI report on tax and price policies was presented and debated and the decision was taken to draft guidelines;
- At the meeting of the Article 6 working group in December 2011;
- Via consultations with working group members, following the initial meeting, including a meeting of “Friends of the Chair”;
- Via consultations with all Parties in the lead-up to COP5;
- During discussion at COP5, in Committee A, in the open-ended working group, and in plenary;
- During the June 2013 meeting of the open-ended intersessional drafting group;
- During the subsequent comments period, open to all Parties (September-November 2013), discussed in detail in the drafting group’s report (FCTC/COP/6/7).

The chairs of the working group, the open-ended drafting group at COP5 and the intersessional open-ended working group have all worked hard to integrate input from Parties, experts and observers into consensual text, and every line of the draft guidelines has been discussed in detail at some point in the process.

It should be noted that the intersessional drafting group benefited from the expert advice of Frank Chaloupka, one of the world’s leading experts on tobacco taxation.

Sovereignty arguments against guidelines adoption are spurious

In private representations to a number of governments, tobacco companies have attempted to portray the draft guidelines as an attack on national sovereignty. The guidelines clearly state the contrary. The first guiding principle of the guidelines is that “[d]etermining tobacco taxation policies is a sovereign right of the Parties”.

The guidelines recommend that Parties “should establish coherent long-term policies on their tobacco taxation structure” (recommendation at the end of 3.2). The guidelines do not set minimum tobacco tax levels. Instead, the guidelines explicitly state, in the second sentence of 3.2, that “there is no single optimal level of tobacco taxes that applies to all countries”. The guidelines go on to mention the fact that the World Health Organization has published a recommendation on the share of excise taxes in the retail price of tobacco products – a recommendation that Parties are, of course, free to accept or reject according to their national circumstances.

The guidelines also do not mandate a specific approach that Parties must take with respect to the choice of tobacco tax structures, except the high-level principle that “Parties should implement the simplest and most efficient system that meets their public health and fiscal needs, and taking into account their national circumstances.” (Recommendation at the end of Section 3.1.) The guidelines present an objective view of the advantages and disadvantages of the various types of tobacco taxes, based on the experience of many Parties and the analysis of leading experts.

The guidelines, if adopted, will constitute an acknowledgement by Parties that, 1) they should consider their tobacco tax structure, keeping health and revenue objectives in mind and, 2) aim for simplicity and efficiency. This acknowledgement does not constitute an infringement on national sovereignty.

Future work

A key element in the successful drafting of Article 6 guidelines has been co-operation between finance and health ministry representatives. Successful implementation of Article 6 will require ongoing co-operation between these ministries at the national level, with Finance bearing responsibility for tax policy, while Health monitors progress in curbing the tobacco epidemic and provides rapid feedback on the public health benefits of improvements in tax structure and increases in tax rates.

One practical obstacle to tobacco tax policy-making in many countries is the failure to collect and/or compile and make available relevant information. Decision-makers need basic information on trends in tobacco pricing, affordability, sales, prevalence and tobacco tax revenues in order to adjust tobacco tax policies to changing needs and circumstances. In the absence of such information from governmental sources, some officials fall back on data provided by the tobacco industry – which has a vested interest in minimising the effectiveness of tobacco tax increases, exaggerating the extent of illicit trade, and underestimating the revenue potential of tobacco tax increases.

As a first step, Parties should give priority to making relevant aggregated data publicly available where they already exist – in particular with respect to volume of sales, average retail price and tax revenue collected. This will make it easier for independent researchers to analyse the demand for tobacco products and forecast the impact of alternative tax policies on consumption.

There are three practical steps the COP could collectively take to contribute to reducing these data gaps.

Improving the reporting instrument

First, the FCTC reporting instrument¹ could be improved to better capture relevant information. The existing reporting instrument includes a number of questions that are relevant to Article 6 implementation, such as those on the supply of tobacco and tobacco products (2.5.1-2.5.3), seizures of illicit product (2.6.1-2.6.6), taxation (2.8.1-2.8.7), the price of tobacco products (2.9.1-2.9.4) and price and tax measures to reduce the demand for tobacco (3.2.1.1-3.2.1.5).

¹ See http://www.who.int/fctc/reporting/reporting_instrument/en/

The reporting instrument at present does not capture any information on affordability trends, although they have been identified, in the guidelines, as a key determinant of demand. The pricing information captured by section 2.9.1 of the reporting instrument (= 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) may provide a reasonable first approximation of price levels – but many Parties have access to much more accurate price data, in the form of the tobacco price index data that are included in the calculation of the Consumer Price Index.

The reporting instrument now includes a large optional module, which presumably will be expanded to reflect the contents of the Article 6 guidelines, after they are adopted. Parties may wish to encourage the Secretariat to consult tobacco tax experts before drafting that section of the questionnaire, to maximise the chances of obtaining reliable and comparable data from countries without putting an excessive burden on respondents.

Requesting an expert report on data collection and data analysis

Beyond this short-term task of maximising the utility of the FCTC reporting instrument, Parties may also wish to consider requesting an expert report on collection and analysis of tobacco tax-related data.

While the FCTC reporting instrument and the WHO's periodic Global Tobacco Control Reports capture valuable data about taxes and prices, it remains the case that too many governments rely on unverified tobacco industry reports for such basic information as level of retail sales, price levels or consumption numbers, as well as estimates of the price elasticity of demand. This leaves them open to various forms of manipulation.

To help deal with this problem, the Conference of the Parties could ask the Secretariat to commission an expert report detailing:

- The minimum data set that Parties need to take informed tax decisions (the “must haves”);
- Supplementary types of data that are useful (the “nice to haves”);
- Possible options for cost-effective collection of data;
- The types of data analysis needed for informed tax decisions (e.g. price elasticity estimates);
- Possible co-operative arrangements between Parties, or with relevant multilateral organisations, to collect and analyse relevant data (e.g. toolkits that could be prepared centrally).

Improving mechanisms of assistance on tobacco tax issues

In Committee B, Parties will be discussing the report of the Working Group on Sustainable Measures to Strengthen Implementation of the FCTC (FCTC/COP/6/19). Because technical assistance on tobacco tax issues is likely to be required primarily by Finance ministries (rather than Health, as with most other articles of the FCTC), and is likely to involve a number of players that may not be as interested in other aspects of the FCTC, Parties may wish to take some time to discuss technical assistance needs specifically for Article 6 implementation. A first step could be to request the Secretariat to document possible mechanisms and partnerships to provide assistance.

Conclusion

Tobacco taxation is a key tool in curbing the tobacco epidemic.

The draft Article 6 guidelines provide clear explanations of key tobacco tax concepts and of the rationale underpinning the guiding principles and recommendations adopted already at COP5. There is therefore every reason to adopt the guidelines without change at COP6.

They will provide an important reference document for tobacco tax policy-makers for years to come.

Parties should consider options for future work on Article 6 implementation, including the commissioning of an expert report on data collection and analysis needs, as well as a mandate to the FCTC Secretariat to seek to improve coordination and delivery of technical assistance in this area.