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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: WHO Framework Convention on Tobacco Control (FCTC)
Outcome of the Seventh session of the Conference of the Parties (COP7),
New Delhi, India, 7-12 November 2016
– *Information by the Presidency*

In view of the meeting of the Working Party on Public Health at Senior Level on 3 February 2017, delegations will find attached a note from the Presidency on the above-mentioned subject.

WHO Framework Convention on Tobacco Control (FCTC)
Main results of the 7th Session of the Conference of the Parties (COP 7),
New Delhi, India, 7-12 November 2016

1. Introduction

The [WHO Framework Convention on Tobacco Control](#) (WHO FCTC) is the first international treaty negotiated under the auspices of WHO. It was developed in response to the globalisation of the tobacco epidemic and is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The Convention represents a milestone for the promotion of public health and provides new legal dimensions for international health cooperation.

The Convention contains altogether 38 articles and is structured into 11 parts, setting out provisions on the objectives, guiding principles and obligations stemming from the Convention, measures aiming at reducing the supply and demand of tobacco, on questions related to liability, scientific and technical cooperation between the parties, communication of information, and on institutional arrangements and financial resources.

The Convention was adopted by the World Health Assembly on 21 May 2003 and entered into force on 27 February 2005. It has since become one of the most rapidly and widely embraced treaties in the history of the United Nations with 180 Parties to date. The European Union and its 28 Member States are parties to the Convention.

[The 7th Conference of the Parties to the FCTC \(COP 7 FCTC\)](#) was held in the Indian capital, New Delhi, from 7 to 12 November 2016. Representatives of 134 Parties to the Convention attended the Conference. The participants also included five States non-parties as well as four intergovernmental organisations and 12 nongovernmental organisations (NGO's) accredited as observers.

It is recalled that the Conference of the Parties is convened every second year in order to review and promote the implementation of the Convention. To that end, the Conference takes a number of decisions, and may also adopt guidelines and recommendations as well as protocols, annexes and amendments to the Convention, as appropriate¹.

The first protocol to the Convention, namely the [Protocol to Eliminate Trade in Tobacco Products](#), was adopted on 12 November 2012 by the Conference of the Parties, meeting in Seoul, Republic of Korea, in accordance with Article 33 of the Convention. Only Parties to the Convention may be Parties to a protocol. Any protocol to the Convention shall be binding only on the Parties to the protocol in question. The Protocol is currently open for ratification, acceptance, approval or accession by the Parties to the WHO FCTC, and has so far been ratified by 25 Parties to the Convention (including six EU Member States (AT, EU, FR, LT, LV, ES, PT) and the EU itself. 40 ratifications are required for Protocol to enter into force.

2. The main results

Most of the work of the Conference of the Parties is carried out in two Committees, A and B, of which Committee A deals with treaty instruments and technical matters, whereas Committee B deals with budgetary and institutional matters. At its seventh session, the Conference of the Parties adopted a total of [12 decisions relating to the implementation of the Convention](#), and [11 decisions relating to the budget and to institutional matters](#).

¹ So far, the Conference of the Parties has adopted eight sets of guidelines covering the provisions of nine articles of the Convention, namely Articles 5.3 (protection of the public health policies of the parties from commercial and other vested interests of the tobacco industry in accordance with national law), 6 (price and tax measures), 8 (protection of exposure to tobacco smoke), 9 (regulation of the contents of tobacco products), 10 (regulation of tobacco product disclosures), 11 (packaging and labelling of tobacco products), 12 (education, communication, training and public awareness), 13 (tobacco advertising, promotion and sponsorship) and 14 (demand reduction measures concerning tobacco dependence and cessation). The COP also adopted at its sixth session (2014) a set of policy options and recommendations on economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the WHO FCTC).

The main achievements of the COP 7 were:

- Continuation of the preparatory work in anticipation of the entry into force of the Protocol to eliminate illicit trade in tobacco products (with limited budget implications),
- Adoption of partial guidelines on the regulation of the content of tobacco products and of tobacco product disclosures (Articles 9 and 10),
- A balanced decision on e-cigarettes endorsing the EU approach and calling for voluntary reporting on scientific, market and regulatory developments,
- Adoption of the work plan and budget for the FCTC Secretariat with zero nominal growth in assessed contributions.

In addition, the COP 7 agreed to eliminate the word “voluntary” from the term “voluntary assessed contributions” to the FCTC budget and to adopt a decision aiming at incentivising Parties (especially those failing to meet their financial obligations) to comply with their obligations under the Convention.

At its fifth plenary meeting, which took place on 12 November 2016, the Conference decided to hold its eighth session (COP 8) in the last quarter of 2018 at the seat of the FCTC Secretariat in Geneva.

3. EU participation and co-ordination

The 7th Conference of the Parties (COP7) addressed the longest agenda ever in the history of the COP (more than 30 agenda items). In addition, it was called upon to examine a number of proposals prepared by the Secretariat of the Convention, which tended to extend or introduce activities, that involved additional costs, but which were of questionable added value for the effective implementation of the Convention.

Notwithstanding this, the EU achieved its main objectives and managed to avoid major concessions, thanks to the extensive preparatory work, that was carried out in the Working Party of Public Health during the months of September and October 2016 on the basis of submissions from the European Commission and the SK Presidency. As a result of this preparatory work, the EU had agreed common approaches for all items on the provisional agenda for COP 7².

During the discussions held in Committees A and B, the interventions on behalf of the European Union were made from behind the EU nameplate. The Commission spoke on the vast majority of the items dealt with in Committee A, whereas the Presidency represented the EU on the vast majority of the items dealt with in Committee B.

All through the Conference, EU coordination meetings were held on Sunday 6 November at 16:00 and from Monday 7 to Friday 11 November generally three times a day in order to take stock of the state of the proceedings in the two Committees.

A detailed overview of the results of the work carried out in the two Committees is set out in the ANNEX I to this note.

² See “I” Item Note from the Working Party on Public Health to the Permanent Representatives Committee (Part 1) as set out in document 13418/16.

Results and proceedings of the conference

A. Treaty instruments and technical matters (agenda items 5 and 6)

Item 5.1 Status of the Protocol to Eliminate Illicit Trade in Tobacco Products - Decision FCTC/COP7 (6)

As regards the status of the Protocol on Illicit Trade in Tobacco Products, it was decided to intensify the work of the Panel of Experts, which should focus on *inter alia* mapping of the emerging traceability systems and the future structure of a global information-sharing focal point. The adopted decision will ensure that work on tracking and tracing is taken forward between COP7 and the Protocol's entry into force. This is very important in the context of implementing the Tobacco Products Directive (TPD).³

Item 5.2 Impact assessment of the WHO FCTC - Decision FCTC/COP7 (7)

In line with the EU position on this item, the COP welcomed the outcome of the work of the expert group contained in document FCTC/COP/7/6 and expressed its gratitude to the expert group and the 12 Parties that had participated in the impact assessment. In its decision, the COP went on to invite Parties to consider evaluating on a regular basis the impact of WHO FCTC implementation in their respective jurisdictions as part of their overall implementation of the Convention and to consider the need to conduct another impact assessment of the WHO FCTC in 5 to 10 years, as well as regional assessments, as necessary. The decision moreover requests the FCTC Secretariat to disseminate further the findings of the impact assessment by promoting the preparation of scientific papers and publications, as appropriate.

³ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

Item 5.3 Implementation of Article 5.3 of the WHO FCTC

– Decision FCTC/COP7 (8)

On this item, the COP adopted a decision, which notably requests the FCTC Secretariat to establish a specific Knowledge Hub⁴ for the implementation of article 5.3 on the protection of the public health policies of the parties from commercial and other vested interests of the tobacco industry in accordance with national law.

Item 5.4 Further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC: “Regulation of the contents of tobacco products” and “Regulation of tobacco product disclosures”: report by the working group and report by WHO

- Decision FCTC/COP7 (14)

The COP adopted partial guidelines on regulation of the content of tobacco products and on regulation of tobacco product disclosures (Articles 9 & 10 of the Convention) in line with the EU position. The guidelines recommend the Parties to ban attractive design features and to request reporting on tobacco ingredients while considering measurement methods proposed by the WHO. Work on addictiveness reduction will be taken forward by a group of expert/stakeholders, and WHO will work inter alia on assessment of novel products (e.g. heat not burn), measurement method development and validation, and will collaborate with the respective knowledge hubs on smokeless tobacco and water-pipes.

⁴ Knowledge Hubs: The Convention Secretariat has established six Knowledge Hubs so far (one in each of the six WHO regions). Their task is to analyse, synthesize and disseminate to the Parties to the Convention knowledge and information on matters under their expertise in relation to the Convention, in accordance with Article 22 (*Cooperation in the scientific, technical, and legal fields and provision of related expertise*). New Knowledge Hubs may be established by the Convention Secretariat after guidance from the Conference of the Parties (COP), the governing body of the WHO FCTC.

Item 5.5.1 Control and prevention of water-pipe tobacco products: report by WHO
- Decision FCTC/COP7 (4)

Following lengthy discussions in Committee A, the COP adopted a decision on water-pipes inviting parties to apply the FCTC provisions on water-pipes and asked the Convention Secretariat to report to COP8⁵.

Item 5.5.2 Electronic nicotine delivery systems and electronic non-nicotine delivery systems: report by WHO
- Decision FCTC/COP7 (9)

A balanced decision was adopted on electronic cigarettes inviting Parties to adopt a variety of measures and to report on scientific, market and regulatory development. This outcome is in line with the relevant provisions of the Tobacco Products Directive, in particular its Article 20. Moreover, in line with the EU position on this item, the adopted decision FCTC/COP7 (9) foresees neither creation of working groups nor the development of guidelines on ENDS/ENNDS.

Item 5.6: Economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the WHO FCTC)
- Decision FCTC/COP7 (10)

Committee A adopted a decision on viable alternatives to tobacco growing, which requests the Convention Secretariat to continue monitoring the implementation of Articles 17-18 of the Framework Convention and to report back to COP8.

⁵ The EU had reservations about the reference to increasing the taxation of water pipe tobacco in the decision as this does not reflect the wording of Article 6 and its guidelines, that setting tax policies is the sovereign right of the Parties, but was assured by the FCTC Secretariat that the decision is not binding on Parties.

Item 5.7 Implementation of Article 19 of the WHO FCTC: “Liability”

- Decision FCTC/COP7 (11)

In line with the EU position on this issue, the COP adopted decision FCTC/COP7 (11), which requests the FCTC Secretariat to make a toolkit on best practices available on the WHO FCTC information platform and to update this toolkit, as new information and resources become available. The decision further requests the FCTC Secretariat to report on progress with regard to this issue at the COP8.

Item 5.8 Addressing gender-specific risks when developing tobacco control strategies

- Decision FCTC/COP7 (12)

In line with the EU position, the COP adopted a decision emphasizing that some tobacco-related problems are unique to women or more prevalent among women and stressing the importance of informing and protecting pregnant women against the harmful effects of tobacco consumption and environmental tobacco smoke. In addition, the decision requests the FCTC Secretariat to invite the WHO to prepare and submit a paper to COP8, that includes further updates on the evidence on tobacco use and its consequences among girls and women, as well as boys and men, and with special attention to vulnerable groups, in respect to social determinants of health.

Item 5.9 Tobacco advertising, promotion and sponsorship: depiction of tobacco in entertainment media

- Decision FCTC/COP7 (5)

In line with the EU position on this issue, the COP adopted a decision requesting the FCTC Secretariat to set up an expert group with regional representation, in collaboration with the WHO, to provide recommendations on how to operationalize the implementation of Article 13 of the Convention and its guidelines on cross-border advertising, including tobacco advertising, promotion and sponsorship (TAPS) in entertainment media, and to report to COP8 on the progress made towards combating cross-border advertising and (TAPS) in entertainment media.

Four items Measures to strengthen implementation of the Convention through coordination and cooperation

– Decision FCTC/COP7 (13)

The following agenda items were merged:

- Item 6.1 Reporting arrangements under the WHO FCTC
- Item 6.3 South-South and Triangular cooperation
- Item 6.4 Sustainable measures to strengthen implementation of the WHO FCTC
- Item 6.5 Financial resources and mechanisms of assistance,

which are addressed in a global decision FCTC/COP7 (13) on Measures to strengthen implementation of the Convention through coordination and cooperation A working group will be set up to develop a mid-term strategy for planning and implementation support. In addition, the Parties agreed on strengthening international cooperation and underlined the importance of tobacco control as pursued by the Framework Convention for the achievement of the Sustainable Development Goals (SDGs).

Item 6.2 International cooperation for implementation of the WHO FCTC, including the implementation of the 2030 Agenda for Sustainable Development, the global NCD targets and human rights

– Decision FCTC/COP7 (26)

On this item, the COP adopted a decision, which encourages parties to cooperate internationally to address the issue of increased tobacco consumption, particularly in lower-income countries, by linking the human rights framework and development to tackling the global tobacco epidemic. The decision moreover invites the FCTC Secretariat to collaborate with existing UN mechanisms and processes working on business and human rights in order to protect public health interests from the commercial and other vested interests of the tobacco industry.

Item 6.6 Issues related to implementation of the WHO FCTC and settlement of disputes concerning the implementation or application of the Convention

– No decision adopted on this item.

The COP was requested to consider and provide further guidance on the report contained in document FCTC/COP/7/20, which set out ways in which disputes concerning the interpretation or application of the Convention might be addressed in parallel to, or as an alternative to, procedures under its Article 27. During the discussions on this item, several parties indicated a preference for diplomatic means of dispute settlement and could not agree to be bound by ad hoc arbitration. Hence, an arbitration procedure should be developed only, if future experience showed that diplomatic means were not working. It was also emphasized that any arbitration procedure eventually developed should not become a means for one Party to impose its legislation on another.

As the matters addressed under this item and item 6.7 (see below) were similar, it was proposed that the COP should consider a draft decision on the two items. A decision put forward by one Party was examined in an informal working group; as consensus on the combined draft decision proved impossible the draft was revised to refer only to item 6.7. Consideration of item 6.6 was thus concluded with no decision being taken by Committee B, to which this agenda item had been transferred.

Item 6.7 Trade and investment issues, including agreements, and legal challenges in relation to the implementation of the WHO FCTC.

– Decision FCTC/COP 7 (21)

A controversial proposal for a decision on trade and investment matters, tabled by one Party, was subject to lengthy negotiations. However, despite very divergent views of many parties, the final text could be influenced positively, and the EU managed to moderate the language and arrive at a neutral, factual text, which was adopted by consensus.

The adopted decision FCTC/COP 7 (21) called upon the parties to increase, as appropriate, coordination and cooperation between health and trade/investment departments, including in the context of negotiations of trade and investment agreements.

In addition, the decision requested the FCTC Secretariat, in cooperation with the WHO, to collect, document and inform parties, as appropriate, on practices in promoting and safeguarding public health measures under trade and investment agreements and to report back to COP8 on such practices.

B. Budgetary and institutional matters (agenda item 7)

Item 7.1 Performance report for the 2014–2015 work plan and budget

- Document FCTC/COP7/22

The Committee welcomed the report and commended the FCTC Secretariat for its efforts to ensure transparency. However, several parties indicated that they would prefer future financial reporting to be presented in a consolidated document, in tabular form, and with as much detail as would be presented by WHO to the World Health Assembly.

Item 7.2 Interim performance report for the 2016–2017 work plan and budget

- Decision FCTC/COP7 (22)

At its sixth session, the COP had requested an interim report on the implementation of the 2016-2017 work plan and budget.

In this report, the COP was asked to give further guidance with regard to the possible use of an amount of 300 000 US \$ that had been set aside for the first Meeting of the Parties (MOP1) to the Protocol to Eliminate the Illicit Trade in Tobacco Products, which would not take place as the Protocol had not yet entered into force due to the insufficient number of ratifications.

Following informal discussions, Parties agreed to reallocate the funds to support activities related to the entry into force and implementation of the Protocol during the intersessional period.

Item 7.3 Payment of the voluntary assessed contributions and measures to reduce Parties in arrears

– Decision FCTC/COP7 (23)

Following extensive discussions, the Committee amended the draft decision of the Bureau on the modalities for ensuring the payment of voluntary assessed contributions with a view to introduce procedures aiming at incentivising Parties in arrears to fulfil their financial obligations. Parties also agreed to drop the word “voluntary” from the expression “voluntary assessed contributions” that will as from now on be referred to as “assessed contributions”.

Item 7.4 Proposed work plan and budget for the financial period 2018–2019

– Decision FCTC/COP7 (24)

In line with the EU position, the work plan and budget for the financial period 2018-2019 was adopted with zero nominal growth in assessed contributions. Zero nominal growth in assessed contributions, combined with the dropping of the 'one-off' contribution of the previous biennium, means that the Parties will pay less in assessed contributions for the financial period 2018-2019 than during the previous biennium (2016-2017).

Item 7.5 Convention Secretariat’s fundraising efforts and collaborative work

– Decision FCTC/COP7 (25)

The Committee adopted a decision on the Convention Secretariat’s fundraising efforts, including a draft fundraising policy limited to elements that are specific to the Convention and thus distinct from those covered by the WHO Framework of Engagement with Non-State Actors (FENSA).

Item 7.6 Process and methodology to conduct the performance evaluation for the current and subsequent Head of the Convention Secretariat: report by the Bureau of the Conference of the Parties

– Decision FCTC/COP7 (15)

The Committee agreed on a decision on the process and methodology to conduct the performance evaluation for the current and subsequent Head of the Convention Secretariat. The EU supported the position of the EURO region.

Item 7.7 Review of accreditation of nongovernmental organizations with the status of observers to the Conference of the Parties
- Decision FCTC/COP7 (16)

The Committee adopted the Bureau proposal as set out in document FCTC/COP/7/28.

Item 7.8 Review of accreditation of intergovernmental organizations with the status of observers to the Conference of the Parties
- Decision FCTC/COP7 (17)

The Committee agreed to the Bureau proposal set out in document FCTC/COP/7/29.

Item 7.9 Maximizing transparency of Parties' delegations, intergovernmental organisations, nongovernmental organisations and civil society groups during sessions of the COP and meetings of its subsidiary bodies
- Item carried forward to the agenda of COP 8

Committee B agreed that Parties should work in Geneva to prepare a proposal for COP 8 on maximizing transparency of Parties delegations, intergovernmental organizations, nongovernmental organizations and civil society groups during sessions of the COP and meetings of its subsidiary bodies. A draft decision, that contained a significant amendment, was withdrawn, since it had been circulated too late to the Parties in breach of Rule 33 of the Rules of Procedure, which foresees that all documents shall be tabled 24 hours in advance of the discussions.

At its fifth plenary meeting on 12 November 2016, the COP agreed to carry the item forward to the agenda of COP8 for further discussion.

Item 7.10 Possible amendments to the Rules of Procedure of the Conference of the Parties
- Decision FCTC/COP7 (28)

During the negotiations on the amendments to the Rules of Procedure, Committee B refused to discuss a new proposal made by one of the Parties, that had been circulated too late (less than 24 hours in advance). The previously circulated proposal for amendments to the Rules of Procedure, set out in document FCTC/COP/7/31 was adopted without major problems.

Item 7.11 Strengthening synergy between the Conference of the Parties and the World Health Assembly

- Decision FCTC/COP7 (18)

The Committee agreed upon a decision to strengthen synergies between the Conference of the Parties and the World Health Assembly. It provides opportunities to promote high-level political discussions on tobacco control issues.

Item 7.12 Relationship of the Convention Secretariat with other international entities: observer status

- Decision FCTC/COP7 (19)

The Committee agreed to the Bureau proposal set out in document FCTC/COP/7/33.

Item 7.13 Hosting arrangements between the Convention Secretariat and WHO

- Decision FCTC/COP7 (18)

Finally a number of key elements of the future hosting arrangement between the Convention Secretariat and WHO as set out in document FCTC/COP7/34 were approved. They advocate a pragmatic approach, based on the terms of hosted partnerships, to ensure that the arrangement is of benefit to both the Convention Secretariat and the WHO.