



Council of the  
European Union

036561/EU XXVI. GP  
Eingelangt am 01/10/18

Brussels, 1 October 2018  
(OR. en)

12403/18

UD 214  
SAN 284  
COPEN 312  
DROIPEN 135  
ENFOCUSTOM 190

**NOTE**

---

From: General Secretariat of the Council  
To: Permanent Representatives Committee

---

Subject: World Health Organization - Framework Convention on Tobacco Control -  
Meeting of the Parties to the Protocol to Eliminate Illicit Trade in Tobacco  
Products, First Session, Geneva, 8-10 October 2018  
- Establishment of a coordinated position

---

Delegations will find in the Annex the above draft coordinated position, amended in light of the comments by delegations, and transmitted by the Commission services.

**STATEMENT BY THE UNION AND ITS MEMBER STATES<sup>1</sup>**

Mr/Ms President,

I am speaking on behalf of the European Union and Member States. [*as appropriate*: The following countries align themselves with this statement: [country X] ].

First, we would like to warmly welcome the entry into force of the Protocol to Eliminate Illicit Trade in Tobacco Products and congratulate all ratifying Parties for their commitment to curbing the illicit tobacco trade. This treaty will now become the hub of international engagement with the aim of eliminating the illicit tobacco trade, which has an undeniable impact for the States economies and public finances, their safety but also the health of their populations.

We would like to thank the Secretariat for their tireless efforts in promoting ratification of the Protocol in recent years. We also wish to highlight the important role played by civil society in this process and acknowledge the important preparatory work done by the Expert Panel.

The Meeting of the Parties is now the central forum to discuss the illicit tobacco trade at multilateral level.

Our first priority will be increasing membership to the Protocol. Only when a critical mass of countries join and effectively implement the Protocol do we achieve a significant impact. We join the call on Convention Parties in all regions to work towards becoming Parties to the Protocol. This is certainly an area where we seek support from the Conference of the Parties under the Framework Convention.

---

<sup>1</sup> Once finalised at EU level, and at the invitation of the Commission, the statement will be proposed for signing (without changes) to other countries of the EURO region (Montenegro, Norway, Serbia, Turkey, and Turkmenistan).

Another critical area is the global information sharing focal point (Article 8). We need to work with vigour to lay the ground work of this complex system. Having a functioning tracking and tracing system is crucial to securing the supply chain. The availability of this information across jurisdictions can be one of the foremost operational benefits of the Protocol.

In the EU we have extensive experience of cross-border cooperation between customs authorities as well as establishing a tracking and tracing system. We are willing to share this expertise with other Parties.

In addition, to facilitate the practical cooperation of customs authorities, we would be willing to study whether the EU's secure IT infrastructure (AFIS), already used by EU customs authorities, non-EU countries authorities and international organisations, could be of use for bilateral and multilateral customs cooperation, without prejudice to the risk management customs provisions. We need to focus on providing tangible, practical operational benefit for investigative authorities.

We also need to ensure effective cooperation with other stakeholders, and in this respect we welcome the participation of the World Customs Organization in particular.

Last but not least, we will rely on the FCTC Secretariat to furnish us with clarifications on various budgetary matters, as a basis for further discussion. We need to be attentive to the budgetary implications of our projects. In that regard, we would also welcome further discussion on how utilising existing networks, infrastructure and expertise could be used to ensure the budget and workplan are as cost effective as possible.

We very much look forward to working with other Regions and Parties to the Protocol to make it a success. Our aim is a large number of Parties and effective implementation and application of the Protocol

Thank you for your attention.

**Draft Co-Ordinated Position of the European Union and its Member States for  
the First Meeting of the Parties to the Protocol to Eliminate Illicit Trade in  
Tobacco Products <sup>2</sup>**

**(Geneva, 8-10 October 2018)**

**Agenda item 1.1 of the provisional agenda - Rules of Procedure and Financial Rules**

Document: FCTC/MOP/1/1

Position: The Union and the Member States:

1. **support** the adoption of the Rules of Procedure in Annex 1, with some amendments as set out hereafter, as a good basis for proceedings for MOP.

Rule 18 (Representation and Credentials): **do not support** the proposed amendment to provide credentials seven days in advance of the meeting. Rather stick to the current timeframe of 24 hours after the opening of the session.

Rule 33 (Conduct of Business): **do not support** the proposed time frame of three days in which to circulate proposals and amendments. Rather stick to the current timeframe of 24 hours.

---

<sup>2</sup> This document lays down a non-restrictive list of items for which a coordinated position can be established. It is based on documents received up to 25 September 2018. This does not exclude the discussion of any other item on the agenda, if explicitly requested by an EU Member State or the Commission.

2. **support** the adoption of the WHO Financial Regulations and Rules as the Financial Rules of MOP with the following modifications:

*Provision should be made that Parties having ratified the Protocol after 2 July 2018 (and as such, under the current proposal, not liable to pay until 2022) will also be expected to contribute to the budget with voluntary assessed contributions as soon as feasible after the Protocol has become applicable to them. This should result in a reduction of individual contributions of the Parties as more Parties join the Protocol.*

*To this effect, in view of further Parties joining the Protocol, the Parties to the Protocol should decide at MOP1 to mandate the MOP Bureau to update, twelve months after MOP1, the voluntary assessed contributions, in consultation with the Secretariat, applying the UN scale. This update would be a mere technical adjustment limited to reflecting the increased membership in the Protocol. The overall budget authorised at MOP1 will not be affected by this re-distribution of costs.*

**Agenda item 1.2 of the provisional agenda - Election of officers of the Meeting of the Parties**

Document: FCTC/MOP/1/2

Position: The Union and the Member States:

1. **support** the decision on the election of a President and 5 Vice-Presidents, one of whom shall act as Rapporteur, to constitute the Bureau of the MOP, in line with Rule 21 of COP ROP.

2. **consider** putting forward a joint candidate for the office of the Bureau, as the governing body under the Protocol between MOPs.

**Agenda item 1.3 of the provisional agenda - Adoption of the agenda and organisation of work**

Document: FCTC/MOP/1/3

Position: The Union and the Member States **support** the adoption of the provisional agenda.

**Agenda item 1.5 of the provisional agenda - Attendance of observers to the First session of the Meeting of the Parties**

Document: FCTC/MOP/1/5

Position: The Union and the Member States:

1. **recall their strong support** of Article 5.3 of the WHO FCTC which stipulates 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." The following approach to observers has to be in compliance with that Article.
2. **support** the proposed decision in Annex 2 regarding invitation of observers attending MOP1 only (Paragraph 1).

3. As from MOP2 onwards (Paragraph 2), **can only support** the proposed decision in Annex 2 related to regional economic integration organisations, IGOs and NGOs, insofar as "any such organisation must be free of any undue influence of the tobacco industry, in line with Article 5.3 of the WHO FCTC." **Support** a review of that language to align it more closely with Article 5.3.

*Parties should remain vigilant against all attempts at undue influence from commercial or other vested interests.*

4. **support** the suggested amendments of Rules of Procedure (see FCTC/MOP/1/1/Annex) on observers from MOP2 onwards in line with Rules 29 – 31.

**Agenda item 3 of the provisional agenda - Progress towards the entry into force of the Protocol to Eliminate Illicit Trade in Tobacco Products**

Document: FCTC/MOP/1/6

Position: The Union and the Member States:

- **welcome** this report and thank the Secretariat for their activities related to promoting the entry into force of the Protocol;
- **support** the proposed decision with the clarification that the database of experts and institutions to provide Parties with technical and legal advice can include representatives from Parties themselves.



**Agenda item 4.1 of the provisional agenda - Reporting and information sharing under the Protocol**

Document: FCTC/MOP/1/7

Position: The Union and the Member States:

- **support** the draft decision in so far it establishes a reporting module based on the practice under the Framework Convention (paragraphs 1-3, 5, 8-11).
- **do not support** the draft decision in so far as it concerns the exchange of enforcement-related information and customs information (paragraphs 4, 6-7), and **propose** instead the creation of a working group to deal with these issues as part of a wider working group on assistance and cooperation in customs matters.

*That group would explore suitable modalities for exchanging such information. The relevant mandate for the working group may make reference to the availability of the AFIS System in that regard, as appropriate. The establishment of a wider working group would need to be reflected in the budget and workplan produced by the Secretariat. The establishment of working groups should not lead to an increase of the budget.*

- as a fall back, **support** the removal of the enforcement related information without the establishment of a working group.

**Agenda item 4.2 of the provisional agenda - Cooperation with competent international and regional intergovernmental organizations, including financial and development institutions (Article 35)**

Document: FCTC/MOP/1/8

Position: The Union and the Member States:

- **support** the proposed decision whereby the Secretariat engages with and seeks cooperation of competent international and regional intergovernmental organisations.
- **recall** again its strong support of Article 5.3 of the WHO FCTC in protecting the setting and implementation of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry.

**Agenda item 5.1 of the provisional agenda - Report of the Panel of Experts on the Protocol to Eliminate Illicit Trade in Tobacco Products**

Document: FCTC/MOP/1/9

Position: The Union and the Member States **"take note"** of the report of the Panel of Experts on the Protocol to Eliminate Illicit Trade in Tobacco Products.

**Agenda item 5.2 of the provisional agenda - Establishment of tracking and tracing systems, including the global information sharing focal point (Article 8)**

Document: FCTC/MOP/1/10

Position: The Union and the Member States:

- **"take note"** of the report of the Secretariat as an important contribution to the discussion on how to set up a global information-sharing focal point ("focal point") as per Article 8 Protocol.
- **support** the proposed decision (Annex 1) with the following amendments:
  - the decision should create a Working Group of the Parties, instead of a "mechanism to propose future work", based on a revised mandate attached to the decision;
  - the Working Group should agree on a report of its activities and conclusions in time for MOP2;
  - Paragraphs (b) and (c) should be deleted, and (d) aligned to the creation of a Working Group.
- regarding the terms of reference (Annex 2), **strongly support** option 1, i.e., a working group consisting of Parties to lead the work.

- **oppose** the objective to "elaborate comprehensive draft guidelines on the implementation of a tracking and tracing system."

*It is important that no additional, Protocol-based requirements would be imposed on the nascent EU track and trace system set up under the Tobacco Products Directive.*

*The Secretariat can decide, after consulting members of the working group, to invite IGOs/NGOs, however these should only have observer status.*

- with due regard to resource constraints, **are willing to offer** their expertise to **support** certain interested third countries, especially in the European neighbourhood, in setting up their national track and trace systems.

**Agenda item 5.3 of the provisional agenda - Timelines for evidence-based research**  
**(Articles 6.5 and 13.2)**

Document: FCTC/MOP/1/11

Position: The Union and the Member States, considering that these two Articles foresee 5-year transition periods, **do not, at this stage and as a matter of priority, support** the proposed decision to establish a working group to provide evidence-based research on key inputs essential to the manufacture of tobacco products and the extent of illicit trade in tobacco products related to duty free sales.

#### **Agenda item 5.4 of the provisional agenda - Financial resources and mechanisms of assistance**

Document: FCTC/MOP/1/12

Position: The Union and the Member States **can support** the draft decision on financial resources and mechanisms of assistance.

#### **Agenda items 5.5 of the provisional agenda - International assistance and cooperation**

**(Articles 23 and 24)**

Document: FCTC/MOP/1/13

Position: The Union and the Member States:

- **support** the draft decision to establish a working group on international assistance and cooperation, if so wished by a majority of Parties.
- **propose to remove** Assistance and cooperation: investigation and prosecution of offences (Article 24) from the scope of this proposal.
- regarding the terms of reference, **strongly support** option 1, i.e., a working group consisting of Parties to lead the work. The Secretariat can decide to invite IGOs/NGOs, after consulting members of the working group, however these should only have observer status.

*Reporting on such activities should always be in consultation with the participating Parties. Such a working group could also be merged with the wider group on assistance and customs cooperation in terms of cost efficiency.*

**Agenda items 5.6 of the provisional agenda - Mutual administrative and legal assistance**  
**(Articles 28 and 29)**

Document: FCTC/MOP/1/14

Position: The Union and the Member States:

- **support** a decision to establish a working group focusing on cooperation in the area of mutual administrative assistance (Article 28). This should be included as part of a wider working group on assistance and cooperation in customs matters (see also under agenda point 4.1).
- at this early stage, **do not support** the inclusion of mutual legal assistance (Article 29) in this working group.
- regarding the terms of reference, **strongly support** option 1, i.e., a working group consisting of Parties to lead the work. The Secretariat can decide, after consulting members of the working group, to invite IGOs/NGOs, however these should only have observer status.
- **do not support** the creation of expert groups dealing with matters for which Parties / public authorities retain core competencies. Reporting on such activities should always be in consultation with the participating Parties.
- **propose** to look into whether the use of the EU secure IT infrastructure AFIS could be of use, without prejudice to the risk management customs provisions. This proposal would have to take into account a variety of factors including whether other authorities than customs authorities could be involved in other Parties and whether access could be provided.

**Agenda item 6.1 of the provisional agenda - Coordination among the governing bodies of the WHO Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products**

Document: FCTC/MOP/1/15

Position: The Union and the Member States:

- **deem it important** to have the greatest possible policy coherence between the COP and the MOP as the governing bodies of the FCTC and the Protocol in order to benefit from synergies, and to avoid any duplication of work. In this regard, **particularly support** that the two governing bodies coordinate their respective work plans on financial and institutional matters common to both treaties.

*Since the MOP is set to become the main multilateral forum to tackle cross-border illicit tobacco trade, focusing on these issues at MOP will promote efficiency in terms of a clear distribution of tasks between COP and MOP.*

*It is clear that the Convention Secretariat should to be the sole Secretariat for both Treaties and their governing bodies. Therefore, the Convention Secretariat is urged to initiate its restructuring process in order to continue providing cost-effective and efficient management adapted to the new situation.*

- **strongly support** that cost for areas that affect both Treaties mutually – such as human resources, administrative support and overall communications – need to be shared in the work plans and budgets of the COP and the MOP.

- **strongly support** that the location of COP and MOP needs to be the same in order not to waste capacity and resources.
- furthermore, **support** the proposal to mandate the Convention Secretariat to gather experience from other treaty governing bodies in order to find potential best approaches. Those findings should be reported to both, MOP2 and COP9. Ask to adapt the draft decision accordingly. The draft decision (2<sup>nd</sup> paragraph c) ) would benefit from some clarification in terms of approach.
- taking the abovementioned comments into account, and provided that these will be properly reflected in the draft decision, **support** the draft decision contained in document FCTC/MOP/1/15.

#### **Agenda item 7.1 of the provisional agenda**

#### **Code of Conduct for the Bureau of the Meeting of the Parties and proposed measures to prevent and address potential conflicts of interest (perceived or existing) among staff of the Convention Secretariat**

Document: FCTC/MOP/1/17

Position: The Union and the Member States:

- **recognise** the importance of protecting the formulation of public health policies from commercial and other vested interests of the tobacco industry, but should insist that the proposed decision requires clarification and detailed scrutiny by all Parties, in strict implementation of Article 5.3 WHO FCTC, in view of a possible adoption at MOP2.
- as a pragmatic approach, **propose** mandating the Secretariat to prepare an updated proposal, based on prior consultations with the Bureau and Parties, for submission to MOP2.



**Agenda item 7.2 of the provisional agenda - Scale and mechanism of the assessed contributions and other resources (Article 33.6)**

Document: FCTC/ MOP/1/18

Position: The Union and the Member States **understand** that the scale of assessed contributions produced by the Secretariat is based on that of the scale of assessment determined by the Health Assembly in line with Rule 5.1 of the WHO Financial Regulations and Rules, and modified to reflect the difference in membership of the WHO and the Protocol. **Welcome** further confirmation on this point, in particular that no Party will pay more than the maximum assessment rate of 22%.

The EU (as a Party) **confirms** its contribution to activities under the 2018-2019 workplan will be 8.18% of the total needed as an exceptional rated amount. This is intended to show the need for financial stability in the initial implementation stages of the Protocol and should be considered an important contribution to the Protocol activities in the context of a currently low level of membership of the Protocol. This should be reflected in the decision on the scale of assessed contributions: "This contribution is exceptional and linked to the launch phase of the Protocol and does not pre-judge the scale of the assessed contributions for the following financial periods."

The EU (as a Party) **confirms** that its contribution to activities under the 2020-2021 workplan should return to 2.5% of the total needed, in line with existing practice.<sup>3</sup> This also reflects the fact that the EU and Member States (that are Parties to the Protocol) contribution to the budget is currently weighted at 70%.

---

<sup>3</sup> E.g. Convention on Biological Diversity, Nagoya Protocol, Framework Convention on Climate Change etc.

*It should be noted that these commitments are subject to the annual endorsement by the budgetary authorities of the European Union. This statement should be reproduced in the record of this first Meeting of the Parties. The scale of assessment and its annual modification must be reasonable, comprehensible, transparent and appropriate and in line with the adjustment mechanism set out under agenda point 1.1.*

**Agenda item 7.3 and 7.4 of the provisional agenda - Proposed workplan and budget for the financial periods 2018–2019 and 2020-2021**

Document: FCTC/MOP/1/19; FCTC/MOP/1/20; FCTC/MOP/1/INF.DOC./1 and FCTC/MOP/1/INF.DOC.2

Position: The Union and the Member States:

- **thank** the Secretariat for preparing the workplan and budget.
- **agree** that prioritisation of activities is important whilst striving to reduce the overall amount.

*However, there is a clear need for a stronger focus to supporting the actual work projects decided by Parties, without increasing the overall budget. Given that promoting ratifications of the Protocol is a priority, this should also be reflected in the workplan.*

- **feel** that further consideration needs to be given to ensuring that the workplan makes best use of existing networks, infrastructure and expertise and that the budget reflects the most cost effective approach. In this respect, the experience and expertise of Parties themselves should be harnessed.
- **need** further clarifications on budgetary matters prior to being able to adopt the proposed workplans and budgets. The explanatory notes prepared by the Secretariat are welcome in providing more detail on the budget. However some practical budgetary matters still need to be clarified, including but not limited to detailed explanations of when the contributions of Parties will fall due, how the Secretariat work on the Protocol will be financed between MOP1 and payment of first contributions, staff costs and the relationship between the COP and MOP budget. The Secretariat will also be expected to explain how it will fund itself pending the arrival of contributions by the Parties in the first years (which may not yet have any funds for the Protocol in their national budgets).

**Agenda item 8 of the provisional agenda - Date and place of the second regular session of the Meeting of the Parties**

Document: FCTC/MOP/1/22

Position: The Union and the Member States **support** the proposed decision on the date and place of the second regular session of the Meeting of the Parties.

---