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EDITORIAL

Protocol to eliminate illicit trade in tobacco products: the dawn of a new era

The WHO Framework Convention on Tobacco Control (WHO FCTC)¹ is the United Nations tobacco control treaty, fostering public health in previously neglected areas. 179 countries as well as the European Union are WHO FCTC Parties, and it comprises both the Northern and Southern hemispheres. Intergovernmental and non-governmental organizations are active observers. It is a powerful alliance for a serious problem – the huge global epidemic caused by tobacco.

During its short life, the COP* (Conference of the Parties) has approved a number of guidelines and policy options on various provisions of the treaty, providing a gold standard for action at the national level. Best practices have been shared with and implemented by many Parties, and overall the treaty has in some way touched the lives of 90% of the population on all continents.

As in every framework convention, subsidiary treaties are negotiated under its umbrella and in 2012, the COP adopted its first, the Protocol to Eliminate Illicit Trade in Tobacco Products.² While its main objective is to protect public health –by decreasing the availability and affordability of tobacco products while increasing government revenues– the Protocol represents a challenge to public health stakeholders as it touches upon a number of areas that go far beyond the health sector, law enforcement being one obvious example.

Furthermore, the Protocol faces antagonists with opposed interests. The tobacco industry and its front groups have swiftly adopted new tactics, for example by

presenting themselves as indispensable stakeholders.³ They have approached customs officials to offer help, suggested to governments that the Protocol be replaced by less rigorous measures and otherwise sought to distract policy-makers from embracing the Protocol. They have tried to inveigle governments to adopt the tobacco industry's own, flawed, tracking and tracing system and thus block the use of more effective technologies, and in a new development, offered substantial grants to promote solutions for combating the illicit trade.

As a result, the Protocol has not matched the speed of ratification of the mother treaty, so that three and a half years after its adoption, it has not yet entered into force by getting forty Parties to it.

The Convention Secretariat has engaged with governments, intergovernmental organizations, civil society groups and academia to promote the entry into force of the Protocol and has identified a number of concerns raised by Parties to the treaty.

Common challenges include uncertainties about where responsibility rests within government, resulting in an inability to create coordinated responses to the illicit trade; unawareness of how the Protocol fits into a comprehensive response to the tobacco epidemic; inadequate understanding of the ratification process and similarly lack of clarity of cost implications related to Protocol implementation.

However, the pace of ratification is accelerating. In the past year, 13 Parties have ratified the Protocol, bringing the total to 19 Parties.⁴ This suggests a clear trend: the Protocol will soon enter into force.

This will at last offer a global response to a global problem –the illicit trade provides one in every ten cigarettes consumed in the world.

Measures contained within the Protocol will considerably contribute to preventing any illegal practice related to producing, shipping, receiving, being in

* The Conference of the Parties (COP) is the governing body of the WHO FCTC and is comprised of all Parties to the Convention. It keeps under regular review the implementation of the Convention and takes the decisions necessary to promote its effective implementation, and may also adopt protocols, annexes and amendments to the Convention. Observers may also participate in the work of the COP.

possession of, distributing, selling or buying tobacco products.

Measures contained in the Protocol aim to ensure the existing supply chain of tobacco products is not illegal. Preventive measures include the establishment of a global tracking and tracing regime comprising national and regional systems and a global information sharing point. Additional measures include licensing and record-keeping requirements, as well as the regulation of Internet-sales, duty-free sales and international transit.

To address the illicit trade, the Protocol establishes offences, addresses liability and allows seizure payments, as well as the disposal of confiscated products.

As with any international treaty, there is also a strong focus on international cooperation, and there are provisions on information sharing, technical and law enforcement cooperation, mutual legal and administrative assistance, and extradition.

The Protocol's obligations cover tobacco, tobacco products and manufacturing equipment (the machinery used to make tobacco products), ensuring that for the first time, every link in the tobacco production chain will be monitored around the world.

Once the Protocol to Eliminate Illicit Trade in Tobacco Products becomes a treaty on its own right, it will complement the objectives of its mother treaty, the WHO

Framework Convention on Tobacco Control, which is "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke".¹

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