



This document relates to item 2 of the provisional agenda

Sixth Session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control,  
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**FCA Briefing Paper**  
**INTERPOL's application for observer status**

**Key recommendations**

- INTERPOL's application should be rejected on the basis that, as long as its agreement with Philip Morris International (PMI) is in force, its participation in FCTC discussions would be inconsistent with the FCTC and the ITP.
- As the police have a crucial role to play in ITP implementation, INTERPOL should be invited to re-apply for observer status in 2015, once it has ended its agreement with PMI and as long as it rejects further partnership agreements with tobacco companies.
- Parties should consider adopting application and periodic review processes for observer status for intergovernmental organisations (IGOs), similar to those which already exist for NGOs.
- Should the Conference of the Parties decide to mandate intersessional work on Article 5.3, this work could include developing criteria for observer status.

**Introduction**

INTERPOL applied for observer status ahead of COP5, no doubt in anticipation of the adoption of the Protocol to Eliminate Illicit Trade in Tobacco Products (ITP). At COP5, the Parties decided to defer a decision until further clarifications were received with respect to the €15 million contribution by PMI to INTERPOL, announced in June 2012.<sup>1</sup> Further information has been received from INTERPOL via letter dated 25 July 2013 (excerpts of which are annexed to FCTC/COP/6/4) and in person, at the Bureau's April 2014 meeting.

The COP's Rules of Procedure give wide latitude to the COP to determine whether or not to grant observer status to international intergovernmental organisations (Rule 30) or to nongovernmental organisations (Rule 31). Rule 30 stipulates: "Any international intergovernmental organisation may apply to the Secretariat for observer status, which may be granted by the Conference of the Parties, taking into account the 17<sup>th</sup> and 18<sup>th</sup> preambular paragraphs as well as Article 5.3 of the Convention."

<sup>1</sup> PMI press release dated 21 June 2012:

[http://www.pmi.com/eng/media\\_center/press\\_releases/pages/201206210200.aspx](http://www.pmi.com/eng/media_center/press_releases/pages/201206210200.aspx);

INTERPOL press release dated 22 June 2012: <http://www.interpol.int/en/News-and-media/News/2012/PR050/>

The 17<sup>th</sup> preambular paragraph of the FCTC refers to the “special contribution of nongovernmental organisations and other members of civil society not affiliated with the tobacco industry” (our emphasis), while the 18<sup>th</sup> paragraph refers to the “need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts”.

With respect to Article 5.3, INTERPOL notes in its letter that it “is not a country and consequently cannot be party to the FCTC”. While this may be true, it is worth noting recommendation 4.9 of the Article 5.3 Guidelines: “Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties.” The Guidelines also include recommendations against “partnerships and non-binding or non-enforceable agreements as well as any voluntary arrangement with the tobacco industry or any entity or person working to further its interests” (3.1) as well as against “acceptance by any branch of government or the public sector of political, social, financial, educational, community or other contributions from the tobacco industry or from those working to further its interests, except for compensations due to legal settlements or mandated by law or legally binding and enforceable agreements” (6.4).

Thus, there is no doubt that the Rules of Procedure allow Parties to deny observer status to an organisation if its participation is judged to be part of an effort by the tobacco industry to undermine tobacco control.

### **PMI’s grant to INTERPOL is substantial and likely to give it significant influence over INTERPOL’s work on illicit trade in tobacco products**

According to INTERPOL’s most recent publicly available financial statements (for the year 2012)<sup>2</sup>, its total operating revenue in that year was €69,589,000. Assuming PMI’s €15 million contribution is spread evenly over the three years of its agreement with INTERPOL, it is thus equivalent to about 7 percent of INTERPOL’s annual revenues – and to about one-third of income from sources other than member states.

Just as significantly, INTERPOL made the PMI contribution public in June 2012 in the press release announcing a “global initiative against trafficking in illicit goods and counterfeiting”, whose creation thus appears to have been contingent upon receipt of PMI funding. Indeed, the PMI contribution is the only private-sector financial contribution explicitly mentioned in INTERPOL’s 2012 annual report (although it does mention “partnerships” with two other private-sector companies, in the biometrics and information technology fields).<sup>3</sup>

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<http://www.interpol.int/content/download/20153/181389/version/3/file/FinancialStatements2012%5B1%5D.pdf>

<sup>3</sup> INTERPOL Annual Report 2012 – online at

[http://www.interpol.int/content/download/20552/185413/version/5/file/Annual%20Report%202012\\_EN\\_i.pdf](http://www.interpol.int/content/download/20552/185413/version/5/file/Annual%20Report%202012_EN_i.pdf)

### **INTERPOL's agreement with PMI is not public**

In its July 2013 letter to the Bureau, INTERPOL claims that its agreement with PMI "is the main safeguard in place to protect INTERPOL from the tobacco industry's interests." The letter goes on to quote two sentences of that agreement, including one mentioning INTERPOL's "independence and neutrality, in accordance with its status as an intergovernmental organisation".

However, to our knowledge the full text of the agreement is not public. For example, we do not know what reporting requirements the agreement involves. Is INTERPOL, for example, required to provide regular reports to PMI on activities paid for from the €15 million contribution?

In the absence of the full text of the agreement, it is also not possible to know what types of activities are or are not eligible for funding. It is possible, for example, that the agreement specifies that the majority of the contribution must be spent specifically on measures to combat trade in *counterfeit* goods. Counterfeit has a direct negative impact on tobacco industry profits, unlike illicit trade in 'genuine' cigarettes – but the latter is a larger problem.

Finally, what does the agreement say with respect to possible renewal when the initial contribution lapses in 2015? Is it intended as one-off funding to kick-start a long-term INTERPOL initiative, or is the continued existence of INTERPOL's initiative on "trafficking in illicit goods and counterfeiting" dependent on future funding by PMI?

ITP Article 4.2 reads:

*In implementing their obligations under this Protocol, Parties shall ensure the maximum possible transparency with respect to any interactions they may have with the tobacco industry.*

While INTERPOL would likely point out that it is not, and never can be, a Party to the ITP, could future Parties to the ITP accept expert advice from INTERPOL without knowing in detail the extent of their obligations to PMI?

### **Implementing the FCTC and the ITP is a matter of public health policy**

INTERPOL's July 2013 letter states that it "has no role in public health policy... [but] is concerned by the law enforcement aspects of the Convention." It also says that the goals of the ITP "go well beyond public health, with its ultimate aim being to eliminate illicit trade in tobacco products".

It is perhaps understandable that police forces do not perceive their work as being part of public health policy, but this interpretation of the ITP and the FCTC is not tenable.

The stated objective of the ITP is "to eliminate all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO Framework Convention on Tobacco Control" (our emphasis). The preamble to the ITP mentions "health" 10 times, and Article 15 of the FCTC refers to the elimination of all forms of illicit trade as "essential components" of tobacco control.

The reason why Parties to the FCTC chose to negotiate a protocol on illicit trade under the umbrella of the FCTC was because of illicit trade's impact on public health. There is no suggestion anywhere in the Protocol that there are "technical" or "law enforcement" aspects of Protocol implementation that can be carried out in partnership with the tobacco industry. Instead, there are explicit and implicit reminders of the principles of Article 5.3 and Article 5.3 Guidelines.

In the ITP preamble:

*Mindful of Article 5.3 of the WHO Framework Convention on Tobacco Control in which Parties agree that in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law;*

*Emphasizing the need to be alert to any efforts by the tobacco industry to undermine or subvert strategies to combat illicit trade in tobacco products and the need to be informed of activities of the tobacco industry that have a negative impact on strategies to combat illicit trade in tobacco products.*

In Article 8 of the ITP, dealing with tracking and tracing:

*12. Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.*

*13. Each Party shall ensure that its competent authorities, in participating in the tracking and tracing regime, interact with the tobacco industry and those representing the interests of the tobacco industry only to the extent strictly necessary for the implementation of this Article.*

In contrast, INTERPOL's letter states: "INTERPOL considers that, with the adoption of the Protocol which creates a new dimension for the relationship between the public and private sectors, we are able to work with the industry, whilst protecting our independence and our Member States' interests."

Finally, it should be noted that references to "counterfeit" and "counterfeiting" were eliminated from the text of the ITP during the final negotiating session for the Protocol, INB5, in 2012 – notably in Article 14, which deals with unlawful conduct including criminal offences. This was because of concerns that the Protocol might otherwise be abused to enforce the intellectual property claims of tobacco companies.

Thus, while INTERPOL's core mandate of facilitating law enforcement by its member states makes it an important potential partner in ITP implementation, the specific aims of its "global initiative against trafficking in goods and counterfeiting" may not be consistent with the Protocol.

### **Police involvement is a crucial element of ITP implementation – and potential partners need more guidance**

While INTERPOL's agreement with PMI is an insurmountable obstacle to granting the organisation FCTC observer status at COP6, it should be emphasised that the Protocol will not be successful without close co-operation with police forces, customs and finance and justice ministries. Moreover, it is worth noting that there a number of ways in which INTERPOL could be invited to provide information to the COP or the Convention Secretariat without granting the organisation observer status immediately.

INTERPOL's application raises a broader policy issue for the Conference of the Parties. To improve their public image and gain influence with decision makers, the tobacco industry regularly offers "partnerships" to all sorts of institutions – intergovernmental organisations, national police forces, customs services, even health ministries. While it is easy to refer government agencies to Article 5.3 and Article 5.3 guidelines, there is no one document that makes it clear to intergovernmental organisations what is expected of them if they wish to be involved in FCTC-related work.

At present, as mentioned in FCTC/COP/6/3, the Conference of the Parties has agreed on detailed procedures for evaluating applications for observer status by NGOs. Moreover, with decision FCTC/COP5(22), the COP also operationalised the requirement in Rule 31.3 of the Rules of Procedure that NGOs' status as observers should be regularly reviewed.

Procedures and criteria for eligibility for intergovernmental organisations (IGOs) have not been worked out in the same detail, and there is no provision in the Rules of Procedure for review of observer status for IGOs once it is granted.

At COP2, Parties decided to automatically grant observer status to all IGOs that had participated as observers in the original FCTC negotiations from 2000-2003 (see decision FCTC/COP2(5)). The only requirement for observer status for IGOs at that time was to be in official relations with the World Health Organization.

The consequence of all this is that IGOs may have forged close relationships with the tobacco industry *without this ever coming to the attention of the Conference of the Parties* – no procedure exists to report interactions with the industry.

FCA understands that intersessional work on Article 5.3 implementation is likely to be one element of the proposal being presented under provisional agenda item 4.8. We would suggest that one task in this regard could be to develop criteria for IGOs' actions relating to the tobacco industry that are consistent with observer status, in light of Rule 30 of the Rules of Procedure.

### **There is no rush – the ITP is not yet in force**

Article 15 of the FCTC is already in force, creating obligations for Parties with respect to combating illicit trade. In practice, however, it is primarily at future meetings to deal with implementation of the ITP that law enforcement expertise will be needed.

At the earliest, the first Meeting of the Parties to the ITP will be held immediately before or after COP7 – after INTERPOL’s agreement with PMI has lapsed, and after its General Assembly completes revisions to its rules with respect to review and acceptance of contributions from private-sector corporations.

In the circumstances, the FCA urges the Conference of the Parties to reject INTERPOL’s application for observer status but to invite it to re-apply when it is no longer in receipt of financial contributions from the tobacco industry.

We further urge Parties to provide clear guidance to observers and potential observers with respect to compatibility with Article 5.3 and its Guidelines, including rules on interactions with the tobacco industry.