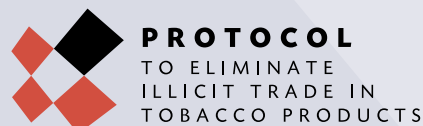




2023

Global Progress Report on Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products





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WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

S E C R E T A R I A T

2023 Global Progress Report on Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products.

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Foreword

This 2023 Global Progress Report on Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products is the second in the series of reports prepared since the entry into force of the Protocol to Eliminate Illicit Trade in Tobacco Products in 2018.

The Global Progress Report is primarily based on the information submitted by the Parties to the Protocol in the 2023 reporting cycle and is published to facilitate discussions at the Third Session of the Meeting of the Parties (MOP3) in November 2023. An abridged version of this report is part of the official documentation for MOP3.

In order to provide information on their implementation of the Protocol, Parties responded to a standard questionnaire made available to them in an online reporting platform. Both the quantity and the quality of responses by Parties have improved in the 2023 reporting cycle, and this enabled the Convention Secretariat to get a better picture of the status of implementation of the Protocol.

This Global Progress Report provides information on 28 substantive articles of the Protocol. It also features a number of examples of implementation of the various requirements under the Protocol by the Parties, including 15 case studies containing more detailed information about addressing a particular requirement of the Protocol, including requirements on licensing, tracking and tracing, regulation of the sale and promotion of tobacco products on the Internet and social media, liability of legal persons, prosecutions and sanctions, disposal and destruction of seized tobacco products, the use of special investigative techniques, jurisdiction on criminal offences and extradition procedures. Sharing such experiences could enable Parties to understand and learn from one another's experience and facilitate the exchange of information and transfer of know-how on the implementation of the Protocol, as appropriate.

Parties to the Protocol also reported on their implementation priorities, as well as on the gaps between their needs to implement the Protocol and available resources – technical and financial – and other constraints and barriers in their efforts to fight illicit trade in tobacco products. These could help the Convention Secretariat, which serves as the secretariat of both the WHO Framework Convention on Tobacco Control and the Protocol, to better tailor assistance provided to the Parties in the implementation of the Protocol and could also help the Meeting of the Parties to the Protocol to take informed decisions. The Convention Secretariat is committed and stands ready to further help the Parties to accelerate their progress.

There is room, however, for further increasing the quantity and quality of data collected, especially in the low-resource settings. With this aim in mind, and under the guidance of the Bureau of the Protocol, the Convention Secretariat carried out a revision of the reporting instrument of the Protocol and of the process of collecting data from the Parties, with a view to: 1) simplifying the current set of questions, deleting questions that are duplicative and impractical, and adding new, refined questions; 2) rethinking questions used to collect quantitative data related to licit and illicit trade in tobacco products; and 3) using data from official external sources to assess global progress in the implementation of the Protocol. The resulting new draft reporting instrument will be proposed for consideration by the Meeting of the Parties to the Protocol in November 2023.

The Convention Secretariat

Executive summary

The Convention Secretariat, which serves as the secretariat of both the WHO Framework Convention on Tobacco Control (WHO FCTC) and the Protocol to Eliminate Illicit Trade in Tobacco Products, conducted the 2023 reporting cycle for the Protocol in accordance with decision FCTC/MOP1(10) between January and March 2023, in conjunction with the reporting cycle of the WHO FCTC. Of the 62 Parties to the Protocol required to report in the 2023 cycle, 53 (85%) formally submitted their implementation reports.

The 2023 Global Progress Report on the Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products has been drafted based on reports submitted by the Parties in accordance with Article 32 of the Protocol, including some case studies and examples from Parties' submissions.

The overall status of the implementation of the Protocol was assessed based on key indicators under each substantive article. Articles on which Parties reported the most progress include Article 16 (Prosecutions and sanctions), Article 10 (Security and preventative measures), Article 15 (Liability of legal persons), Articles 14 (Unlawful conduct including criminal offences) and Article 17 (Seizure payments). In relation

to the implementation of the time-bound requirements under Article 8 (Tracking and tracing), 35 Parties (57%) informed the Convention Secretariat about the establishment of a tracking and tracing system. Lower implementation was observed for measures related to articles under Part V of the Protocol (International cooperation), for example, Article 30 (Extradition), Article 31 (Measures to ensure extradition), Article 29 (Mutual legal assistance) and Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters).

Implementation rates per article are variable and are analysed in detail in the current report. The following paragraphs present a summary of the main points.

Article 5 (Protection of personal data)

Most of the Parties reported on their existing legislation to protect personal data in relation to the implementation of the Protocol. A few Parties reported having issued data protection regulations since the submission of their previous report. Other Parties reported efforts to develop similar data protection regulations. However, nine Parties reported that no specific regulation on protection of personal data exists in their jurisdictions.



Photo courtesy of Ministry of Finance, Montenegro

Article 6 (Licence, equivalent approval or control system) – Thirty-eight Parties (61%) indicated having a licensing system in place for the importation of tobacco products; 32 Parties (52%) reported requiring licences for manufacture of tobacco products; and 29 Parties (47%) reported having the same requirements for exporters. Fewer Parties reported having in place the same requirements for the production (13%), import (23%) and export (16%) of manufacturing equipment, despite these being also mandatory requirements under the Protocol. Approximately half of the Parties (53%) require licences for any natural or legal person to be engaged in wholesaling, brokering, warehousing or distribution of tobacco, tobacco products or manufacturing equipment. A significantly lower number of Parties require licences for legal and natural persons in respect of activities such as retailing (39%), transporting commercial quantities (29%) and growing of tobacco, except for traditional small-scale growers, farmers and producers (18%).

The competent authority responsible for the issuance, renewal, suspension, revocation or cancellation of licences varies among Parties. The ministries (or departments and units within these ministries) responsible for these matters range from customs and excise to finance, economic affairs, trade, tobacco control, health and agriculture. In 41 Parties (66%), the competent authority has the prerogative to issue, renew, suspend, revoke or cancel licences for importers of tobacco products. In most Parties, licence fees are monitored and collected once a year, whereas some Parties use a longer tenure. The competent authority has such prerogative in relation to manufacturers of tobacco products in 33 Parties (53%) and in relation to exporters of tobacco products in 28 Parties (45%). A few Parties collect licence fees once, at the time of issuance of the licence, and some others do not charge a fee on issuance of a licence.

Article 7 (Due diligence) – Only 19 Parties (31%) reported requiring that due diligence be conducted for all natural and legal persons engaged in the supply chain of tobacco, both before the commencement and in the course of a business relationship. The implementation rate is lower in respect of manufacturing equipment (20%). Nineteen Parties (31%)

reported due diligence measures with regard to customer identification in respect of actors in the supply chain of tobacco and tobacco products, and 12 of them (19%) reported requiring documentation (or a declaration) regarding any criminal records for customer identification purposes. In addition, eight Parties (13%) indicated conducting due diligence in identifying bank accounts used for trade transactions.

Article 8 (Tracking and tracing) – Around half of the Parties (57%) reported having established a tracking and tracing system in their jurisdiction; however, there is not sufficient information in the submitted reports to assess whether such systems contain all the essential components of a tracking and tracing system required under the Protocol. Also, 57% of the Parties reported requiring unique, secure and non-removable identification markings (UIMs) on unit packets (cigarette packs), 53% on unit packages (for example, cartons) and outside packages of cigarettes (for example, master cases). Fewer Parties reported the same for other tobacco products. These responses should be assessed with caution, as the understanding of the Parties on the features of UIMs might substantially differ.

Article 9 (Record-keeping) – Forty-one Parties (66%) reported requiring all natural and legal persons engaged in the supply chain of tobacco products to maintain complete and accurate records of all relevant transactions. However, the rates of implementation are lower in respect of licencees engaged in the supply chain of tobacco (50%) and in respect of manufacturing equipment (21% of Parties).

Article 10 (Security and preventive measures) – Many Parties reported the implementation of a range of measures to prevent the diversion of tobacco products into illicit trade channels. Further, 44 Parties (71%) reported having established sanctions in their legislation to address situations when licencees do not adhere to the provisions of Article 10.

Article 11 (Sale by Internet, telecommunication or any other evolving technology) – Thirty-six Parties (58%) reported applying measures to all sales of tobacco products covered by this article,

while 29 of them (47%) imposed a complete ban on online sales and sales using telecommunications and similar technologies.

Article 12 (Free zones and international transit) – Thirty-eight Parties (61%) reported having the authority to conduct controls in free zones in accordance with its provisions. However, only 21 Parties (34%) prohibit the intermingling of tobacco products with non-tobacco products in a single container or any other similar transportation unit at the time of removal from free zones. When goods are in transit or transshipment, 39 Parties (63%) require that controls be exercised for tobacco products and/or manufacturing equipment. However, 11 Parties (18%) reported that they do not have effective controls in free zones. Finally, some Parties explicitly mentioned the absence of free zones in their territories.

Article 13 (Duty free sales) – Thirty-seven Parties (60%) reported that all relevant provisions of the Protocol apply to duty-free sales of tobacco and tobacco products in their jurisdictions. Most of the Parties regulate the sale of cigarettes in duty-free outlets by means of specific rules and conditions, whereas 15 Parties (24%) do not permit duty-free sales in their jurisdictions.

Article 14 (Unlawful conduct including criminal offences) – Most of the Parties reported that they consider acts like illicit manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing and exporting, tax evasion, smuggling or attempts of smuggling, falsification of markings, counterfeiting, concealment, intermingling, sales on Internet and other evolving technology-based modes of sale of tobacco, tobacco products and manufacturing equipment as unlawful.

Article 15 (Liability of legal persons) – Forty-three Parties (69%) reported that they held legal persons liable for established unlawful conduct, whereas 46 Parties (74%) reported ensuring that the natural and legal persons held liable for unlawful conduct are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, in accordance with their national law, pursuant to **Article 16 (Prosecutions and sanctions).**

Article 17 (Seizure payments) – Thirty-six Parties (58%) reported having adopted legislation or other measures to authorize competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products or manufacturing equipment.

Article 18 (Disposal or destruction) – Twenty-eight Parties (45%) reported that all confiscated tobacco, tobacco products and manufacturing equipment had been destroyed in their jurisdictions; and 26 of them (42%) added that they use environmentally friendly methods for destroying or disposing of the confiscated tobacco products.

Article 19 (Special investigative techniques) – Thirty-six Parties (58%) confirmed using special investigative techniques to combat illicit trade in tobacco, tobacco products or manufacturing equipment. Further, 24 Parties (39%) notified the Convention Secretariat that they had signed bilateral or multilateral agreements or arrangements for using such techniques for the purpose of investigating the criminal offences established in accordance with Article 14 of the Protocol.

Article 20 (General information sharing) – Even though Parties are required to share details of seizures of tobacco, tobacco products or manufacturing equipment, quantity, value of seizures, product descriptions, dates and places of manufacture, and taxes evaded, few Parties provided quantitative and qualitative information on seizures.

Article 21 (Enforcement information sharing) – Only 17 Parties (27%) reported having exchanged enforcement information with another Party on their own or at the request of the other Party in the previous two years for the purpose of detection or investigation of illicit trade in tobacco, tobacco products or manufacturing equipment.

Article 22 (Information sharing: confidentiality and protection of information) – Twenty-two Parties (36%) indicated that they notified the Convention Secretariat of their designated competent national authority for the purposes of Articles 20, 21 and 24.

Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters) – Only a handful of Parties reported having engaged in providing and receiving financial or technical assistance to or by other Parties. As far as cooperation for capacity-building (training) between Parties is concerned, the most commonly cited areas of cooperation are law enforcement and information gathering. Ten Parties reported having developed or conducted research on identifying the exact geographical origin of seized tobacco and tobacco products.

Article 24 (Assistance and cooperation: investigation and prosecution of offences) – Only 14 Parties (23%) reported collaborative arrangements in this regard.

Article 26 (Jurisdiction) – Twenty-seven Parties (44%) reported having adopted measures to establish jurisdiction over the criminal offences established in accordance with Article 14.

Article 27 (Law enforcement and cooperation) – Thirty-nine Parties (63%) reported having established a domestic coordination mechanism among enforcement agencies, and only half of them reported having established coordination with law enforcement agencies in other Parties (mostly through bilateral or multilateral agreements).

Article 28 (Mutual administrative assistance) – Seventeen Parties (27%) reported having signed bilateral, regional or multilateral agreements with other Parties to enable mutual administrative assistance.

Article 29 (Mutual legal assistance) – Eighteen Parties (29%) reported having designated a central authority for the purpose of mutual legal assistance. However, only seven Parties (11%) reported that they had participated in mutual legal assistance initiatives with another Party or Parties.

Article 30 (Extradition) – Only three Parties mentioned that they had utilized the Protocol for the purposes of extradition, which makes this the least implemented provision.

Almost all the Parties reported on their **national priorities** for implementation of

the Protocol, many of them prioritizing the fight against illicit trade in tobacco products as a general matter. In the current reporting cycle, Parties continued to consider the establishment of a tracking and tracing system for tobacco and tobacco products (in accordance with the requirements of Article 8 of the Protocol) of high importance. Other measures prioritized by the Parties include the establishment of institutional mechanisms for coordination and cooperation of various agencies responsible for the implementation of the Protocol at the national level, as well as the development of comprehensive legislation or the revision of existing legislation to enable and strengthen implementation of the Protocol.

Further, 12 Parties (19%) reported **gaps** between resources available and needs assessed for the implementation of the Protocol. Of these, nine Parties provided details on the gaps identified, such as, lack of financial, material or human resources for implementation of the Protocol; lack of research, insufficient sharing of good practices and experiences of implementation; and inadequate mobility for border control and market surveillance. Some Parties highlighted the need for technical assistance and capacity-building of actors relevant to the implementation of the Protocol. Some Parties indicated that they have a budget allocation for implementation of the Protocol (including the establishment of a tracking and tracing system), while many others reported that they do not have budget allocations from the government exchequer for implementation of the national tobacco control strategy for Protocol provisions.

In respect of **constraints** and **barriers** to implementation of the Protocol, several Parties referred to interference by the tobacco industry as a constraint in the implementation of the Protocol. In addition to a lack of resources, the most reported constraints and barriers included a lack of comprehensive legislation and national strategy, technical and capacity-related barriers, and challenges related to domestic coordination. Some Parties identified a lack of knowledge and guidance at the national and regional levels to implement an efficient tracking and tracing system as one of the biggest challenges to implementing the Protocol.



Photo courtesy of Ministry of Health, Saudi Arabia

Many Parties reported challenges with the set-up or operationalization of national coordination mechanisms or platforms for implementation (they may be lacking altogether, or ineffective) while few others identified the general lack of understanding of the needs and awareness of illicit trade in tobacco products at the domestic level as factors that impede implementation of the Protocol.

Considering that the Protocol is a relatively young treaty, the rate of implementation of most of its provisions is encouraging. Parties report having focused their attention on supply chain control measures and on prosecutions and sanctions for illicit trade in tobacco, tobacco products and manufacturing equipment. However, implementation varies greatly among Parties across regions and according to the broad range of their social and economic status.

While around half of the Parties reported having established a tracking and tracing system for cigarettes, there is not sufficient information in the submitted reports to assess whether such systems contain all the essential components of a tracking and tracing system as required under the Protocol.

The implementation reports of Parties suggest that many Parties continue to lack the financial resources and expertise required for implementation of the Protocol. Some Parties are in the process of creating national workplans towards effective implementation of the Protocol. More focus on international cooperation, assistance and sharing of information between the Parties (through bilateral, regional, multilateral and South–South and Triangular Cooperation), as well as technical assistance in scientific, technical and technological matters, would assist the Parties in their efforts to eliminate illicit trade in tobacco products.

1. Introduction

The Protocol to Eliminate Illicit Trade in Tobacco Products is an international treaty with the objective of eliminating all forms of illicit trade in tobacco products through a package of measures implemented by countries in cooperation with one another. The Protocol is the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC), and it is an international treaty in its own right. It was adopted in 2012 at the Fifth session of the Conference of the Parties (COP) to the WHO FCTC.

The Protocol was developed in response to growing international illicit trade in tobacco products, which poses a serious threat to public health and jeopardizes the impact of tobacco control measures implemented under the requirements of the WHO FCTC. Illicit trade increases the accessibility and affordability of tobacco products, thus fuelling the tobacco epidemic and undermining tobacco control policies. It also causes substantial losses in government revenues, and at the same time contributes to the funding of transnational criminal activities. The treaty builds upon and complements Article 15 of the WHO FCTC, which addresses means of countering illicit trade in tobacco products, a key aspect of a comprehensive tobacco control policy.

The Protocol provides a framework for Parties to act in cooperation to curb global illicit trade. Securing the supply chain is considered the backbone of the Protocol. Measures that focus on securing the supply chain include requirements of licensing and record-keeping, security and preventive measures, and transactions involving tobacco products in free zones, including during international transit and duty-free sales, as well as sales over the Internet and other telecommunication means and any other evolving technology-based modes of sale.

A key component of the Protocol is the establishment of a global tracking and tracing regime within five years of the Protocol's entry into force. This regime comprises national and/or regional tracking and tracing systems to be established in the jurisdictions of the Parties, with a global information-sharing focal point located at the Convention Secretariat, which serves as the secretariat of both the WHO FCTC and the Protocol. The aim of the global tracking and tracing regime is to secure the supply chain of tobacco products and to equip national authorities with a platform for exchange of information to determine the origin, transportation route, intended market of sale and potential point of diversion of the products.



Photo courtesy of Tax and Customs Authority, Portugal



Photo courtesy of Hong Kong Customs and Excise Department, China (Hong Kong Special Administrative Region)

In the fight against illicit trade in tobacco products, cooperation and coordination among Parties and with relevant international organizations and civil society have an important role to play. The Protocol includes important measures on information sharing, cooperation on technical issues and law enforcement, the protection of sovereignty, jurisdiction, and mutual legal and administrative assistance and extradition. In view of the cross-border nature of the illicit trade in tobacco products, Parties may need to exchange information to facilitate the detection and/or investigation of the illicit trade. In addition, mutual legal and administrative assistance among Parties and recommendations to encourage them to implement the necessary legal frameworks for enforcement were also adequately covered in the Protocol.

The Protocol establishes the reporting obligations of the Parties (Article 32), which are linked to the reporting system of the WHO FCTC. This 2023 Global Progress Report on Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products provides a compilation of Parties' progress in relation

of the substantial provisions of the Protocol as they have reported on a biennial basis. In addition to this, Party reports are available on the Convention Secretariat website (<https://fctc.who.int/protocol/protocol-databases>).

The Global Progress Report also provides an overview of the status of implementation of the Protocol based on respondents' implementation reports submitted in the 2023 reporting cycle. This report follows as closely as possible the structure of the Protocol in addressing article-by-article implementation. The scope of this Global Progress Report also includes enabling Parties to understand and learn from one another's experiences by providing examples of implementation in various areas of the Protocol.

Of the 62 Parties to the Protocol required to report in the 2023 cycle, 54 (87%) formally submitted their implementation reports.¹ Nevertheless, most of the Parties that have not formally submitted their reports updated their data in the reporting platform; all data available in the reporting platform were reflected in this report.

1 At the time this report was prepared, the Protocol had 67 Parties, but only 62 Parties were required to report on their implementation of the Protocol provisions in 2023. For the analysis presented here, all reports submitted and updated in the reporting platform were extracted on 26 May 2023. The following Parties had formally submitted reports by that time: Austria, Belgium, Benin, Brazil, Burkina Faso, Chad, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Ecuador, European Union, Fiji, France, Gambia, Ghana, Greece, Guinea, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Kuwait, Latvia, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mauritius, Montenegro, Netherlands (Kingdom of the), Nicaragua, Niger, Norway, Panama, Paraguay, Portugal, Qatar, Samoa, Saudi Arabia, Senegal, Seychelles, Slovakia, Spain, Sweden, Togo, Türkiye, United Kingdom of Great Britain and Northern Ireland, and Uruguay. The status of submitted reports is available at <https://fctc.who.int/protocol/reporting/parties-reporting-timeline>.

Methodological notes

In this Global Progress Report, implementation rates of the measures required under the Protocol are measured through the analysis of the responses by the Parties, provided to the online questionnaire. Unless specified otherwise, the implementation figures provided for key provisions (indicators) of the Protocol, presented in this report, refer to the number of respondents who answered “yes” to a specific question. The complete list of indicators used in the reporting instrument and the implementation rates for these indicators are presented in the Annex.

Measures should apply nationally to the whole Party (or to the regional economic integration organization in the case of the European Union), as appropriate. Subnational regulations are not considered as affirmative responses; however, they are considered during the analysis of the open-ended questions.

All data available in the reporting platform are used in the analysis. Apart from the respondents that officially submitted their reports, a few other Parties inserted some data in their report forms, but they did not submit officially their reports. Data inserted by these Parties were also included in the analysis. Unless specified otherwise, the total number of Parties considered in the analysis (“n”), in

most cases, is the total number of Parties that were expected to report in the 2023 reporting cycle. Only the “yes” response was counted as implementation; the remaining percentage up to 100% includes cases when: 1) reports were not submitted; 2) the question was left without a response; or 3) the response is “no” or “not applicable”.

In addition to the implementation rates for the indicators, the 2023 Global Progress Report, as in the previous global report, presents examples of implementation, based on the responses of the Parties to the open-ended questions. These are either mentioned in the text of the Global Progress Report or highlighted separately in the form of a case study.

For purposes of reporting on sections related to Articles 14 to 31 of the Protocol, the data have been aggregated to comply with the confidentiality clauses in the respective articles. Implementation practices are highlighted, but the country names are usually only given in special circumstances, when authorization was granted by the relevant Party to make its information public.

Some limitations of the analysis need to be noted. Respondents’ implementation reports contain references to laws and regulations that usually detail how implementation, enforcement or compliance should look like. Responses are not subject to systematic validation against the text of the laws, regulations and/or policy documents.

All figures and tables in this document have been prepared by the Convention Secretariat, based on information received in the reporting cycle, unless otherwise mentioned. Acknowledgments for the photographs published in this report are given for each photograph.

2. Article-by-article implementation of the Protocol

The status of implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products was assessed based on information contained in the reporting platform for the Protocol, which includes data from Parties that submitted their reports in 2023, as well as additional information inserted in the platform by a few other Parties that have not submitted full reports. A total of 151 indicators (see Annex) were included in the analysis on which the text of this Global Progress Report is based, across 24 substantive articles of the Protocol.

The reporting cycle carried out in early 2023 was the second reporting cycle for the Protocol. Based on the information available in the reporting platform, assessed as of 26 May 2023, implementation rates of the substantive articles of the Protocol were calculated.

According to the analysis, based on the calculation of simple averages of the main indicators under each article of the Protocol, the measures most reported as implemented were under Article 16 (Prosecutions and sanctions), Article 10 (Security and preventative measures), Article 15 (Liability of legal persons), Articles 14 (Unlawful conduct including criminal offences) and Article 17 (Seizure payments).

Contrarily, among the least implemented articles we found the following: Article 30 (Extradition), Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters), Article 31 (Measures to ensure extradition), Article 29 (Mutual legal assistance) and Article 7 (Due diligence).

Implementation rates of other substantive articles fall in between. This big group also includes Article 8 (Tracking and tracing) of

the Protocol that requires that some of its provisions be implemented within a specific time frame. For instance, each Party needs to ensure that cigarette unit packets and packages bear unique identification markings within five years of the Protocol entering into force for that Party, and within 10 years on the packets and packages of other tobacco products. The implementation of this measure is now reported by between 27 and 35 Parties. In addition, an international tracking and tracing regime with the introduction of a global information-sharing focal point must be established within five years of entry into force of the Protocol (as per Article 8). In this second reporting cycle, 35 Parties reported having established a tracking and tracing system.

However, the above categories should be viewed with caution. On one hand, some of the articles only have a binary question considered in this calculation, which is not representative of the comprehensive implementation of the measures under that particular article. On the other hand, looking at the comprehensiveness of measures put in place – in case of the articles that contain multiple measures or indicators – these were usually not implemented in a comprehensive manner by most of the Parties. For example, 38 Parties reported that they require a licence for the importers of tobacco products; however, most of the Parties do not have a licensing system in place for the import, export and production of manufacturing equipment.

Part V of the Protocol consists of measures related to international cooperation, but three among the five least-implemented articles are related to this Part of the Protocol. Only a few Parties demonstrated active participation in the sharing of general and enforcement information on risk management principles, trends and patterns of illicit movement of tobacco and tobacco products, seizures and confiscation, and investigation practices in the first few years of entering into force of the Protocol.



Photo courtesy of Ministry of Foreign Affairs and Human Mobility, Ecuador

In the sections that follow, we present examples of the article-by-article implementation of the Protocol. The sections include implementation rates as well as examples of implementation received from the Parties.

General obligations

Protection of personal data (Article 5)

Key observations

- **Most of the Parties reported on their existing legislation to protect personal data of individuals regardless of nationality or residence in relation to the implementation of the Protocol.**
- **Many of them mentioned the relevant law or regulation in their respective reports.**

In responding to the open-ended questions under this article, a few Parties reported having issued and updated data protection regulations that could be considered when implementing the Protocol since the submission of their previous implementation reports. However, nine Parties reported that no specific regulation on the protection of personal data exists in their jurisdictions.

The following examples are given from the Parties that updated their regulations relatively recently. For example, in Brazil, the General Law for the Protection of Personal Data was enacted in 2018 with the aim of protecting the fundamental rights of freedom and privacy and the free formation of the personality of everyone. The law covers the processing of personal data, collected through physical or digital means, by an individual or a legal entity, and encompasses a wide range of operations carried out in both manual and digital means.

Ecuador issued its Constitutional Law for the Protection of Personal Data in 2021; the law applies to the public and private sectors in relation to processing and subsequent use of personal data, including electronic data. The purpose of the regulation is to establish the conditions of legitimacy that must be met by those responsible for or oversee data processing, so that the processing of data is legitimate. It also determines the ways in which the owner of the data can give his or her consent. In Ecuador, some special categories of personal data such as sensitive data, data from children and adolescents, health data and data of persons with disabilities are created, recognizing differentiated treatment of these categories of data. Further, since June 2021, the National Directorate of

Public Registries had been working on a draft regulation to the Constitutional Law for the Protection of Personal Data, with the participation of civil society, the private sector and public institutions, and the draft was sent to the Ministry of Telecommunications and Information Society on 6 January 2022, and subsequently to the Secretariat of the Presidency of the Republic of Ecuador for its analysis and approval.

In Panama, the Resolution 904-04-175-OAL was approved in 2015 and it declares and classifies restricted access information and customs information. In addition, the Executive Decree 285 of 28 May 2021, in relation to Law 81 on Personal Data Protection, establishes principles, rights, obligations and procedures to regulate the protection of personal data. In accordance with these legal instruments, the sectors responsible for data handling are provided with the necessary tools to put into practice the protocols and procedures for the treatment of data in compliance with the law.

In Senegal, the Ministry of Health and Social Action works closely with the Commission for the Protection of Personal Data and the Agence de l'Informatique de l'Etat to create an effective legislation on data protection.

In Saudi Arabia, the Chairman of the National Tobacco Control Committee, the Minister of Health and all related staff are required to sign a declaration that they are not engaged in illicit trade. In addition, if an individual or an entity is accused of being engaged in illicit trade in tobacco, their identity would not be exposed until the connection with the offence is established. Also in Nicaragua, the use of personal data of the offenders is restricted, and only dealt with by the respective government departments and not available to the public.

The Serbian Law on the Protection of Personal Data regulates the right to protection of individuals concerning the processing and free flow of personal data, the principles of processing, the rights of data subjects, the obligations of controllers and personal data processor, code of conduct, transfer of personal data to other countries and international organizations, oversight, remedies, liability and penalties in case of violation of the rights of natural persons in connection with the processing of personal data, as well as special cases of processing.

In Türkiye, the Personal Data Protection Law No. 6698 covers protection of the fundamental rights and freedoms of individuals.

Especially the privacy of individual's life, in the processing of personal data, and related obligations and procedures. Mauritius also declared that the aim of implementing their new Data Protection Act is to establish the data protection framework in line with the international standards such as European Union's General Data Protection Regulation and to strengthen the control and personal autonomy of data subjects over their personal data. In Costa Rica, Law No. 8968 of 5 September 2011 provides basis "for the protection of the individual against the processing of personal data".

The United Kingdom of Great Britain and Northern Ireland reported that the protection of data in the country is covered under the Data Protection Act 2018 and the United Kingdom General Data Protection Regulation, while the protection of data in Gibraltar is covered under the General Data Protection Regulation (EU) 2016/679 as retained and amended under Gibraltar law, the Data Protection Act 2004, and Regulation 9 of the Tobacco Products Directive Regulations 2016.

The European Union (EU) and its Member States have also reported on their relevant laws or regulations. The EU, as a Party to the Protocol, mentioned their General Data Protection Regulation (2016/679), Data Protection Law Enforcement Directive (2016/680) and Regulation 2018/1725, which have been in place since 2018; it also touched upon mechanisms to transfer personal data from the EU to third countries. Adequacy decisions are one of those mechanisms and the European Commission can adopt adequacy decisions for the law enforcement sector. The European Commission's webpage on the international dimension of data protection² provides an overview of EU policy in relation to data transfer.

Most EU Member States mentioned the same regulations that were presented in the report by the EU, while a few others reported on some additional measures.

For example, Spain specifically cited its national regulations on data protection. For the administrative field, they have the Law 3/20189 on the protection of personal data that guarantees digital rights. For criminal investigations, the Spanish regulations are: Constitutional Law 1/2020 on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist crimes and serious crimes; Constitutional Law 7/2021 on the protection of personal data processed for purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of criminal penalties; and Constitutional Law 9/2022 establishing rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of criminal offenses, amending Constitutional Law 8/1980 on the Financing of the Autonomous Communities and other related provisions, and amending Constitutional Law 10/1995 on the Criminal Code; and more recently, Law 2/2023 regulating the protection of persons who report regulatory infringements as part of the fight against corruption.

Cyprus reported that it adopted Law no. 125(I)/2018 Protection of Natural Persons to effectively implement certain provisions of the EU Regulation 2016/679 regarding the processing of personal data and its free movement. Further, for the purpose of harmonizing its national law with EU Directive 2016/680, Cyprus issued Law No. 44(I)/2019 on the Protection of Natural Persons regarding the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of

² https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection_en

criminal offences or the execution of criminal penalties, and on the free movement of personal data.

In Latvia, following the relevant EU legislations, the Law on Processing of Personal Data in the Criminal Proceedings and Administrative Offence Proceedings entered into force on 5 July 2018, which regulates the processing of personal data performed for the prevention, investigation and detection of criminal offences and administrative violations in a uniform and

transparent manner.

Norway also incorporated EU's data protection standards into their domestic law and created a separate case-processing system for applications for import, export and production of tobacco products and equipment for tobacco production licences to ensure that the case processing is in accordance with Directive 95/46/EC (General Data Protection Regulation).

Supply chain control

Licence, equivalent approval or control system (Article 6)

Key observations

- More than half of the Parties require licences to import or manufacture tobacco products.
- The competent authority responsible for the issuance, renewal, suspension, revocation or cancellation of licences varies among the Parties. In two thirds of the Parties, the competent authority has the prerogative to issue, renew, suspend, revoke or cancel licences for importers of tobacco products.
- Sanctions for fraudulent practices in relation to licensing vary widely from Party to Party and include both administrative and judicial sanctions.

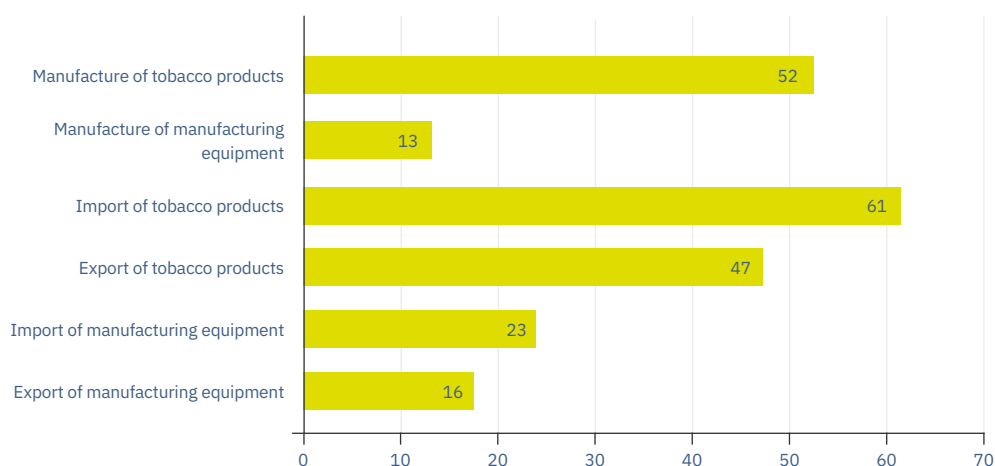


Photo courtesy of Ministry of Foreign Affairs and Human Mobility, Ecuador

In relation to Article 6 of the Protocol (Licence, equivalent approval or control system), 38 Parties (61%) indicated having a licensing system in place for the importation of tobacco

products; 32 Parties reported requiring licences for producing tobacco products; and 29 Parties having the same requirements for exporters (for the full set of data see Fig. 1).

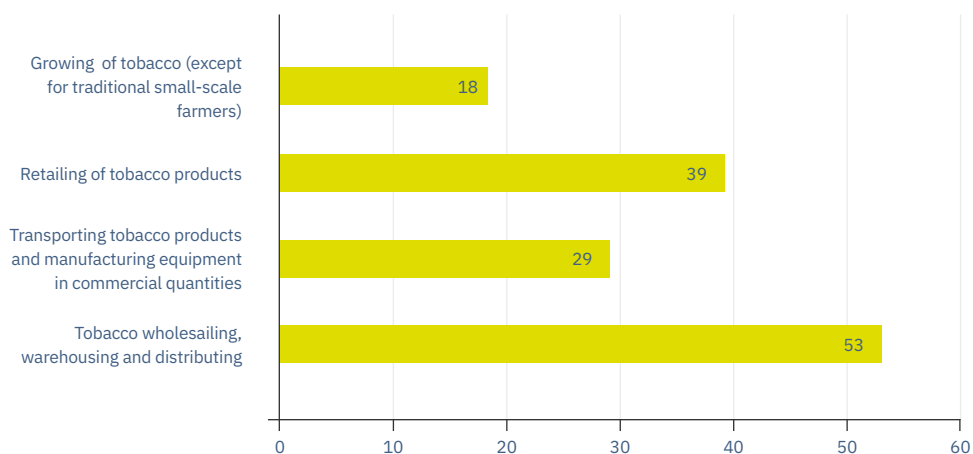
Fig. 1 Percentage (%) of Parties that have reported having licensing system in place in 2023



Approximately half of the Parties (53%) require licences for any natural or legal person to be engaged in wholesaling, brokering, warehousing or distribution of tobacco and

tobacco products or manufacturing equipment. As seen in Fig. 2, a significantly lower number of Parties require licences for other types of tobacco-related activities.

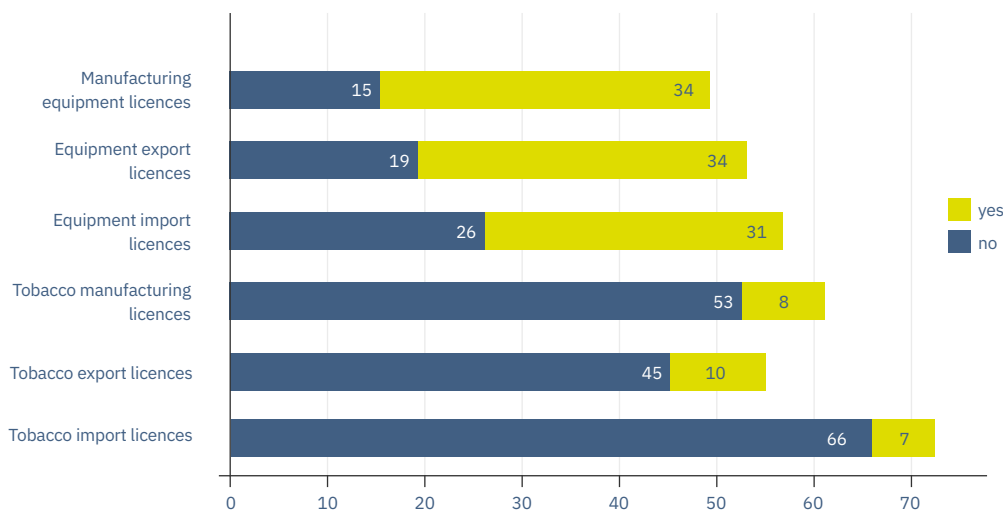
Fig. 2 Parties requiring licence for tobacco related activities (in percentage)



In 41 Parties (66%), the competent authority has the prerogative to issue, renew, suspend, revoke or cancel licences for importers of tobacco products (Fig. 3). The competent

authority has such prerogative in relation to manufacturers of tobacco products in 33 Parties (53%) and in relation to exporters of tobacco products in 28 Parties (45%).

Fig. 3 Percentage (%) of Parties that have reported authorities' prerogative to issue, renew, suspend, or revoke licences³



The competent authority responsible for the issuance, renewal, suspension, revocation or cancellation of licences varies among Parties. The ministries (or departments and units within these ministries) responsible for these matters range from customs and excise to finance, economic affairs, trade, tobacco control, health and agriculture.

The EU reported that the competent authorities responsible for licensing are established by its Member States and those are, in most cases, national customs authorities. Austria, Belgium, Croatia, Czechia, Cyprus, France, Greece, Luxembourg, Malta, the Netherlands, Portugal and Slovakia in their responses specifically mentioned that customs (in some cases also responsible for excise and other taxes) is responsible for issuing and management of licences for tobacco-related activities, including exportation, importation, retail sale, storage and transportation. In case of the United Kingdom of Great Britain and Northern

Ireland, the responsible authority for licences is His Majesty's Revenue and Customs (HMRC). In Iraq, ministries of commerce and finance (actually customs under finance) jointly deal with licences along with Baghdad Chamber of Commerce. In Congo, customs share the responsibility with the Ministry of Commerce. Many Parties in the African Region, including Burkina Faso, Cabo Verde, Guinea, Niger and Togo, assign the management of licences to their ministries of trade or commerce. In Mali, the task is managed by the department of Directorate-General of Trade and Competition. The responsible ministry in Kuwait is the Ministry of Industry and Trade. The licensing of different activities related to tobacco products are divided between ministries of health and trade in Benin and Brazil. Health ministries are solely responsible for issuance and management of licences in Fiji, Nicaragua, Norway and Samoa. In Cote d'Ivoire, the Islamic Republic of Iran, Nigeria, Qatar and Sweden different categories of licences are

³ The percentages up to 100% represents 'Not Applicable' or 'No Answers'.

managed by a wide range of government departments including public health, trade, industry, finance and budget, agriculture and respective municipal authorities. Sanctions for fraudulent practices in relation to licensing vary widely from Party to Party and include both administrative and judicial sanctions. Sanctions range from suspension, revocation and cancellation of licences to fines and imprisonment (of up to six years). In Norway, repeated violations of the advertising ban and other violations of relevant regulations could lead to the licence being revoked.

In many Parties, licence fees are monitored and collected once a year, whereas some Parties use a longer tenure. Nicaragua collects licence fees once every two years while Benin, Paraguay and Seychelles collect licence fees once every five years. A few Parties (Austria, Iraq, Latvia, Madagascar, Spain and Sweden) collect licence fees once, only at the time of

issuance of the licence. Parties that reported that they do not charge a fee on issuance of a licence are Croatia, Czechia, Ecuador, France, Ghana, Luxembourg, Portugal, Slovakia, Uruguay, and the United Kingdom of Great Britain and Northern Ireland.

In the EU, the authorized warehouse keeper status is subject to authorization by the competent authorities of the Member States. Member States may charge a fee for an authorized warehouse keeper licence, which may be collected annually or one-off fee to be collected at the onset of authorization. Fee structures vary among different categories of licences in Montenegro. Licences are issued for a period of five years for manufacturers, importers and exporters, and for two years in case of retailers, which may be renewed at the end of the initial tenure upon payment of the licence renewal fee. “Facility establishment licences” and “production



Photo courtesy of Ministry of Health, Spain

licences” are issued for a period of five and three years, respectively, and may be renewed after achieving a satisfactory mark in the compliance review and inspection and upon payment of the renewal fee. In Malta, no recurrent licence fee is issued although applicants are required to lodge a bank guarantee with their application.

From the reports submitted by the Parties, it is evident that government agencies review and audit the actions and the conduct of the licencees on a periodic basis, in most cases once a year. In Comoros, Mauritius, Qatar, the United Kingdom of Great Britain and Northern Ireland and in a few EU Member States, including Belgium, Czechia, Latvia and the Netherlands, these audits are conducted as and when required, based on an assessment of the risks. Some Parties run audits and inspections usually once in two years (Chad, Nicaragua and Paraguay), three years (Greece) and five years (Benin) while in Cote d’Ivoire, Guinea and Malta conduct similar inspections several times in a year, sometimes biannually and even on quarterly basis. In some Parties, audit and inspections agencies are different from licence issuing authorities and in most cases inspection agencies work under another ministry, sometimes under the president’s or prime minister’s office.

In Serbia, licences are issued for two years for the retail sale of tobacco products, and for five years for the production and first processing, manufacturing, wholesaling, import and export of tobacco and tobacco products. Licences can be renewed at the request of applicant and the relevant natural and legal persons are required to provide same information and documents as for the issuing of licence. The Tobacco Administration conducts an eligibility check for every applicant. Licences are inspected by national inspectorates through regular and random controls of all natural and legal persons. In Sweden, the Department of Public Health and local municipalities conduct inspections in accordance with the plan of supervision agreed by the concerned agencies.

In 39 Parties (63%), all

licenced natural or legal persons are obliged to inform the competent authority of any change of the location of their business or any significant change of their information relevant to the activities in advance as licenced.

Twenty-seven Parties reported the requirement of informing the competent authority of any acquisition or disposal of new manufacturing equipment.

The EU reported that the Directive 2008/118 EC implements the obligation under Article 6 of the Protocol in relation to tobacco products. Commission Regulation 684/2009 details the structure and content of electronic messages through the Excise Movement Control System (EMCS), whereby cross-border movements of excise goods in duty suspension are monitored. Since February 2023, Directive 2020/262 replaced Directive 2008/118 and cross-border, duty paid business-to-business movements have now been monitored under the EMCS. In France, the scope of EMCS system is extended to the movement of products subject to excise duty within the national territory with the use of a tailored Gestion de l’Accompagnement des Mouvements de Marchandises soumises à Accise, meaning management of movements of goods subject to excise duty, application. A digital map of tobacco retailers is also under preparation and the management of the system would be fully automated. In the Netherlands, under Article 90a of the Tax Law, licences are required to export, import and transfer manufacturing equipment to another Member State of the EU. Greece has been implementing Article 6 of the Protocol using Article 100a of the Law 2960/2001 (National Customs Code) under which licences for intra-community transactions, exportation and importation of tobacco and

manufacturing equipment, and importation of tobacco products are managed electronically through a nationwide system. Activities such as processing, storage, brokerage and wholesale trade will also be electronically controlled from December 2023. Latvia is currently creating a regulatory framework to control the storage, use and movement of manufacturing equipment that are yet to be registered in its national system. In Malta, when a novel tobacco product is introduced in the local market, experts in the Ministry of Health are consulted. Montenegro made an important amendment in terms of the tenure of licences for tobacco manufacturers. The licences that previously were issued for an indefinite period will now need to be renewed after five years based on an evaluation. Since September 2021, an electronic registration system for companies

importing and manufacturing tobacco products according to Decree 284/008 was established in Uruguay. Previously, the licence management system was manual and there was no authority to monitor or supervise compliance. In Nicaragua, about 90% of the tobacco companies were brought under a licensing scheme between 2020 to 2022. The process of authorizing invoices for import consignments was also introduced and Customs only allows goods into the country upon submission of authorized invoices and payment of duties and taxes. In Paraguay, Ministry of Industry and Commerce manages an industrial registry system that includes tobacco companies, and the National Health Surveillance Directorate has access to the records of licences granted to the tobacco industry.

Due diligence (Article 7)



CASE STUDY**NORWAY****Tobacco retailers under strict licensing coverage**

The Norwegian Directorate of Health is the competent authority designated to deal with tobacco- and tobacco products-related licensing in Norway. When an application to change the activities of a licensee is lodged along with required documentation, the licence-issuing agency carries out both documentary checks and on-site inspections. The licence applicant must fulfil requirements for good conduct, must have an internal control system that covers relevant provisions in the tobacco control act and must set requirements for securing the tobacco products. In addition, the applicant must describe which market the tobacco products are intended for. This follows from Chapter 3 of the Tobacco Control Act and regulations on the registration and licensing scheme for tobacco products (Chapters 4–6).

Licensing fees are collected and monitored once a year.

The Norwegian Directorate of Health and the customs authorities work together to check whether licensing conditions are met and to control the movement of tobacco products into, through and out of Norway.

The requirement for a licence for the import, export and production of tobacco products and equipment for tobacco production came into force in Norway on 15 June 2021 after a transitional period. This follows from section 8 and 43 of the Norwegian Tobacco Control Act and regulations on the registration and licensing scheme for tobacco products (Chapter 4–6).

Since January 2018, Norway has prohibited retailers of tobacco products from selling tobacco products and tobacco surrogates to consumers unless they are registered in a public national register maintained by the Norwegian Directorate of Health. The duty to register includes retailers selling tobacco products for a short period of time or on a simple occasion only. It is also required that wholesalers of tobacco products and tobacco surrogates register in the public national register. It is also prohibited to sell tobacco products and tobacco surrogates to consumers unless the products are lawfully imported or bought from a wholesaler that is registered.



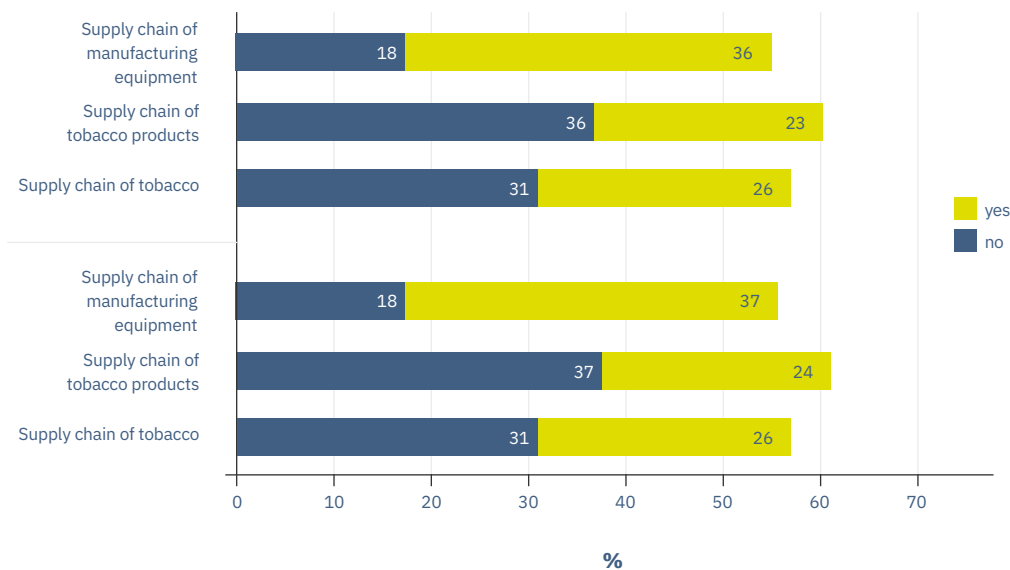
Key observations

- **About one third of the Parties reported requiring that due diligence be conducted for all natural and legal persons engaged in the supply chain of tobacco, both before the commencement and during a business relationship.**
- **Only seven Parties “blocked” at least one legal or natural person as customers within their jurisdictions because of the due diligence process.**
- **The implementation rate is significantly lower in the case of licencees for manufacturing equipment.**

In relation to Article 7 (Due diligence), only 19 Parties (31%) reported requiring that due diligence be conducted for all natural and legal persons engaged in the supply chain of tobacco, both before the commencement and in the course of a business relationship, and about 37% of the Parties require similar due diligence measures during the conduct of businesses involving tobacco products. The implementation rate is lower in respect of manufacturing equipment (18%) both before the commencement and in course of the business relationship (see Fig. 4).

The reports by the Parties provide some examples on how such due diligence is carried out. In the United Kingdom of Great Britain

Fig. 4 Due diligence being required before commencement and during business (in percentage)



and Northern Ireland, suppliers of raw tobacco must confirm that their customers are approved under the Raw Tobacco Approval Scheme. The customer’s unique approval number must be checked by the supplier at the first purchase, and the supplier will need to continue to check this on a regular basis during the business relationship. Any requests by customers to purchase more than 50 kg of raw tobacco must include a check with HMRC to verify the approval

is in place. Transporters of raw tobacco must only ship raw tobacco to approved persons and approved addresses. In case of tobacco products, section 7A of the Tobacco Products Duty Act places legal obligation on tobacco manufacturers to avoid facilitating the smuggling of tobacco products into the United Kingdom. For suppliers of manufacturing machinery to another person based in the United Kingdom, it should confirm that the customer holds a licence

from HMRC with the right to manufacture before the supply takes place. Just like in the case of purchasing raw tobacco, a customer's unique licence number must be checked the first time this person is supplied with machinery, and the supplier will need to continue to check this on a regular basis. In relation to Gibraltar, the Tobacco Act 1997 was amended to add Part VA which places an obligation on any person engaged in the supply chain to conduct due diligence before the commencement of and during the course of a business relationship.

For tobacco, the EU does have general customer due diligence rules established with an anti-money laundering focus. In this case, due diligence is limited to payments in cash over € 10 000 in a single transaction or linked transactions. The EU and Member States are using a variety of means to strengthen their due diligence processes, including legal provisions on money laundering as well as instruments under private law.

In Latvia, commercial activities involving tobacco products may be carried out at a site of operation by a merchant who has received a special permit (licence) issued by the State Revenue Service, and any individual is able to check online if the licence is valid. Lithuania's Law on Prevention of Money Laundering and Terrorist Financing defines entities and legal persons involved in economic and commercial activities related to trading of precious stones, precious metals, movable cultural goods, antiques or any other property worth € 10 000 or more, or an equivalent amount in foreign currency, whether the transaction is carried out in a single operation or in several operations which appear to be linked should be under specific due diligence practices.

In the Islamic Republic of Iran, due diligence in customer identification is mandatory in case of purchase, sale and transportation. Malta conducts due diligence through checks with various sections within the customs department such as the legal office and customs intelligence and also checks for criminal records of the economic operator. The Slovak legislation regulates the rights and obligations of legal entities and natural persons in preventing and detecting the legalization of proceeds from criminal activities including money laundering and the financing of terrorism.

reported due diligence measures are undertaken with regard to customer identification in respect of actors in the supply chain of tobacco and tobacco products, while 12 Parties (19%) reported requiring documentation (or a declaration) regarding any criminal records for customer identification purposes.

In addition, only eight Parties (13%) indicated conducting due diligence in identifying bank accounts used for trade transactions as part of customer identification process and seven Parties (Austria, the Islamic Republic of Iran, Malta, Montenegro, Senegal, Sweden and Türkiye) reported that at least one legal or natural person has been "blocked" as customers within their jurisdictions as a result of due diligence process.

Norway's new Tobacco Control Act (Section 16) requires licencees to: 1) carry out customer checks of other traders before and during the customer relationship, including making sure that those subject to licensing have a licence and those subject to registration are registered; 2) monitor sales to own business customers to ensure that the quantity of products placed on the market is in accordance with the demand for this product; and 3) report to the Directorate of Health any suspicion that a business customer breached the provisions of the said act.

In Senegal, all natural and legal persons involved in supply chain of tobacco, tobacco products and manufacturing equipment are required to: 1) carry out due diligence before and during the business linkage; 2) monitor sales to their customers; and 3) obtain information on their full name and identity.

Nineteen Parties (31%)

Tracking and tracing (Article 8)

Key observations

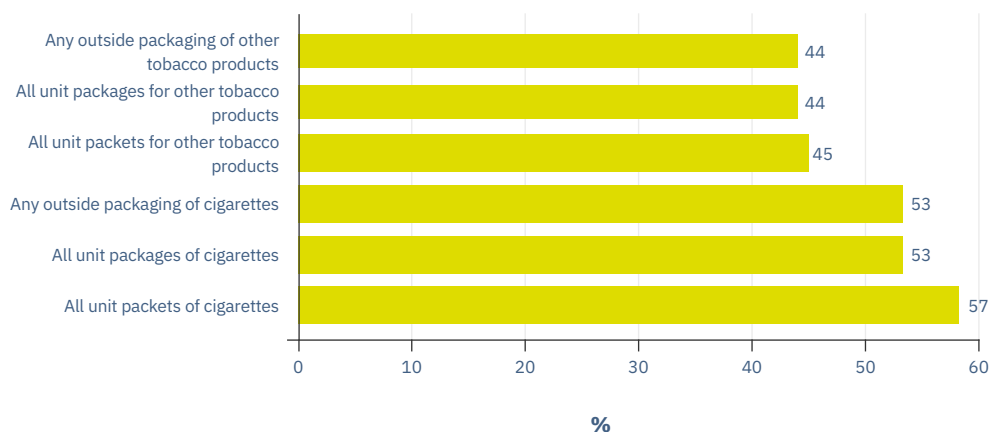
- **More than half of the Parties (57%) reported having established a tracking and tracing system in their jurisdiction; however, there is not sufficient information in the submitted reports to assess whether such systems contain all the essential components of a tracking and tracing system required under the Protocol.**
- **The tracking and tracing systems in place in most of the Parties are capable of producing data on date and location of manufacture, product description and manufacturing facility.**
- **Most of the Parties take comprehensive measures to keep their system independent of the influence or interference from the tobacco industry, although in some cases tobacco manufacturers and importers are asked to bear related costs of setting up of a system or creating bar-codes and tax stamps.**

Unique identification markings (UIMs).

As per Article 8.3 of the Protocol, Parties should require that unique, secure and non-removable identification markings, such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of 10 years of entry into force of the Protocol for that Party. In the current reporting cycle, 35 Parties (57%) reported having established a tracking and tracing system in their jurisdictions.

Parties were also asked to report whether they require that unique, secure and non-removable UIMs in the form of codes or stamps need to be applied or affixed to or form part of all unit packets and packages and any outside packaging of cigarettes and other tobacco products. Fifty-seven per cent of the Parties reported requiring UIMs on unit packets (the cigarette packs), and 53% reported the same for unit packages (for example, cartons) and outside packages of cigarettes (for example, master cases). Fewer Parties (around 45%) reported the same for other tobacco products (Fig. 5). These responses should be assessed with caution, as the understanding of the Parties on the features of the UIMs might substantially differ.

Fig. 5 Percentage (%) of Parties that have reported implementing unique identification markings under Article 8 in 2023



Information available on the markings.

As per Article 8.4.1 of the Protocol, the tracking and tracing system in Parties should be able to generate some information either directly or by means of a link to determine the origin of products and point of diversion, such as date and location of manufacture,

manufacturing facility, machine used to manufacture tobacco products, production shift or time of manufacture, the name, invoice, order number and payment records of the first customer who is not affiliated with the manufacturer, the intended market of retail sale, product description, any warehousing

and shipping information, the identity of any known subsequent purchaser, and the intended shipment route, the shipment date, shipment destination, point of departure and consignee. Most of the Parties that reported having tracking and tracing systems indicated that their systems could provide data on the date and location of manufacture, product description and manufacturing facility. Based on the responses submitted, a good number of Parties' systems are capable of producing data for all 11 data fields.

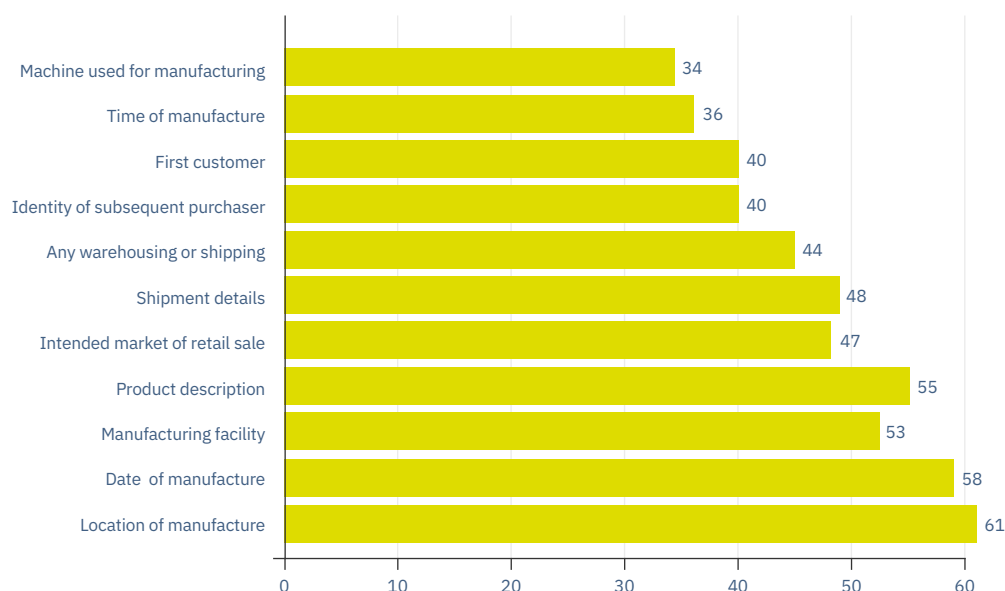
The tracking and tracing systems of Parties vary as far as the technology used, scope and coverage, capacity to capture data fields, serviceability and user-friendliness are concerned (Fig. 6). EU Member States reported that the system they used requires that information be encoded in UIMs, and that it should not exceed 50 alphanumeric characters. In the EU tracking and tracing system, each "ID issuer" (an entity that is appointed by each EU Member State and responsible for generating and issuing UIMs and is not affiliated with the tobacco industry) prepares its own coding structure based on basic elements indicated in the secondary legislation (adopted by each Member State). In the United Kingdom of Great Britain and Northern Ireland, data fields are captured in a central repository, which is only accessible to authorized government officials via a user interface.

Some other Parties reported requiring fewer data points. Paraguay reported that the sales invoice carries limited information, and in the first sale of the product, whether it is for the local market or for export, the description of the product is included in the invoice. In Brazil, through the Scorpios System, information on time of manufacture and manufacturing facility is available in the seal. Uruguay reported that the bar-code, the name, address and other contact details of the manufacturer are available on the side of the packaging. In Ecuador, the information available is obtained through activation of the physical safety components in the production lines, using the SIMAR equipment installed for this purpose.

In Benin, information on the place and date of manufacture, manufacturing plant, and date of order and itinerary of the product are available on the stamp. In Saudi Arabia, date of manufacture and country of origin data are available on the packages.

Obligations not delegated or performed by the tobacco industry. Most of the Parties that reported having established a tracking and tracing system elaborated on how they ensure that any of the obligations assigned to the government are not delegated to or performed by the tobacco industry. The EU and its Member States reported the measures they take to control fraud and how their system is kept safe from interference by tobacco industry

Fig. 6 Percentage (%) of Parties reporting that information on the manufacture of the product, the shipment or the purchaser is available in their jurisdiction



(see the text box below). In Fiji, in case of a suspicion that an unknown entity approaches one of the stakeholders engaged in the system, a meeting among stakeholders is convened to clarify if the entity or the person is backed by the tobacco industry. Mauritius reported that since the implementation of excise stamps in 2008, these stamps are procured by the competent authority through open tender exercise and sold to importers for affixing on packs at the factory premises.

Benin reported that their system is owned and established by the Government itself without any involvement of a third party. Ecuador and Malta reported that the uniform identification markings are supplied by third parties that do not have any connection with the tobacco industry. Saudi Arabia clarified that the tobacco industry is not able to interfere as setting up tobacco manufacturing industry is prohibited in the country. Nigeria ensured non-interference of the tobacco industry by raising awareness on industry interference among lawmakers and government officials, and adopting a code of conduct that requires related officials to sign a declaration of no conflict of interests.

Costs associated with tracking and tracing of tobacco products. Responding to a question on costs of the tracking and tracing systems, most of the Parties reported that they do not require the tobacco industry to pay – in part or in full – for the establishment of tracking and tracing systems or the production of excise stamps. The ID issuers appointed at the level of EU Member States may charge proportionate and non-discriminatory fees to manufacturers or importers for generating and issuing UIMs. In some other Parties, although tobacco industry is not engaged in the establishment or management of the system, they are asked to bear all related costs of issuance of IDs, tax stamps or seals, as applicable. The Islamic Republic of Iran reported that the cost of equipment and infrastructure at manufacture

points is borne by the tobacco manufacturers while the costs of surveillance and monitoring system is upon the Government. In Benin, costs for bar-codes are met from the public treasury while documentation and laboratory analysis related costs are borne by the importer. As per the new legislation of Norway, the licence holder shall pay an annual fee to cover the costs of developing and operating the licence register, the licence scheme, the tracking system and the security marking, as well as supervisory duties in accordance with the regulations on the registration and licensing scheme for tobacco products.

Many Parties including Madagascar, Panama and Qatar reported that they would upgrade their tracking and tracing systems soon. Norway reported that the European Economic Area (EEA) Committee decided on 4 February 2022 to incorporate the European Tobacco Products Directive 2014/40/EU and associated legal acts into the EEA Agreement. Iceland and Norway made constitutional reservations to the decision which means that the EEA Committee's decision would not come into effect until the "Althing" and the "Storting", their respective parliaments, and had given their consent. The Storting decided on 2 June 2022 to incorporate the European Tobacco Products Directive into the EEA Agreement. Norway expected that the implementation of the European Tobacco Products Directive could be completed during 2023.

The United Kingdom of Great Britain and Northern Ireland reported that the EU-wide tracking and tracing system was implemented in the United Kingdom in May 2019. At the end of the transition period following United Kingdom's EU-exit, the United Kingdom launched its own standalone system from 1 January 2021. Requirements for the United Kingdom system currently only apply to cigarettes and hand-rolling tobacco, and it would be expanded to other tobacco products from 2024 onwards.

CASE STUDY

EUROPEAN UNION

The tracking and tracing system of the European Union

The EU's tracking and tracing rules established by Article 15 of Directive 2014/40/EU and Commission Implementing Regulation (EU) 2018/574, concern the:

- Establishment and operation of a tracking and tracing system for tobacco products;
- Availability of the specific information that needs to be reported to the system, to the European Commission and the Member States; and
- Expansion of its system's scope.

Under the EU tracking and tracing system:

- All unit packets of tobacco products are required to be marked with a unique identifier which should be non-removable printed or affixed, indelible and not hidden or interrupted in any form.
- Relevant economic operators involved in tobacco trade are required to record the movements of these packets throughout the supply chain and transmit the related information to an independent provider.
- The data are then made accessible to the Commission and the authorities of the EU Member States for enforcement purposes.

The EU tracking and tracing system also has additional characteristics, such as:

- Clearly defined requirements on the independence of certain entities participating in the system, namely ID issuers, providers of repository services and anti-tampering devices as well as their subcontractors, from the tobacco industry (that is, legal independence, financial independence, absence of conflict of interest);
- The generation of unique identifiers by an independent third party to be appointed by each Member States (ID issuers);
- The process of verification of unique identifiers is protected with an anti-tampering device supplied and installed by an independent third party;
- Manufacturers and importers must ensure that the application of unit-level unique identifiers is directly followed by the verification of those unit-level unique identifiers in terms of correct application and readability (by means of an anti-tampering device). Full access to the record of the verification process must be provided to the Member States;
- All data reported to and saved in the system's repositories can be accessed solely by the European Commission, the Member States and appointed external auditors. The economic operators do not have access to the data;
- Clearly defined rules on the validation of data and its instantaneous access by national authorities and the Commission via the central functionalities provided by the secondary data repository operator.

Some EU Member States provided further information on their security management. For example, in Sweden, the Public Health Agency of Sweden (PHAS) is designated as a national ID issuer. PHAS has regulatory rights and assignments in, among other things, supervision and guidance and creating requirements for authenticity details in the security marking which are communicated and decided on time.

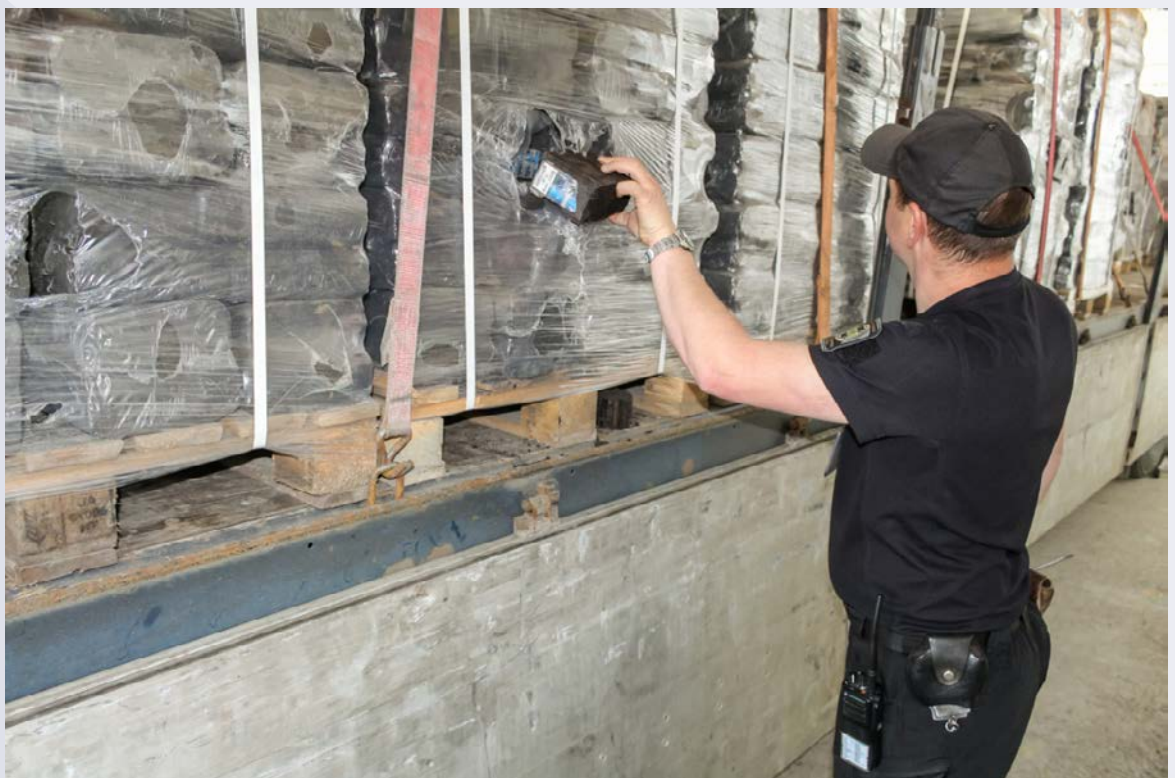
Manufacturers and importers of tobacco products enter into data storage agreements with an independent third party, which hosts the data storage facility for all relevant information regarding the tobacco products of these manufacturers and importers. The data storage facility

must be physically located on the territory of the European Union. The agreement and the suitability of the third party are approved by the European Commission. The activities of the third party are overseen by an external auditor, who is proposed and paid for by the manufacturer of tobacco products and approved by the European Commission. The external auditor submits a report to the European Commission and to the respective Member State on an annual basis. The European Commission, the competent authorities of all Member States and the appointed external auditor have full access to the data storage facilities. In duly justified cases, the Commission or the Member States may grant manufacturers or importers access to the stored data provided that commercially sensitive information remains adequately protected in conformity with the relevant EU and national legislation.

The ID issuer of each Member State may charge fees to manufacturers or importers for generating and issuing unique identifiers (traceability codes). These fees should be proportionate to the number of unique identifiers generated and issued to economic operators taking into account the mode of delivery, and non-discriminatory. Manufacturers and importers must bear all costs related to the establishment, operation and maintenance of the data storage system and the costs should be fair, reasonable, and proportionate to the services rendered and the amount of unit level unique identifiers requested over a given period of time. Manufacturers of tobacco products are also required to provide all other economic operators involved in the trade of tobacco products with equipment necessary for the recording (scanning) of the tobacco products purchased, sold, stored, transported or otherwise handled.

The EU also reported that the obligations specified under Article 8.12 have not been delegated to the tobacco industry.

The EU tracking and tracing system has been in operation since May 2019.

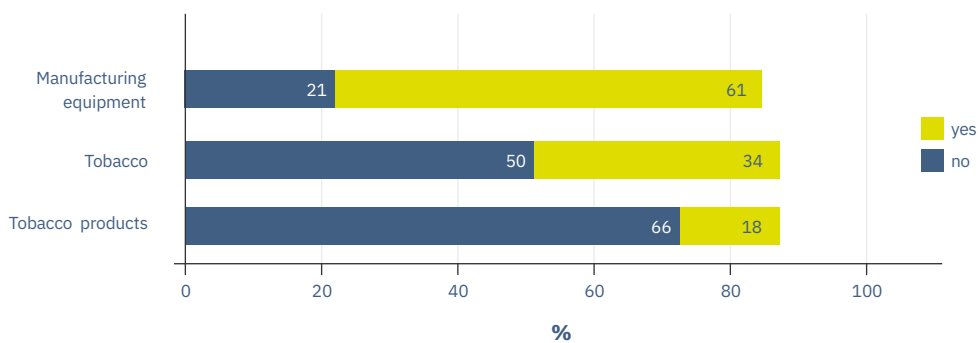


Record-keeping (Article 9)

Key observations

- **Two thirds of the Parties reported requiring all natural and legal persons engaged in the supply chain of tobacco products to maintain complete and accurate records of all relevant transactions.**
- **The European Union and its Member States require authorized warehouse keepers for tobacco products to keep records of tax warehouse, accounts of stock and movements of excise goods.**
- **Only 10 Parties reported that they cooperate with other Parties and relevant international organizations in progressively sharing and developing improved systems for record keeping.**

Fig. 7 Percentage (%) of Parties requiring record keeping of transaction for natural or legal persons engaged in tobacco



In implementing Article 9 (Record-keeping), 41 Parties (66%) reported requiring all natural and legal persons engaged in the supply chain of tobacco products to maintain complete and accurate records of all relevant transactions (Fig. 7). However, the rates of implementation are lower in respect of licencees engaged in the supply chain of tobacco and in respect of manufacturing equipment. On a different note, 17 Parties (27%) responded that tobacco products and manufacturing equipment are sold or manufactured for export, or they are subject to duty-suspended movement in transit or trans-shipment on the territory.

In the EU, “Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty” requires all authorized warehouse keepers for tobacco products to keep records of each tax warehouse, accounts of stock and movements of excise goods, consent to all monitoring and stock checks, and any checks

enabling competent authorities that goods are received. The Regulation of the European Commission (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118/EC sets out detailed information to be generated when excise goods (for example, tobacco products) are transferred under the excise duty suspension regime. However, such record-keeping requirement for economic operators engaged in the supply chain of tobacco is not kept mandatorily at the EU level, and Member States have their own national measures to ensure relevant information (in line with Article 6 of the Protocol) is recorded and provided to relevant national authorities.

For example, Malta reports that any movement from the point of import to the point of release, including warehouse-to-warehouse and warehouse-to-market transfers, are not only scanned with the tracking and tracing system, but also documented in customs records. This allows the customs authorities

to be in possession of complete records of all movement of tobacco and tobacco products. As per Articles 34 to 38 of the Slovakia's Act on Excise Duty on Tobacco Products, as amended, it is required to keep complete and accurate records of the prescribed specific information and relevant transactions. Procedures for movement of tobacco products under suspension of excise tax and details of accompanying document or irregularities or offences with the transport of tobacco products under tax suspension are also regulated by the same Act.

According to the Croatian excise legislation, information on intended entry, exit and transit of any transaction of raw tobacco and accompanying documents certifying the movement of goods need to be reported to the Croatian Customs Administration. In Greece, in case of import, export and movement of tobacco within the EU, the companies involved in the transactions are obliged to electronically submit records of transactions supplemented with commercial documents, identity of buyer and seller, quantity, description and the Combined Nomenclature code⁴ of the products on a quarterly basis. In the case of trading of manufacturing equipment, the country of origin of the equipment, brand and serial number, place of warehousing and the authorization number of the person involved should also be recorded. In Spain, licencees allowed to transport tobacco are required to have prior registration as a raw tobacco operator in the Registrar of Raw Tobacco Operators, and notification of each transaction of tobacco from the territory or movement within the territory, and the document certifying the notification, must accompany the transport.

In some Parties, licencees are not only required to maintain complete and accurate records of all relevant transactions, but also report them to the authorities concerned. In Burkina Faso, Latvia and Montenegro licencees are required to provide information monthly of all brands of cigarettes, cigars and cigarillos sold in the market. In Comoros, licencees need to maintain information on registrations, transactions, storage and traceability of tobacco products and to provide

them to the concerned authorities. In Fiji, according to the Tobacco Control Act and its regulations, licencees are required to keep records of purchases and sales for two years, while customs legislations require the same documents to be kept for at least five years. In Mauritius, importation of tobacco and tobacco products are controlled, and information on the identity of the importer, details of the product being imported, including its harmonized system code, country of origin, volume of the consignment, and shipping records is duly recorded. In the United Kingdom of Great Britain and Northern Ireland, economic operators are obliged to maintain and keep records according to provisions of Customs and Excise Management Act of 1979.

Some Parties provided detailed information on the legislative, executive, administrative and other measures, time, and procedures adopted for record-keeping. In the EU, Directive 2014/40 (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) requires economic operators to maintain and keep complete and accurate records of all relevant transactions for at least five years. Some EU Member States also adopted national measures in relation to even longer record-keeping requirements. For example, Cyprus reported that in the customs legislation of the country, economic operators are required to keep records for seven years. In Czechia, producers and owners of warehouses that are used to store tobacco and tobacco products are required to keep records for 10 years. Persons who place tobacco products into free circulation must attach a tobacco label of the products, keep records of the tobacco labels and report the number of labels on an annual basis. In Croatia, for the purpose of tax inspections and audits, businesses are obliged to keep issued and received invoices, customs declarations, excise documents, proof of exemption if any, duty calculations, production, and import and export documents for 10 years.

In Cote d'Ivoire, the customs agents need to keep annual registers of customs operations,

⁴ The Combined Nomenclature (CN) is the EU's eight-digit coding system, comprising the Harmonized System (HS) codes with further EU subdivisions.

clearance-related documents – including the release order, declaration, transport manifest, packing list, freight forwarders invoice, statement of insurance costs, delivery note and all related correspondence – for at least three years at their office.

In Türkiye, producers of tobacco notify the Department of Tobacco and Alcohol and the Ministry of Agriculture and Forestry on a regular basis of movements of raw materials, quantities of products shifted from warehouses, sales, returns and banderol movements. They are also required to keep records of the nature and origin of tobacco imported, volume produced, used as raw materials, transported to a different location, processed products (such as fine cut tobacco, homogenized or reconstituted tobacco) and details of banderols that are used to tax collection purposes. In Mauritius, importers are legally required to submit monthly returns on excise stamps, quantity of cigarettes imported, and number of ex-warehousing bills of entry validated by customs. Monthly reports on import of tobacco, tobacco products and accessories used in the manufacture of cigars and cigarettes are also required to be submitted to the relevant authorities in Nicaragua.

In Slovakia, warehouse keepers are obliged to keep records of movements and stock of

tobacco products in the warehouse and need to present them when asked by the customs authorities, at least until the payment of duties and taxes. In Congo, non-keeping of proper registers is an act of fraud and punishable according to national legislation.

Although quite a good number of Parties have a requirement of recording complete and accurate information of relevant transactions of production, importation and exportation of tobacco and tobacco products, only six Parties (10%) reported that they established a system for sharing with other Parties details contained in all records kept in accordance with Article 9 of the Protocol, and only 10 Parties (16%) reported that they cooperate with other Parties and relevant international organizations in progressively sharing and developing improved systems for record-keeping. The EU and a few Member States reported that Member States have access to records stored under the EU tracking and tracing and excise movement control systems. Mauritius reported that the recorded data are locally shared through the National Agricultural Products Regulatory Office and the Ministry of Finance and sharing of information with other countries is conducted through customs mutual administrative assistance agreements.

Security and preventive measures (Article 10)

Key observations

- **Many Parties reported the implementation of a range of measures to prevent the diversion of tobacco products into illicit trade channels.**
- **Most of the Parties with a licensing system reported having established sanctions in their legislation when licencees fail to adhere to the provisions of Article 10.**
- **Several Parties strengthened their relevant legislations and added strict punitive measures for contraventions of legal provisions.**

Article 10 requires Parties to take necessary measures to prevent diversion of tobacco products into illicit trade channels. In their reports, Parties provided examples of measures that are in place in their jurisdictions. Some Parties also reported that they ensure that contraventions are subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions.

Most of the Parties mentioned use of tracking and tracing system as the foremost measure for preventing diversion of tobacco products into illicit trade channels. France reported that the EU tracking and tracing system has been implemented in the country. In addition, regular checks in all logistics modes and road routes are carried out to combat illicit trade, including from other countries where rate of taxes on cigarettes is lower than in France.

Among other examples, Comoros, Ghana, Niger and Togo reported that they consider that health warnings, pictograms and statements such as “the sale of the product is authorized for consumption in COUNTRY NAME only” helped preventing diversion of tobacco products into illegal channels. In Fiji, a customs official is based at the country’s sole tobacco manufacturer to check that applicable excise duties are paid, to monitor quantity produced and to track the movement of products. Presence of a customs official needs to be ensured when tobacco products

are removed from warehouse for distribution in Fiji and for export, and when goods are brought in the warehouses. Customs and health officials jointly check imports of tobacco products to ensure the goods are consistent with the manifests provided. Similarly, imported consignments of cigarettes are escorted by customs from the ports to importers’ bonded warehouses.

Türkiye reported using product registration and certification systems to prevent diversion into illicit channels. Volume of locally produced tobacco and related raw materials, as well as imported goods, movements to and from warehouses, sales, returns and quantity of used tax stamps, are registered with the Department of Tobacco and Alcohol under the Ministry of Agriculture and Forestry. A certified wholesale and retail system has been established so that any illicit movement can be identified. Norway reported that the purpose of its Currency Register Act is, among other purposes, to contribute to the collection of due taxes and duties by giving the control and investigative agencies access to information on currency exchange and physical or electronic transfer of funds in and out of Norway.

Forty-four Parties (71%) reported having established sanctions in their legislation to address situations when licencees do not adhere to the provisions of Article 10. In the EU, there are various sanctions in place relating to non-compliance of the provisions of Article 10. Cross-border transfers of cash amounts over € 10 000 are to be declared to customs authorities. If there is any indication of criminal activity, customs authorities may act on amounts lower than the ceiling. In case of “unaccompanied cash”, the customs authorities have the power to ask the sender, recipient or their representative to make a disclosure declaration and can carry out checks. EU Member States must ensure that relevant enforcement agencies carry out adequate monitoring of transactions and business relationships to enable detection of unusual or suspicious transactions.

For cross-border transfer of cash not declared, or breaches of provisions of the Anti-Money Laundering Initiative, EU Member States are obliged to introduce effective,

proportionate and dissuasive penalties in their national legislation. Most EU Member States that are also Parties to the Protocol, and other Protocol Parties legislated for revocation of licences and sanctions, as appropriate. Luxembourg modified its law against money laundering and added sanctions in terms of penalties and criminal proceedings of different multitudes. The penalty for failure to declare the foreign currency above the acceptable amount in Spain is a minimum of € 600 while the maximum is 50% of the amount seized. In Czechia, in addition to financial penalties and confiscation of goods, the licence is revoked if the conditions relating to the licence are found to be breached.

In their progress notes, several Parties reported on their laws that cover security and preventive measures to fight tobacco-related financial crime. Madagascar reported placing inspectors at the premises of manufacturers each time products are removed from the plant, and tobacco products cannot be transported without a movement permit issued by tax authorities.

In Panama, Article 18 of Law 13 of 24 January 2008 (on tobacco control) establishes that the State, through regulations, shall adopt and take necessary measures in all special economic or free zones to specifically monitor, document and control the storage and distribution of tobacco products that are under a duty or tax suspension regime. Further, Article 25 of Executive Decree 230 of 2008 establishes that the competent authority shall empower the National Customs Authority to inspect, detain, seize and suspend goods in transit, subject to any customs destination that may be infringing health regulations on tobacco products and their derivatives and that do not have the corresponding authorizations.

The same decree in Article 26 provides that natural and legal persons operating in special economic areas or free zones shall be obliged to submit monthly inventories of commercial movements related to tobacco products and their derivatives, and if unjustifiable shortages are found in these movements, they would constitute aggravating circumstances for customs offences.

The Article 288-A of Law 34 of 2015 in Panama establishes that anyone who introduces or removes goods of any kind, origin or provenance from the customs territory, evading the intervention of the Customs Authority, even if it does not cause fiscal damage, or who evades the payment of duties, taxes, fees and any other corresponding charges, shall be punished with imprisonment of two to five years. The same penalty shall be imposed on anyone who possesses or imports tobacco products into Panama without having paid the taxes or fails to comply with the sanitary regulations and health standards in force. The tobacco products found in such a condition shall be seized and destroyed by the National Customs Authority, the National Police and the Ministry of Health.

In the United Kingdom of Great Britain and Northern Ireland, the Tobacco Products Duty Act 1979 was amended to make provision (Section 8JB) for sanctions if tracing and security requirements are contravened. In relation to Gibraltar, changes to the Tobacco Act 1997 and the introduction of the Tobacco Products (Manufacturing Machinery) Regulations 2020 placed obligations on licencees to report suspicious transactions and only supply products in quantities commensurate with demand in the intended market for retail sale.

CASE STUDY

ECUADOR

Implementing a comprehensive set of measures to control illicit trade in tobacco products

With a view to preventing diversion of tobacco products into illicit trade channels, the Government of Ecuador took coordinated measures involving various ministries and departments, including state agencies that carry out inspections and audits, for example, the police and customs.

In compliance with Articles 298, 299 and 301 of the Comprehensive Constitutional Criminal Code of Ecuador, 2014 (as amended in 2016), investigations by the Customs and Tax Offences Unit and the road interdiction by the National Police Border Control and Contingency Coordination are the foremost actions undertaken by the two major forces.

CARA FRONTAL



Photo courtesy of Ministry of Foreign Affairs and Human Mobility, Ecuador



Photo courtesy of Ministry of Foreign Affairs and Human Mobility, Ecuador

In accordance with the competencies of the National Customs Service of Ecuador, the following has been executed and implemented regarding the prevention and control of illicit trade:

- Coordinated implementation of control operations with inter-agency patrols at specific control posts between SENAE (Customs Surveillance Corps), Armed Forces and National Police.
- Conformation of the Inter-institutional Articulation Table as per Presidential Commitment No. 1277 for SENAE, National Police and Armed Forces.
- Bilateral information exchange with counterparts at the borders for the implementation of specific controls.
- Development of territorial technical roundtables for the fights against smuggling at the level of governorates.
- Change in the approach to the treatment of smuggling as a state policy leads to new strategies for coordinated action.
- Identification of regulations that need to be reformed and relevant steps for modification.
- Creation of the Office for Institutional Strengthening and Fight against Corruption – OFIELC (Investigations).
- Creation of a Specific Task Force for the control of smuggling.
- Strengthening of customs intelligence and reinforcement of working teams.

Sale by Internet, telecommunication or any other evolving technology (Article 11)

Key observations

- **About half of the Parties reported banning the sales of tobacco products through Internet, telecommunication or any other evolving technology.**
- **Many Parties issued specific legislative provisions prohibiting sale of tobacco products using Internet and other modern technologies.**
- **Some Parties initiated a registration system for distance sales of tobacco products.**

Twenty-nine Parties (49%) reported banning sales of tobacco products through Internet, telecommunication or any other evolving technology. Thirty-six Parties (58%) reported that they apply relevant provisions of the Protocol in managing online and other technology-supported sales. Among these Parties, Brazil, Burkina Faso, Congo, Costa Rica, Cote d'Ivoire, Panama, Paraguay, Qatar, Samoa, Saudi Arabia and Serbia reported having specific legislative provisions prohibiting the sale of tobacco products using Internet and any other modern technology. Montenegro also reported that the new amendments to the Tobacco Act contains specific provision of banning distance sales of tobacco products. In addition, some of the Parties prohibited selling of tobacco using vending machines considering this as an evolving technology. Panama prohibited online purchase and promotion of tobacco products over the Internet by Law 315 of June 2022 that included a ban on the use, importation and commercialization of electronic nicotine delivery systems, electronic cigarettes, vaporizers, tobacco heaters and other similar devices with or without nicotine. Two Parties (Saudi Arabia and Serbia) reported that they do not issue licences to sell tobacco and tobacco products through the Internet,

telecommunications or any other evolving technology-based mode of sale. In the EU, the legislation does not prohibit sales of tobacco products through the Internet, telecommunications or any other evolving technology, but Member States are allowed to prohibit cross-border distance sales. Some Member States prohibit Internet sales of tobacco by using this clause. For Member States that have not prohibited cross-border distance sales, retailers engaging in that activity must register with the relevant authorities and make consumers aware of those registered outlets. Among the EU Member States, Cyprus, France, Latvia, Lithuania, Luxembourg and Spain banned distance sales of tobacco products using Internet and any other evolving technology. Belgium prohibited selling and buying of e-cigarettes, e-liquids, and products containing tobacco and herbal products for smoking and devices. France reported frequent inspections and significant seizures of express and postal freight containing tobacco products that are destined for final buyers and intermediaries in its jurisdiction. In the Netherlands, the ban on sales of tobacco products through the Internet is reported to be effective from 1 July 2023.

An intention of cross-border distance selling of tobacco products to Sweden needs to be registered with the Public Health Authority. Sales should not be conducted until the trader receives the registration confirmation. Introduction of a self-monitoring programme is the main condition of approval of the registration. Any amendment to the economic operator's information must be notified to the Public Health Authority without any delay. In their 2023 implementation report, Serbia (information received from the Ministry of Trade, Tourism and Telecommunication) reported banning 240 advertisements for the sale of cut tobacco via Internet. Costa Rica prohibited sale of tobacco products to consumers by telephone, digital, electronic, Internet, email and other similar means as the identification of the purchasers and their legal age cannot be verified without doubt in these modes of sale.

CASE STUDY

TÜRKİYE

Experience with the sale and promotion of tobacco products on the Internet and social media

Law No. 4733 on the Regulation of tobacco, tobacco products and alcohol market, which is the main legislation for tobacco products in Türkiye, prohibited the sale and the promotion of tobacco products on the Internet and social media.

On the other hand, within the scope of Consumer Protection Law No. 6502, the Advertising Board is responsible for setting principles in terms of commercial advertisements and examining misleading advertisements imposing administrative fines for the sale and promotion of tobacco products on the Internet and social media, as well as for the advertisement and public disclosure of explanation, information and documents regarding the sale and promotion of those products. In case the websites sell and advertise tobacco products and electronic cigarettes, a decision is made by the above-mentioned board to block access to these websites, and a notification is submitted to the Association of Access Providers to block these websites.

In addition, the Advertising Board continues its inspections on the sale and advertising of electronic cigarette and flavoured tobacco products on e-commerce platforms and social media accounts carrying out regular screening activities in this regard. Cooperation is also maintained with the e-commerce platform companies taking proactive steps, by applying filters in order to prevent such products from being uploaded to the platforms and offered for sale.

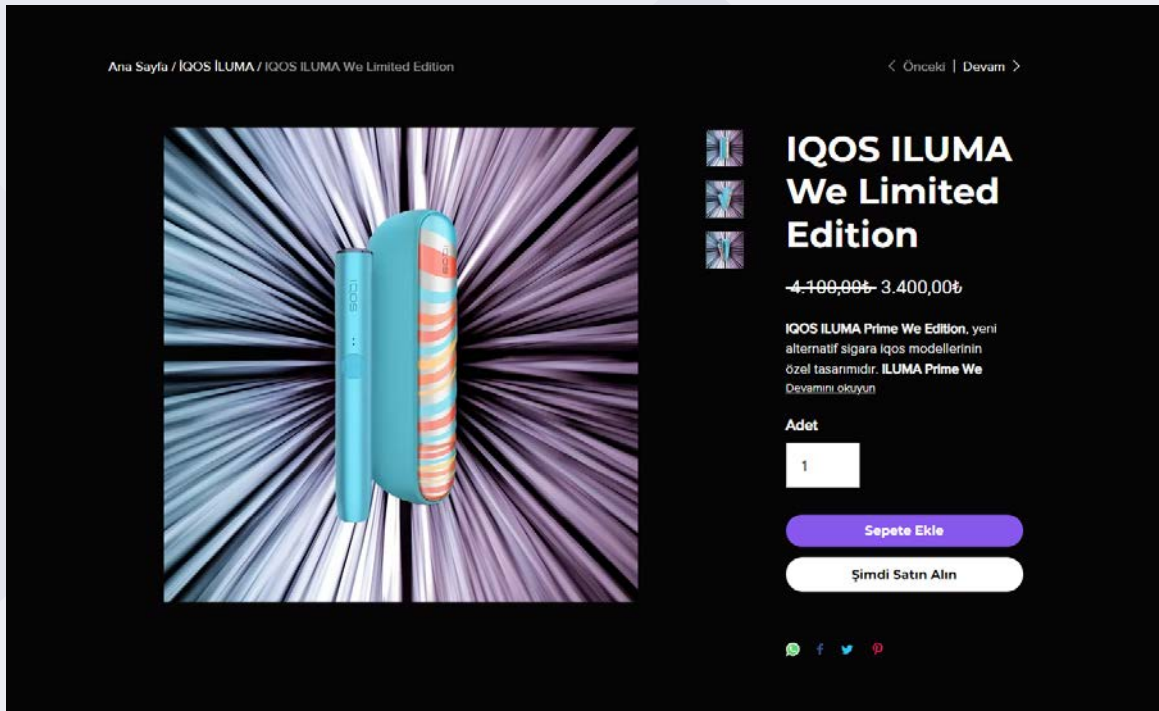


Photo courtesy of Ministry of Health, Türkiye

Free zones and international transit (Article 12)

Key observations

- **Most of the Parties have the authority to conduct customs and similar controls in free zones.**
- **Intermingling of tobacco and non-tobacco products remains a key concern in the free zones and only one third of the Parties reported prohibiting the intermingling of tobacco products with non-tobacco products.**
- **Only less than one third of the Parties reported that they have the authority to control transit or trans-shipment of tobacco products and/or manufacturing equipment.**

Thirty-eight Parties (61%) reported that they have authorizations to conduct customs and similar controls in free zones using all relevant measures as provided in the Protocol. However, only 21 Parties (34%) reported prohibiting the intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones. Responding to both the questions, 13 Parties answered “Not Applicable” which might mean that they do not have free zones in their jurisdictions. Further, 11 Parties (18%) reported that they do not have effective controls in free zones.

Several Parties, including a few EU Member States (such as Austria, Belgium, Cyprus, the Netherlands, Norway, Slovakia, Spain and Sweden), reported that they do not have free zones in their jurisdictions. In a few Parties, although they have free zones and manufacturing of tobacco products has not been banned in free zones, no economic operator applied for a licence or permit to manufacture tobacco products inside free zones using tax suspension programme. In Luxembourg, there are currently no approved operators who applied for and are in possession of an excise authorization to store tobacco products at the free zone near Luxembourg airport.

The EU reported that they support the recommendation of the Organisation for Economic Co-operation and Development on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones (see text box below), adopted on 19 October 2019. Czechia applies controls on all consignments entering and exiting a free zone (including tobacco and tobacco products). The Islamic Republic of Iran has a specific law on operations in the free zones that regulates purchase, sale, transportation, and storage of tobacco and tobacco products in the free zones. Panama reported that they are working to develop a legal framework that will deal with different aspects of operations in the free zones and will cover all free zones in the country (see also a case study on how Panama applies tobacco-related controls in its free zones in the 2021 Global Progress Report on the Implementation of the Protocol). In the United Kingdom of Great Britain and Northern Ireland, the approval to deal with tobacco products in the free zones requires fulfilment of certain obligations and conditions, specifically highlighting Article 12 of the Protocol in the guidance.

Montenegro passed a decision on the prohibition of the storage of tobacco products in the territory of the free zone “Luka Bar” in 2021. Subsequently, the Ministry of Finance issued an instruction on electronic record-keeping on the entry and exit of goods from the Luka Bar that ensures efficient implementation of customs control measures over goods that enter, exit or are transferred in the free zone, through electronic record-keeping, that is, submission of entry/exit security summary declaration.

In Türkiye, the production of tobacco and tobacco products in free zones is not permitted, and applications for licences that contain production of tobacco in the free zones are rejected. However, the purchase and sale of tobacco leaves in free zones may be permitted if the activity is authorized through a certificate issued by the Ministry of Agriculture and Forestry (Department of Tobacco and Alcohol), but there are no companies operating in this field. The purchase and sale of tobacco products in free zones are generally prohibited in Türkiye, but

companies operating in the catering sector and duty-free stores are exempt. Türkiye also reported that there had not been any trade in tobacco products under harmonized system codes 2401 and 2403 in the free zones in 2021 and 2022.

The EU and some of its Member States reported that there is no EU-level measure prohibiting the intermingling of tobacco products with non-tobacco products. However, certain Member States adopted national provisions in their jurisdictions to control intermingling when removing containers from the free zones. Czechia reported that no economic operator has tried to intermingle tobacco products with non-tobacco goods in the last two years.

Mauritius reported that they would issue legislation prohibiting intermingling of tobacco products with non-tobacco goods.

Thirty-nine Parties (63%) reported that they control transit or trans-shipment of tobacco products and/or manufacturing equipment. In Mauritius, goods in transit are monitored with less stringent inspections and enforcement actions. Sweden only inspects goods in transit or in trans-shipment only when global or regional operations (for example, European Multidisciplinary Platform Against Criminal Threats or EUROPOL operations) against illicit trade are conducted.



CASE STUDY

OECD recommendations on countering illicit trade: enhancing transparency in free trade zones⁵

In their fight against illicit trade, the Council of the Organisation for Economic Co-operation and Development (OECD) adopted, in October 2019, a set of recommendations aimed to promote strengthening controls inside the free zones. According to the Council recommendations, governments should make efforts:

- to provide for the right of the competent authorities to require relevant data, documents, samples and other information related to the production and movement of goods, and to carry out, in accordance with domestic law, ex officio checks at any time on goods stored, manufactured or packaged and services provided or activities conducted in the free zones;
- to allow competent authorities to take appropriate actions and measures in accordance with domestic law;
- to empower competent authorities to examine merchandise before or at the time of admission to a free zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation or instruction which the competent authority is authorized to enforce;
- to empower competent authorities to enforce applicable prohibitions and restrictions on activities carried out within the free zone, having regard to the nature of the goods in question, the requirements of customs supervision, or security and safety requirements;
- to empower competent authorities to prohibit persons who do not provide the necessary assurance of compliance with customs provisions from carrying out activities in a free zone;
- to prohibit legal or natural persons convicted of illegal economic or financial activities from operating within free zones;
- to ensure that the perimeter and entry and exit points of free zones are subject to competent authorities' supervision;
- to ensure that goods, persons and means of transport entering and leaving free zones are subject to effective controls;
- to ensure that the economic operators that are allowed to operate within the free zone are physically located within the zone, and that they communicate to the competent authorities the identity of the clients in their operations;
- to ensure competent authorities have access to aggregated statistical data on goods entering and leaving free zones on the basis of their tariff classification, and information that identifies the owner(s) of goods;
- to cooperate internationally in the exchange of law enforcement information, and consult with competent authorities and affected industries in investigations and other legal or administrative proceedings concerning specific cases of misuse of free zones related to illicit trade;
- to enhance domestic inter-agency cooperation, including obligations to report suspicions of illegal behaviour to the competent public authorities and information sharing between agencies, as well as other cooperation mechanisms, such as joint investigations and joint intelligence centres;
- to promote awareness among competent authorities and private sector stakeholders (for example, major intermediaries including shipping agents, freight forwarders, customs brokers and logistics companies) to understand the roles and responsibilities of operating in a free zone, as well as risks related to free zone operations;
- to foster partnerships among stakeholders to counter illicit trade emanating from high-risk free zone;
- to monitor the activities of free zones and publish annual indicators that help contribute to an evaluation of their risk of facilitating illicit trade;
- to develop relevant prior non-compliance or enforcement statistics, including customs detentions and seizures of illicit goods originating, or in provenance from a free zone, and enforcement actions already taken regarding that zone;
- to conduct targeted operations with respect to shipments originating from high-risk free zones; and
- to make greater use of existing or new international agreements that include provisions on mutual legal assistance or other forms of enforcement cooperation, in order to combat illicit trade conducted through free zones.

Source: The Compendium of Legal Instruments of the OECD is available at: <https://legalinstruments.oecd.org>, and the direct link to the Recommendation at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0454>

⁵ Recommendation of the Council on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones OECD/LEGAL/0454 <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0454>

Duty-free sales (Article 13)

Key observations

- **Fifteen Parties (24%) do not allow duty-free sales of tobacco and tobacco products in their jurisdictions.**
- **Thirty-seven Parties (60%) reported that all relevant provisions of the Protocol apply to duty-free sales of tobacco and tobacco products in their jurisdictions.**
- **Several Parties only have duty-free outlets inside access-controlled areas such as airport terminals and ports.**

Fifteen Parties (24%) reported that they do not allow duty-free sales of tobacco and tobacco products in their jurisdictions while 36 Parties (58%) had not yet issued a ban on duty-free sales. All 36 Parties that allow duty-free sales actually have duty-free stores or similar sales outlets.

Thirty-seven Parties (60%) reported that they have implemented effective measures to subject any duty-free sales of tobacco products to all relevant provisions of the Protocol. In Mauritius, duty-free sales of tobacco products are subject to the relevant provisions of the Protocol and are being closely monitored by the Mauritius Revenue Authority.

Most of the Parties maintain the sale or import of tobacco products in limited quantities. For example, Fiji allows 200 cigarettes or 200 grams of tobacco to be brought into the country without paying any duty. Samoa also allows 200 sticks of cigarettes per passenger at the airport and charge applicable duties and taxes when a passenger brings more cigarettes than the approved limit. In Gambia, the maximum allowed limit for tobacco is 250 grams. In Uruguay, the maximum limit for incoming international passengers and to buy at the duty-free shops is four cartons of cigarettes. In Samoa, only locally manufactured cigarettes are sold in the duty-free shops.

Many Parties mentioned that they only have duty-free outlets inside access-controlled areas such as airport terminals and ports. Nicaragua, Portugal and Serbia reported that they only have duty-free shops inside airport and seaport terminals. In Comoros, Lithuania and Sri Lanka, duty-free tobacco products are sold at the international airports, only to outgoing passengers. Ghana deposes customs officers at the duty-free shops to ensure country nationals do not purchase from the duty-free shops.



Photo courtesy of Federal Public Service (FPS) Health, Food Chain Safety and Environment, Belgium

Offences

Unlawful conduct including criminal offences (Article 14)

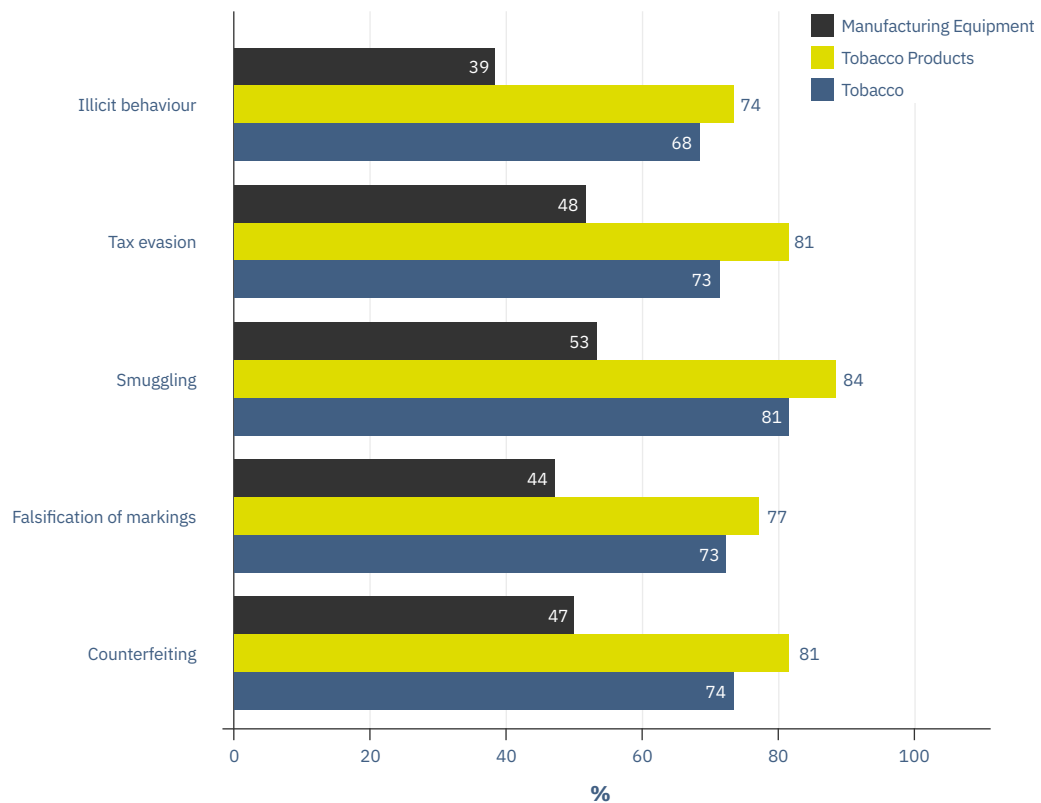
Key observations

- Most of the Parties reported that they consider acts, such as illicit manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing and exporting, tax evasion, smuggling or attempts of smuggling, falsification of markings, counterfeiting, concealment, intermingling, sales on the Internet, and other evolving technology-based modes of sale of tobacco, tobacco products and manufacturing equipment, as unlawful.
- Smuggling is considered by most of the Parties an unlawful criminal offence.

- Many Parties have not yet criminalized illicit manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing and exporting of tobacco, tobacco products and manufacturing equipment.
- About half of the Parties do not consider illicit trade-related activities of manufacturing equipment unlawful.

Fig. 8 presents whether the activities listed constitute unlawful conduct in the Parties' jurisdictions, according to their domestic law. The percentage points are provided for three items/product categories: illicit trade of: 1) manufacturing equipment; 2) tobacco products; and 3) tobacco. It is seen from the figure that many Parties do not consider illicit trade and activities of manufacturing equipment unlawful. One reason for that could be that these State Parties do not have tobacco manufacturing in their countries, and these rules are not applicable to them.

Fig. 8 Percentage (%) of Parties that have reported of unlawful conduct provisions by product type under Article 14 in 2023



Smuggling of tobacco and tobacco products is considered unlawful by most of the Parties. Although most of the Parties consider falsification of markings, tax evasion and counterfeiting as unlawful, many have not yet criminalized illicit manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing and exporting of tobacco, tobacco products and manufacturing equipment.

51 Parties (82%) reported considering concealment of tobacco products unlawful, while 13 Parties (21%) categorically mentioned that intermingling of tobacco products with non-tobacco products in the free zones, and while removing products from the free zones is not unlawful in their jurisdictions, it is clear contravention of Article 12.2 (Free Zones and international transit) of the Protocol.

In 42 Parties (68%), illicit trade of tobacco products through the Internet or other technology-based modes of sale is unlawful. Obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment is considered unlawful in 49 (79%) Parties.

“Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union’s financial interests by means of criminal law” requires

Member States to ensure that criminal offences are punishable by effective, proportionate and dissuasive criminal sanctions. Additionally, “Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law” requires Member States to take necessary measures to ensure that offences are punishable by effective, proportionate and dissuasive criminal penalties.

In some Member States, all Protocol offences as listed in Article 14 may be punishable as criminal offences. For example, in France, smuggling tobacco products is covered by Article 419 and punishable under Article 414 of the Customs Code; money laundering resulting from a customs offence is covered and punished by article 415 of the Customs Code and any breach of the rules governing the manufacture or marketing of tobacco products is a punishable offence under articles 1791, 1793, 1810 and 1811 of the General Tax Code, which provides for penalties, confiscation and even custodial sentences of up to one year’s imprisonment. There are specific provisions on fraud, money laundering and bribery of officials in the Swedish Criminal Code and on measures against money laundering and terrorist financing in the Law of 2017:630.

Many Parties provided relevant sections of their penal code, criminal code, and other relevant laws and regulations related to illicit trade in tobacco and tobacco products.



Photo courtesy of Tax and Customs Authority, Portugal

Liability of legal persons (Article 15)

Key observations

- **More than two thirds of the Parties reported having established administrative, civil or criminal liability of legal persons for established unlawful conduct.**
- **Many Parties amended their legislation to make provision for sanctions if tracking and tracing and security requirements are contravened.**

The liability of legal persons for unlawful conduct under Article 14 of the Protocol established such persons were subject to the legal principles of each respondent and this liability may be criminal, civil or administrative. Forty-three Parties (69%) declared having established the liability of legal persons for unlawful conduct, including criminal offences.

In the United Kingdom of Great Britain and Northern Ireland, the Tobacco Products Duty Act 1979 was amended in 2021 to make provision for sanctions if tracking and tracing and security requirements are contravened. Related regulations for this amendment have not yet been finalized. In relation to Gibraltar, the Tobacco Act 1997 was amended to include Section 15 which establishes the liability of

persons or companies guilty of tobacco-related offences. The Tobacco Products (Manufacturing Machinery) Regulations 2020 establish the liability of corporations that commit offences detailed in the regulations.

When affecting the EU's financial interests (an element of evasion of customs duties), the EU's so-called "PIF Directive" establishes liability of legal persons. The Directive on combating money laundering by means of criminal law (see above, under Article 14) also establishes the liability of legal persons. In Spain's national legislation, such liability was foreseen in different rules such as Spanish Criminal Code (1995) and Law 10 of 2010, among others. The Article 15 of the Protocol was already implemented in Dutch legislation as Article 51 of the Dutch Criminal Code. Direct criminal liability of legal persons was introduced into the Slovak legal order in 2016. In Norway, the Chapter 4 of the Penal Code regulates enterprise penalties for criminal offences.

According to Brazilian legislation, it is possible to hold a legal entity liable for its civil wrongdoings or civil effects of its acts. On the other hand, legal persons are criminally liable only for environmental crimes. Uruguay introduced a new Code of Criminal Procedure in 2017 that establishes an accusatory system as opposed to the previously existing inquisitorial system.

CASE STUDY

PANAMA

Regulatory framework for the liability of legal persons

Panama provided detailed information on the liability of legal persons for unlawful conduct or criminal acts related to tobacco products. The Law 63 of 28 August 2008 adopted the Code of Criminal Procedure which establishes that, for the exercise of criminal prosecution, the Public Prosecutor's Office directs the investigation of crimes and carries out or orders the execution of useful procedures to determine the existence of the offence and those responsible, with the assistance of the investigative bodies and the police force.

Regarding the criminal liability of legal persons, Article 97 of the Code establishes the following:

- In the case of proceedings involving legal persons, notification that the company is being investigated, and of the application of the respective sanction, shall be made to its president or legal representative.
- The president or legal representative of the legal person shall exercise, on behalf of the legal person, all the rights and guarantees to which the company is entitled.
- The provisions of this Code for the accused shall be understood to apply to the person representing the legal person, insofar as applicable.

The criteria for attribution according to Article 51 of the Panamanian Criminal Code are as follows:

- that a legal person is used or created to commit crime; and
- that the benefit to the entity from the commission of the offence is not relevant.

According to Article 51 of the Criminal Code, when a legal person is used to commit an offence, even if it does not benefit from it, any of the following sanctions shall be applied:

- cancellation or suspension of the licence or registration for a term not exceeding five years;
- a fine of not less than five thousand balboas (equivalent to similar amount in US dollars) and not more than twice the amount of the injury or the patrimonial benefit;
- total or partial loss of tax benefits;
- disqualification to contract with the State, directly or indirectly, for a term not exceeding five years, which shall be imposed together with any of the above;
- dissolution of the company; or
- a fine of not less than 25 000 balboas (equivalent to similar amount in US dollars) and not more than twice the amount of the injury or the financial benefit, in the event that the legal person is the provider of the transport service by means of which the drug is introduced into the national territory.

Prosecutions and sanctions (Article 16)

Key observations

- **Most Parties adopted or implemented measures to ensure that natural and legal persons held liable for the unlawful conduct are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions.**
- **Many Parties provided details of criminal and non-criminal sanctions in their respective national jurisdictions.**

Overall, 46 Parties (74%) reported ensuring that the natural and legal persons held liable for unlawful conduct are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, in accordance with their national law, pursuant to Article 16 of the Protocol.

Several Parties provided some details of their criminal and non-criminal sanctions. In Czechia, for administrative offences, the

tobacco products would be confiscated and destroyed. At the same time, a fine, sufficiently deterrent and at the same time proportionate to the nature of the offence, would be imposed. Criminal offences relating to tobacco and tobacco products are sanctioned according to Article 240 of the Penal Code which says persons engaged in the offence may be punished by a sentence from two to 10 years in prison. In cases when the tobacco products were not taxed, the tax must be assessed and subsequently collected. According to Cypriot national law, any act or omission regarding the provisions of the Protocol, constitutes a criminal offence and upon conviction shall be liable to imprisonment or to a fine or both penalties.

In France, persons guilty of smuggling as defined in Article 414 of the Customs Code are liable to a fine of between one and two times the value of the smuggled goods, confiscation of the smuggled goods, the means of transport used, objects used to conceal the smuggling and goods and assets that are the direct or indirect product



Photo: Mauritius Revenue Authority

of the offence, as well as three years of imprisonment. In the case of the aggravating circumstance of the commission of such acts in an organized gang, the fine may be up to 10 times the value of the fraudulent object, and the imprisonment up to 10 years. Latvia provides for both administrative and criminal liability for smuggling or illegal storage, transportation or sale of excise goods. From 2020, the Party provides for criminal liability for the illegal sale of tobacco products in a small amount, which means that a person can be held criminally liable for the illegal sale of even one packet of cigarettes.

As per Criminal Code of Lithuania, a fine is one of the main punishments that can be imposed by the court which is calculated in the amounts of minimum standard of living (MSL), with one MSL is equivalent to € 50. The amounts of a fine shall be determined as follows: a) for a misdemeanour – in the amount from 15 MSLs up to 500 MSLs; b) for a minor crime – in the amount from 50 MSLs up to 2000 MSLs; c) for a less serious crime – in the amount from 100 MSLs up to 4000 MSLs; d) for a serious crime – in the amount from 150 MSLs up to 6000 MSLs; and e) for a

negligent crime – in the amount from 20 MSLs up to 750 MSLs. In case of a legal entity, the amount would be from 200 MSLs up to 100 000 MSLs. The Slovak Penal Code provides for sanction of imprisonment of certain length along with the following penalties:

a) home arrest; b) community service work; c) pecuniary penalty; d) forfeiture of property; e) forfeiture of a thing; f) prohibition to undertake certain activities; g) prohibition of residence; h) prohibition of participation in public events; i) loss of honorary titles and distinctions; j) loss of military and other rank; and k) expulsion.

In Türkiye, for tobacco related criminal offences, administrative and judicial sanctions (such as suspension, revocation and/or cancellation of the licence, administrative fine, judicial fine, imprisonment) are applied. In Iraq, anyone who imports, manufactures or sells tobacco or tobacco products more than specified volume shall be penalized with a fine of 25 to 50 million Iraqi dinar (equivalent to approximately US\$ 19 100 to US\$ 38 200) and the licence to sell, import or manufacture shall be revoked, in addition to destroying the seized goods.



Photo courtesy of Tax and Customs Authority, Portugal

CASE STUDY**COSTA RICA****Addressing prosecutions and sanctions**

The General Law on the Control of Tobacco and its Harmful Effects on Health (Law 9028) and the related regulations establish sanctions for the natural and legal persons who fail to comply with the provisions of this law. The sanctions are not only for the offenders involved in the illicit trade in tobacco products, but also cover criminals that contribute to other crimes related to harmful effects on human health. Articles 36, 38, 39 and 41 detailed the scope, coverage and step-by-step procedures of the prosecution and sanctions.

When the General Directorate of Customs or the Tax Control Police finds that, in tobacco product sales facilities or distribution vehicles, there are products for which due customs duties and taxes have not been paid, fully or in part, they shall proceed to the preventive seizure of the products and, following due procedure, the sanctioning provisions established in the General Customs Law, its amendments and related regulations, or in the Penal Code, shall be applicable, as appropriate.

Once the process has been completed with the judicial or administrative resolution, the authority that heard the case shall order the destruction or return of tobacco products, as appropriate. In the case of the destruction of the product, the procedure should follow the requirements established by the Ministry of Health.

If a criminal offence is established, and the tobacco products in question are confiscated, the competent authority, within a period of three days, shall forward the proceedings to the corresponding judicial authority, which shall order the deposit in the place provided by the Ministry of Health for the safeguarding of evidence until the authority determines what is appropriate. If after a period of three months, following the end of the judicial process, the legitimate owner does not appear in court to assert his rights, the jurisdictional authority shall order the Ministry of Health to destroy the goods, for which purpose the corresponding record shall be drawn up. When proceeding with the destruction of these goods, appropriate measures must be taken to avoid risks to health and the environment.

Seizure payments (Article 17)

Key observations

- **More than half of the Parties took legislative or other measures to recover the amount proportionate to lost taxes and duties.**

Thirty-six Parties (58%) reported having adopted legislation or other measures to authorize competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products or manufacturing equipment.

The EU reported that the EU itself and some Member States have private legal instruments with certain tobacco manufacturers, which provide for payment for seized quantities of genuine tobacco when the quantitative and other conditions foreseen in these agreements are met. Spain reported that agreements with the manufacturers British American Tobacco (BAT) and Japan Tobacco International (JTI) are currently in force. Spain's national legislation governing offences and penalties for smuggling and excise duties related to illicit tobacco and tobacco products provides

for the collection of taxes not collected by the state and fines based on the value of the goods seized.

In France, persons guilty of smuggling within the meaning of Article 414 of the Customs Code are liable to a fine of between one and two times the value of the smuggled item. In Malta, all lost duties and taxes are to be paid by the infringer and fine equivalent to three times the taxes lost is applied. The Netherlands reported that the provision of seizure payments has already been in force in the country according to Dutch legislation via Article 76 of the General Law on State Taxes and General Customs Act. In Norway, smuggled tobacco products are subject to levying of excise duties with the proportionate amount of penalty tax added according to the amount of unpaid excise duties.

In Fiji, customs and excise legislation sets out appropriate penalties for importers and manufacturers when offences are established and, in those cases, a monetary penalty could be up to two or three times the value of the evaded duty or excise, whichever is greater. Paraguay establishes offences for payment proportional to the amount of uncollected taxes or duties, in addition to the other punishments and sanctions.



Photo courtesy of Ministry of Health, Saudi Arabia

Disposal or destruction (Article 18)



Photo courtesy of Ministry of Health, Saudi Arabia

Key observations

- **Almost half of the Parties reported that they dispose of seized tobacco, tobacco products and manufacturing equipment through destruction.**
- **Many Parties use environmentally friendly methods for destroying confiscated goods.**

Twenty-eight Parties (45%) reported that all confiscated tobacco, tobacco products and manufacturing equipment had been destroyed in their jurisdictions; and 26 of them (42%) added that they use environmentally friendly methods for destroying or disposing of the confiscated tobacco products.

The Union Customs Code of the European Union (Article 197 to 200) allows for destruction and disposal of goods by customs authorities. In 2022, Austria seized and destroyed 1.5 million packets of cigarette, 15.6 tons of tobacco and other tobacco products, 20 200 units of e-cigarettes, chewing tobacco, tobacco for heating, cigars and cigarettes using local waste disposers (with the separation compostable and non-compostable materials). In the Netherlands, 180 323 273 cigarettes

were confiscated in 2022 of which 178 million came from 31 significant seizures (> 50 000) and the smaller seizures were mainly at Dutch airports (passenger controls), mail/couriers and domestic shops (retail). In Spain, the provision of destruction was included in the Law 12/1995 on the Repression of Smuggling and in the Criminal Procedure Act, in certain cases. From June 2020 to February 2023, Spain destroyed 39 687 204 packs of cigarettes (20 cigarettes per pack), 418 702 075 grams of water-pipe tobacco, snuff tobacco and tobacco leaf, 135 151 units of cigarettes, 717 units of manufacturing equipment and 278 177 units of other related materials.

In Lithuania, tobacco products are disposed of by shredding, with the subsequent waste composted or incinerated. From 2022, all tobacco and tobacco product destruction facilities are required to implement an environmental management system (such as EMAS or another based on LST EN ISO 14001) or other environmental management standards following relevant European or international standards, approved by certification bodies complying with the EU legislation or with the relevant European or international certification standards. Lithuania destroyed 124 495 kilograms of tobacco (raw and cut), 960 248

217 sticks of cigarettes (mostly “illicit whites”) and 246 482 units of heated tobacco products from 2020 to 2022. Around the same time, Sweden destroyed approximately 5.6 million cigarettes, 6400 kilograms of other tobacco products, and 150 litres of vape fluid.

In Croatia, the destruction of confiscated tobacco and tobacco products is carried out by an authorized utility company, under the supervision of a commission formed by the Central Office of Customs Directorate. They use a specialized machine that grinds tobacco and cigarettes into fine powder with 8-millimeter rollers, which is mixed with municipal waste. Machines and other parts used in the tobacco industry were destroyed by autogenous cutting in several places so that the machines and parts were completely unusable. In 2022,

Croatia destroyed 37 471 747 sticks of cigarettes, 12 209.27 kilograms of tobacco, 9800 pieces of heated tobacco products, 90 pieces e-liquid, 69.20 kilograms of other products (for example, water-pipe tobacco), and a few manufacturing equipment and parts.

In Mauritius, all cigarettes seized by the Customs Department are destroyed on a quarterly basis. The method used is cut and crush, with disposal at a landfill under the supervision of the Customs, Finance and Administration Departments of Mauritius Revenue Authority and the National Agricultural Products Regulatory Officer. Iraq and Madagascar reported that they destroyed 1 465 976 and 1 120 288 packs of cigarettes, respectively, in 2022.



Photo courtesy of State Revenue Service of the Republic of Latvia



Photo courtesy of State Revenue Service of the Republic of Latvia

At the end of 2022, the Ministry of Health in Panama took a decision that established methods for destruction and final disposal of waste tobacco products, electronic nicotine or non-nicotine administered systems, heated tobacco and similar products that are confiscated, deteriorated, expired or that represent a risk to health. The procedure engages relevant ministries and departments; finally, the Ministry of Health issues a destruction order that complies with sanitary measures. In 2022, a total of 2561 packages of cigarettes were destroyed by incineration following the new rule. Türkiye reported that tobacco products seized in the last two years

were destroyed or disposed of by burning, shredding and rendering them unusable by appropriate methods in recycling facilities. The United Kingdom of Great Britain and Northern Ireland reported using environmentally friendly destruction methods, whereby tobacco products are destroyed via incineration, with the heat used to generate electricity, or via shredding; before destroying the seized cigarettes, the Party ensures that all packaging materials are removed and recycled where possible, whereas manufacturing equipment is broken down for scrap with any useable metal recycled (see more details in the text box).

CASE STUDY

United Kingdom of Great Britain and Northern Ireland: disposal and destruction of seized tobacco products

Tobacco, tobacco products and tobacco manufacturing equipment marked for disposal are sent for disposal 45 days from date of seizure. Some tobacco products, tobacco samples and tobacco manufacturing equipment are not sent for destruction as they are under investigation or a claim for restoration has been made.

All destructions are carried out by approved contractors who adhere to relevant legislative and regulatory requirements within the United Kingdom. Destruction of the goods in question is carried out in environmentally friendly methods – maximizing recycling of waste to energy schemes.

Disposal contracts with United Kingdom Border Force for the destruction of tobacco products emphasize the importance of environmentally friendly destruction methods. Across all waste streams, minimal material is sent to landfills. Tobacco products are destroyed via incineration with the heat used to generate electricity or via shredding and the waste is used similarly to other types of waste used to generate energy via incineration. All packaging materials are removed and recycled where possible. Any machinery is broken down for scrap and any useable metal recycled.

In relation to Gibraltar, the Tobacco Act 1997 was amended to add Section 16A which sets out that all tobacco that comes into the possession of the authorities and is not subject to a claim must be destroyed. The Tobacco Products (Manufacturing Machinery) Regulations 2020 s.23(2) states that all forfeited machinery must be destroyed. Under the current law, each commodity sent for disposal has to be assigned an appropriate European Waste Catalogue code (EWC code) which is primarily determined by the activity that produced the waste. The catalogue does not include a category for law enforcement, therefore, in consultation with the United Kingdom Environment Agency an EWC code from Chapter 16 – Other wastes from industrial processes, has been applied to tobacco, either 16 03 05* (hazardous) or 16 03 06 (non-hazardous). Legitimate cigarettes (non-counterfeit) are assigned a non-hazardous code. All other tobacco products are deemed to be hazardous. The assignment of a Chapter 16 code results in limited disposal options as the disposal site must hold the relevant permit to dispose of these specific codes. The sites themselves are monitored closely by the United Kingdom Environment Agency.

The following table contains the combined quantities of tobacco, tobacco products and tobacco-manufacturing equipment seized and later destroyed in the United Kingdom and Gibraltar.

Tobacco Products	2020	2021	2022
Cigarette lighter	5007 units	2 units	0 units
Cigarettes	303 999 493 sticks	1 093 213 241 sticks	965 167 374 sticks
Cigars or Cigarillos	101 811 units	377 481 units + 0.75kg	117 478 units + 156.17kg
e-Cigarettes	4162 units	80 459 units	335 286 units
Filters	0 units	2205 units	10 840 units
Hand rolling tobacco	48 133 kg	102 592.33 kg	42 543.61 kg
Other tobacco products	604 568 units + 819.5 kg	29 416 762 units	7 581 999 units
Wraps	127 601 units	242 units	30 279 units
Machinery	4 units	4 units	0 units

Special investigative techniques (Article 19)

Key observations

- **In many Parties, the use of controlled delivery and other special investigative techniques are allowed as special investigation techniques to effectively combat illicit trade in tobacco, tobacco products or manufacturing equipment.**
- **Controlled delivery and surveillance, including the use of technical devices are two commonly used special investigation techniques.**

Overall, 36 Parties (58%) allow the use of controlled delivery and other special investigative techniques to effectively combat illicit trade in tobacco, tobacco products or tobacco- manufacturing equipment.

At the European level, use of special investigation techniques has been established for a long time. Special techniques such as controlled deliveries, covert investigations and joint team investigations are agreed through Article K.3 and 34 of the Treaty on European Union on Mutual Assistance and Cooperation between Customs Administrations (Naples Convention II) and Directive 2014/41/EU of the European Parliament. In addition, control delivery and mutual assistance in collection of excise duties are allowed to combat tobacco smuggling and illicit trade in the national legislation of Croatia, Czechia, Cyprus, France, Lithuania, Slovakia and Spain.

Controlled delivery and surveillance, including the use of technical devices are two commonly used special investigation techniques in the United Kingdom of Great Britain and Northern Ireland. Qatar's legislation allows special investigation techniques such as electronic and other forms of surveillance and undercover operations to control illicit trade. In Türkiye, the Law on the Prevention of Money Laundering and the Law on Anti-Smuggling authorizes the use of controlled delivery in combatting illicit trade.

Moreover, telephone tapping, monitoring with technical means and informant secret investigator methods are also used as tobacco smuggling investigation techniques. Twenty-four Parties (39%) notified the Convention Secretariat that they had signed bilateral or multilateral agreements or arrangements for the use of special investigative techniques (such as controlled delivery) in investigating the criminal offences established in accordance with Article 14 of the Protocol.

In Türkiye, existing legislation allows the use of special investigative techniques. Through security cooperation agreements, controlled delivery application is allowed with 42 countries, namely, Afghanistan, Azerbaijan, Bahrain, Bosnia and Herzegovina, Bulgaria, Cameroon, Central African Republic, Congo, Egypt, Ethiopia, France, Georgia, Germany, Ghana, Greece, Hungary, India, Iraq, Italy, Kazakhstan, Latvia, Lithuania, Mauritania, Mexico, Niger, Oman, Pakistan, Qatar, Romania, Russia, Serbia, Slovenia, Somalia, Spain, Syria, Tajikistan, Tanzania, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan and Yemen. Cote d'Ivoire reported that their mutual administrative assistance agreement with Morocco and the memoranda of understanding with Burkina Faso, Mali and Senegal help them to efficiently use special techniques, including through the interconnectedness of the computer systems of their customs administrations.

Slovakia reported that special investigative techniques, cross-border surveillance and controlled deliveries are nowadays the most used techniques to prevent, investigate and prosecute infringements in cases of, among other things, illegal cross-border commercial trade in taxable goods; they are also used to monitor the flow of money that may be related to illegal trade of tobacco and money laundering. In case of the United Kingdom of Great Britain and Northern Ireland, having Fiscal Crime Liaison Officers (FCLOs) in different countries helps promote collaborative arrangements in the fight against illicit trade.

CASE STUDY

PANAMA

Use of special investigative techniques

Special investigative techniques are essential investigative tools at the time of the investigation of a criminal proceeding, even more so if it has organized crime overtones. The reason is that they allow obtaining relevant information on the criminal structure of an organization, the modus operandi, identification of the perpetrators, distribution of tasks, jurisdictions to which the funds or assets are transferred, types of money laundering used and the identification of assets for freezing, among other aspects.

In Panama, special investigative techniques such as undercover operations, monitoring and surveillance, controlled purchases, controlled deliveries and collaboration with police agents are used. The special investigative techniques used by the Public Prosecutor's Office are interception of communications, undercover operations, controlled purchases, controlled deliveries, and surveillance and monitoring.

Some of the special techniques are regulated in national regulations. Some examples are given below.

In the Code of Criminal Procedure:

- Special Investigation Technique requiring prior control by a Judge of Guarantees:

Interception of communications. The interception or recording by any technical means of forms of personal communication requires judicial authorization. At the request of the Prosecutor, the Judge of Guarantees may, depending on the nature of the case, decide whether to authorize the recording of conversations and the interception of cyber communications, satellite tracking, and electronic surveillance and telephone communications to prove the punishable act and the involvement of a specific person.

- Special Investigation Techniques that require subsequent control by a Judge of Guarantees:

Undercover operations. The Prosecutor may carry out undercover operations, such as controlled purchases, controlled delivery, analysis and infiltration of criminal organizations and surveillance and monitoring of persons during an investigation, for the purpose of gathering evidence to determine the occurrence of the punishable act, as well as its actors and participants.

International controlled delivery. Controlled delivery of an international nature requires the State concerned to give prior notice of the entry of the illicit consignment and to report on actions carried out by them in relation to the goods that are subject to the controlled delivery procedure.

In the Law on Reforming the Criminal, Judicial and Criminal Procedure Code and adopting measures against activities related to organized crime:

- Undercover Operations

An undercover operation shall be understood as an infiltration activity carried out by a national or foreign agent or public servant with a fictitious identity, with the aim of obtaining information or evidence that allows the investigation and prosecution of persons who are part of organized criminal groups and their dismantling, through the design of effective strategies.

The competent prosecutor may order the carrying out of undercover operations that must be submitted to the control of the judge of guarantees within 60 days.

Undercover agents are national or foreign public servants who, voluntarily or at the request of the competent prosecutor, are appointed and designated a function with the aim of obtaining evidence or information that allows the discovery, investigation and prosecution of members of organized criminal groups.

Undercover agents shall be empowered to engage in commercial traffic, undertake duties, enter and participate in meetings at the workplace, home or places where the organized criminal group conducts its operations or transactions.

The person who has participated in the investigation as an undercover agent shall testify under assumed identity in the judicial proceedings and the provisions relating to witness protection shall be applicable to him or her.

- Monitoring and follow-up

Within the framework of an investigation that gives rise to a well-founded presumption that a crime is being prepared or consummated, the prosecutor may order police officers to carry out surveillance and monitoring of persons, groups, organizations, vehicles, places and objects of any nature, for the purpose of verifying facts, details, situations, links or behaviour useful to the investigation.

- Controlled delivery

Controlled delivery consists of allowing consignments of illicit drugs, precursors or illicit substances, money, arms or other illicit elements or those suspected of containing them, or material goods, species, objects and effects presumed to be illicit in the possession of or destined for persons or a criminal group or organization to circulate through, leave or enter the national territory, with the knowledge and supervision of the competent authorities.

The technique of controlled delivery is used to discover the transit routes, the means of entry into and exit from the country, the distribution and commercialization system, as well as to obtain evidence and the identification, investigation and prosecution of the organizers, transporters, buyers, protectors and other persons involved in the illegal activities.

International controlled delivery requires the State concerned to give prior notification of the entry of the illicit consignment and to report on the actions carried out by it in relation to the goods subject to the controlled delivery procedure.

The public prosecutor may authorize the substitution of the items and substances subject to controlled delivery with other simulated and innocuous ones. Once the consignment has been intercepted, an analysis of the substituted items shall be ordered, and the nature of the substances intercepted and their quantity shall be recorded in the investigation procedure.

The competent prosecutor may order a controlled delivery, which must be submitted to the control of the judge of guarantees within 60 days.

- Controlled purchases

The controlled purchase is an act of investigation that consists of the acquisition of any type of illicit drugs, precursors or illicit substances, arms or other illicit elements or those suspected of containing them, or of material goods, species, objects and effects that are presumed to be illicit, which will be ordered by the prosecutor and will be carried out by an undercover agent, by himself or with the help of collaborators.

In these cases, identified or marked banknotes may be used to make controlled purchases. In addition, the same techniques may be applied in cases of human trafficking, extortion, kidnapping, corruption of public servants and crimes against intellectual property.

The competent prosecutor may order the carrying out of controlled purchases and the use of identified or marked money, which he shall submit to the control of the judge of guarantees within 60 days.

As part of undercover operations, controlled delivery, controlled purchases, monitoring and surveillance, the competent prosecutor may authorize the use of filming and the taking of photographs using any technological means for this purpose.

International cooperation

General information sharing (Article 20)

Key observations

- **Data shared on cross-border trade and seizures was inadequate, incomplete and to some extent inaccurate.**
- **With an aim to deal with the absence of general information sharing, the Convention Secretariat identified several official external sources of data, including databases and communication platforms containing information on illicit trade in tobacco products.**

Despite the fact that Parties to the Protocol are required to share, as part of the reporting instrument of the Protocol, details of seizures of tobacco, tobacco products or tobacco-manufacturing equipment and their quantity, the value of the seizures, product descriptions, dates and places of manufacture and taxes evaded according to Article 20 (General information sharing), few Parties provided quantitative and qualitative information on seizures. Consequently, it was not possible to identify any pattern of seizures in terms of products seized, concealment methods, and modus operandi used in illicit trade in tobacco,

tobacco products or manufacturing equipment. Still, a few countries shared cross-border trade and seizure data through the reporting platform, but in most cases, the data shared were inadequate and incomplete. This is one of the reasons it has not been possible to report aggregate data (of cross-border trade and seizures) in this report.

A few examples of seizures and concealment methods used by the dishonest economic operators may be mentioned so that other Parties are able to strengthen their risk profiles and risk management criteria. According to the 2021 Annual Report of the European Anti-Fraud Office (OLAF), a surge in the illicit manufacturing of cigarettes within the EU has been observed over the past few years. OLAF's inspections revealed a series of irregularities in water-pipe tobacco trade, including that the companies listed as sending and receiving the goods had never been involved in tobacco trading, several companies had no financial turnover in the past few years and consignments were officially imported but stored in warehouses for long periods. After physical inspections at the request of OLAF, it was revealed that the economic operators were waiting for an opportune moment to re-export them to another country even at a reduced price with an aim to take advantage of less strict tobacco control regulations in the new destination.



Photo courtesy of Hong Kong Customs and Excise Department, China (Hong Kong Special Administrative Region)

Spain reported that in the last three years there has been a decrease in seizures of containers transported by sea. Recent concealment methods include “double bottom” or hidden chambers in private vehicles and cigarette packets hidden in passengers’ accompanied luggage in the quantity just below the maximum limit to avoid being considered a criminal offence. An illicit modality that has increased in the last three years, and which has been on an upward trend for the last 10 years, is the illicit manufacture of cigarettes in clandestine cigarette production factories.

These factories produce counterfeit cigarettes of different brands that spread in the black market by transnational criminal organizations. In Cyprus, the largest quantities and cases of tobacco products were smuggled from the northern territories of the country where the government does not exercise effective control. Tobacco products (mainly fine-cut tobacco for roll-your-own cigarettes, water-pipe tobacco and cigarettes) were also seized from air passengers’ luggage. In addition, small quantities of tobacco products were found and seized in mail or courier parcels.



Photo courtesy of Ministry of Health, Spain

In the United Kingdom of Great Britain and Northern Ireland, smuggling remains the principal problem which includes counterfeits of familiar United Kingdom brands manufactured overseas.

In Gibraltar, the trend for tobacco smuggling is largely confined to cigarettes. Latvia reported that most of the cigarettes are smuggled mainly by road from Belarus and the Russian Federation, with cigarettes concealed behind a cover cargo or in concealed places constructed

in vehicles. Some quantities of these cigarettes are smuggled to Estonia and Scandinavian and Western European countries, transiting Latvia. Most often, but in relatively smaller quantities, cigarettes are smuggled from Belarus, hidden in railway cargoes and wagon constructions. In recent years, more cigarettes have been smuggled from East Asia (Cambodia, China, Viet Nam) and the Middle East (United Arab Emirates) in sea containers. Some other examples of recent trends and seizures can be found in the text boxes on pages 54/55.



Photo courtesy of Ministry of Public Health, Uruguay

These offences are also facilitated using a variety of technologies, namely the use of powerful and state-of-the-art techniques and devices for the movement of illicit excise goods across national borders and counter-surveillance (drones, GPS and GSM signal suppressors, thermal visors, video surveillance devices, GPS devices, forest cameras, radios, diving equipment, walkie-talkies, and encrypted mobile application programmes). However, technological advances also increase the capacity of law enforcement agencies to prevent, investigate and detect these offences.

In Lithuania, during the COVID-19 pandemic, illicit cigarettes were brought into the country

in bigger quantities using commercial cargo vehicles (trucks, lorries, etc.) as passenger movement was highly restricted. Criminals used cover loads of wood, chipboard, sawdust briquettes, chip stone, charcoal, fertilizer, building materials, vegetables and frozen fish in the trucks and lorries, and sometimes no cover load was used. Use of railway transportation to smuggle tobacco products intermingled in other goods (cigarettes covered inside the cargo) in the cargo section or in special hiding places installed in the wagons is on the rise in both seizures made and quantities of goods transported.

In November 2022, the Criminal Office of the Financial Administration of Slovakia managed to thwart trafficking of illegal cigarettes in the east of Slovakia. As part of this action, armed officers arrested 20 people directly at the scene. In terms of the amount of damage to the state, this was a historic seizure, when the excise duty on tobacco and tobacco products evasion was estimated at € 6.2 million. The illegal cigarettes were likely destined for the European market.

With an aim to deal with the limited amount and quality of data reported by the Parties through their reports about seizures, the Convention Secretariat, under the guidance of the Bureau of the Meeting of the Parties to the Protocol, identified several official external sources of data, including databases and communication platforms containing information on illicit trade in tobacco products. For example, the Customs Enforcement Network (CEN) of the World Customs Organization (WCO), the new WCO communication platform (ExciseNet), the seizures database of the United Nations Office on Drugs and Crime (UNODC) and the WCO Container Control Programme

contain information that could be relevant for assessing global progress in implementation of the Protocol. In addition, databases such as UNCTADStat of the United Nations Conference on Trade and Development, the United Nations Commodity Trade Statistics Database (UN Comtrade), the Trade Map of the International Trade Centre (ITC), the Data Portal of the United Nations Industrial Development Organization (UNIDO) and the FAOSTAT database of the Food and Agriculture Organization (FAO) could also be relevant.

In addition, UNODC's SHERLOC portal, which disseminates information resources and laws on transnational organized crime could also be relevant to the implementation of the Protocol. Further, international law enforcement agencies maintain databases of individuals and organized crime groups that may be involved in a range of criminal activities, including the smuggling and illicit trade of tobacco and tobacco products. The Convention Secretariat will continue to engage with relevant entities to explore the suitability of their data to complement the reporting instrument of the Protocol and in the assessment of progress in implementation of the Protocol by the Parties.



Photo courtesy of State Revenue Service of the Republic of Latvia

CASE STUDIES

FRANCE

Trends and examples of recent seizures

A growing concern in illicit trade in tobacco products in France is cigarettes from illegal manufacturing plants located in Europe, which is a new development for France. The rest of the illicit cigarettes come from countries where they have been purchased at a lower price than that charged in the legal network of France or are completely smuggled in from third countries.

The disruptions caused by the COVID-19 pandemic, followed by the geopolitical situation in Europe, have gradually changed smuggling routes and disrupted the pre-existing supply chains of smuggling groups. These criminal groups have adapted their actions by processing finished products closer to the places of consumption.

As for other tobacco products, “hookah” (or shisha) tobacco is being smuggled through different ways, including express freight or courier posts, concealing them in the legal freight boxes with false declarations. It also appears that a growing number of workshops blending and packaging shisha tobacco for distribution are in operation in Western Europe.

Despite a few seizures, tobacco smuggling by sea containers appears to be on the decline in French ports. Counterfeit tobacco products arrived in France from other European countries by lorries. Many of these lorries transit through French territory on their way to the United Kingdom of Great Britain and Northern Ireland or to Ireland, which are also major destination markets for illicit tobacco.

Illicit cigarette manufacturing equipment is smuggled into the EU and then concealed in split consignments by logisticians from fraud organizations. The fraudulent organizations then recruit workers trained in the operation of such equipment, or train insufficiently experienced workers, and make them produce manufactured tobacco products.

Since the presence of raw tobacco in the market is not monitored specifically for tax purposes, it is currently difficult to analyse accurately, as well as to track the shipments. However, the use of raw tobacco might be one of the main sources of illicit manufacture of tobacco products.

France shared some examples of recent seizures, as follows:

- On 24 May 2022, during an inspection on the A6 motorway, officers from the Lons le Saunier customs team (Jura) stopped a Polish heavy-goods vehicle to check its load. Although the transport documents indicated a delivery of packaging materials bound for Lyon, opening the pallets quickly revealed a few cartons of cigarettes. Once the vehicle was completely unloaded and all the pallets opened, nearly 10 tonnes of contraband cigarettes were discovered worth € 5 million in the legal market. When questioned by customs officials, the lorry driver confirmed that he had to deliver the goods to the Lyon region where cigarette smuggling is rife.
- On 2 August 2022, officers from the Dunkirk brigade discovered a heavy vehicle carrying almost 8 tonnes of concealed tobacco during an inspection when boarding a ferry bound for Ireland. On the same day, Channel Tunnel customs officers intercepted a heavy-goods vehicle bound for the United Kingdom of Great Britain and Northern Ireland carrying 1.6 tonnes of tobacco. Finally, on 4 August 2022, officers from the Dunkirk brigade intercepted a container from Singapore bound for the United Kingdom containing 4.4 tonnes of counterfeit tobacco.
- On 3 March 2022, the Tobacco Trafficking Research and Intervention Unit of the Lyon Regional Customs Department identified a warehouse storing contraband cigarettes in the Lyon region. With the support of another local unit to secure the premises and the operation, the inspection of the warehouse resulted in the seizure of more than 19 tonnes of cigarettes, around € 160 000 in cash and a weapon. Three individuals were arrested, and their houses raided.

- In March 2021, the Reims customs brigade intercepted a van with German number plates. The driver claimed to be arriving from Germany and travelling to Paris. He presented an invoice listing car parts for BMWs, but was actually carrying a pallet wrapped in transparent cellophane containing cartons marked “Hornbach” and containing 3344 kilograms of hookah tobacco; and a second shrink-wrapped pallet containing 150 kilograms of cartons of cigarettes bearing health warnings in German.

MONTENEGRO

Trends and policy responses

Montenegro reported that the total volume of in-transit tobacco and tobacco products, which does not include bulk shipments, in 2021 and 2022 was 21 559 538.95 kilograms, with a total value of € 361 727 093.30. Montenegro also notified that it is not possible for them to provide precise data as the consignments contain tobacco and tobacco products with other goods.

In Montenegro, as in the EU and in the countries of the region, the problem of smuggling and illegal trade in excise goods, primarily cigarettes, is increasingly pronounced.

Organized criminal groups that are involved in other criminal activities, such as smuggling drugs, groups of closely related people and individuals – also deal with tobacco smuggling in Montenegro. Corruption helps aid and/or cover up these criminal activities, and the targets of corruption are usually members of the Police Administration and the Customs Administration.

The significant expansion of cigarette smuggling is due in part to the large differences in the price of tobacco products in the countries of the region and within the EU. Smuggling of tobacco and tobacco products as the most dominant form of smuggling of excise goods is a global problem.

The development of this type of crime is aided by supply and demand on the market, differences in the rates of taxation of products, and different legal regulations in the states regarding the amount of excise duty, which is a motivating factor for members of organized criminal groups, but also for individuals to carry out this type of criminal activity, which yields very high profits.

Organized criminal groups use different modes when carrying out this criminal activity, and the final destinations for the smuggling of tobacco and tobacco products are most often EU countries. In connection with this, at the end of July 2021, the Government of Montenegro adopted a national strategy for the fight against the illegal trade in tobacco products with an action plan for its implementation.

One of the series of activities undertaken by the Government of Montenegro with the aim of suppressing the illegal trade in cigarettes is the decision of 29 December 2021 to prohibit the storage of tobacco products in the territory of the Free Customs Zone of the Port of Bar (see Article 12 earlier in this report). Before the recent enhanced enforcement efforts, warehouses in the Free Customs Zone of the Port of Bar were the main source from which cigarettes were smuggled either by land or by sea.

World Customs Organization released its Illicit Trade Report 2022



The World Customs Organization (WCO) Secretariat recently released Illicit Trade Report 2022 – the latest edition of its flagship publication on enforcement matters and cross-border illicit trade. The report also showcases the commendable efforts of the customs community to combat illicit trade and protect societies.

The report provides a meticulous analysis of illicit trade dynamics by examining seizure data and case studies reported by various customs administrations. It delves into seven key topics, including drugs, environment, cultural heritage, money laundering and terrorist financing, intellectual property rights, health and safety, and revenue. The analysis primarily relies on data collected from the WCO Customs Enforcement Network (CEN), a global database of customs seizures and offences.

In the context of responses to illicit trade in tobacco and tobacco products by the enforcement agencies, the two main conclusions may be drawn from 2021 and 2022 data are:

- a. For combined tobacco and alcohol related products, the majority of cases in 2022 were detected through routine and random controls (51%). This detection method was also most productive in 2021 (52%).
- b. An important observation is the consistent increase in the use of risk profiling as a detection method: 46% in 2022; 44% in 2021; 38% in 2019; and only 15% in 2018.

Among the WCO Member that responded to the survey of seizures of excise products, 91% consider tobacco trafficking to be a high or essential priority within their customs administration, indicating the significant attention given to the issue.

According to the 2022 report, 87 countries reported 24 168 tobacco product cases, indicating a significant increase of 35.6% compared to 2021. The number of reporting countries remained relatively stable, with 78 countries reporting in 2019. The 15 countries that reported most of the seizures are: Saudi Arabia, Ireland, Austria, Kuwait, Italy, Oman, Slovakia, Qatar, Türkiye, Poland, United Arab Emirates, Germany, the Russian Federation, Argentina and Spain. In 2022, a total of 22 133 seizures were reported, resulting in the seizure of 2 257 941 935 pieces of cigarettes. In comparison, there were 14 596 seizures and a total of 2 730 137 843 pieces seized in 2021.

The report may be accessed from the WCO website⁶

⁶ https://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2022_en.pdf?db=web

Enforcement information sharing (Article 21)

Key observations

- **About a quarter of the Parties shared enforcement information with another Party on their own initiative or at the request of another Party.**

Responding to the question of sharing enforcement information with other Parties, only 17 Parties (27%) reported that they shared enforcement data with another Party on their own initiative or at the request of the other Party in the last two years.

The United Kingdom of Great Britain and Northern Ireland reported that His Majesty's Revenue and Customs (HMRC) exchanged information with other jurisdictions for many years through the International Mutual Assistance Team for matters related to mutual administrative assistance or mutual legal assistance (MLA). HMRC also shares information for intelligence purposes through the network of its Fiscal Crime Liaison Officers (FCLOs), which consists of over 45 HMRC officers based around the world, which has existed for many years. In the days ahead, the United Kingdom reported that it would

continue to improve its information sharing and joint work with other jurisdictions by continually reviewing global threats to the country and, where necessary, redeploying FCLO resource accordingly to more effectively tackle organized crime through international collaboration. His Majesty's Customs Gibraltar regularly shares information with law enforcement agencies both locally and abroad to tackle the illicit smuggling of tobacco, through MLA or an International Letter of Request, when needed or sought. From April 2020 to December 2022 there have been 39 international requests received, 11 international requests sent, 48 local requests received, and five local requests sent.

Latvia also shared a case of close collaboration with Lithuania. In 2022, Lithuanian Police on behalf of the Latvian State Police conducted a search and seized cigarette production equipment. Latvia also reported a case in which cooperation between the State Police of Latvia and the Risk and Intelligence Service of the United Kingdom's HMRC, illegal cigarette production factories in the United Kingdom were discovered. Similar cooperation exists in the case of Burkina Faso and Togo. Their information-sharing exercise resulted in a seizure of cigarettes transiting through Burkina Faso.



Photo courtesy of Portuguese Tax and Customs Authority, Portugal

Information sharing: confidentiality and protection of information (Article 22)

Key observations

- **Many Parties used their Protocol reporting instrument to share the names of the competent national authorities for requesting and receiving data referred to in Articles 20, 21 and 24 of the Protocol.**
- **Parties nominated a wide range of agencies including the department of customs and excise, ministry of public health, ministry of trade and enforcement agencies as competent authority to receive and request data.**

Under Article 22 of the Protocol, each Party is required to designate the competent national authorities to which data referred to in Articles 20, 21 and 24 are supplied and notify Parties of such designation through the Convention Secretariat. Only 24 Parties (39%) reported that they already designated competent national authority or authorities to which data referred to in the said articles are supplied.

Many Parties used their reporting instruments to share names of the designated national authorities for requesting and receiving data referred to in Articles 20, 21 and 24. Cyprus and Spain designated their Department of Customs and Excise as the competent authority to share general and enforcement data. Portugal designated the Portuguese Tributary and Customs Authority and Customs Anti-Fraud Department as the competent authorities. In the case of the Netherlands, the competent authority is Customs Information Centre. Latvia designated their State Revenue Service as the competent authority. The Ministry of Commerce, Industry and Trade is the competent authority for Burkina Faso. Madagascar designated the Research Department of the Tax Research and Control Directorate as the designated authority to share data, while Benin designated Ministry of Justice for the same purpose.

Some of the Parties kept ministries or departments of public health as their competent authorities to share information on the Protocol provisions. For Nicaragua and Sweden the competent authorities are the National Health Regulatory Authority and the Public Health Agency of Sweden, respectively. In Türkiye, the Tobacco Control Enforcement Unit under the Ministry of Health and Medical Services plays the information-sharing role. Saudi Arabia created the National Tobacco Control Committee represented by 14 ministries to coordinate data sharing among other tasks.

Few Parties designated multiple agencies as competent authorities for sharing of data. For example, Gambia designated the National Drug Law Enforcement Agency, Gambia Revenue Authority, National Pharmacy Council and National Centre for Arts and Culture as the designated authorities. The competent authorities for Slovakia are the National Unit Europol and Criminal Office of the Financial Administration, Coordination Unit. In the case of Samoa, the agencies are the Ministry of Custom and Revenue, Ministry of Finance, Ministry of Health, and Ministry of Commerce, Industry and Labour. In Türkiye, data sharing tasks are the responsibilities of the Department of Anti-smuggling and Organized Crime or the Foreign Relations Department of Security General Directorate of Ministry of Interior. Paraguay also designated Ministry of Public Health and Ministry of Foreign Affairs for the sharing of tobacco control-related data.

The EU reported some progress in the implementation of Article 22(2) of the Protocol. The provisions of the General Data Protection Regulation (2016/679), Data Protection Law Enforcement Directive (2016/680) and Regulation 2018/1725 have been applicable in the EU since 2018. There are various mechanisms to transfer personal data from the EU to third countries, and only when the protection travels with the data. Adequacy decisions are just one of those mechanisms, and the European Commission can now adopt adequacy decisions for the law enforcement sector. Specific adequacy assessment elements are set out in Article 36(2) of Directive 2016/680.

Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters (Article 23)

Key observations

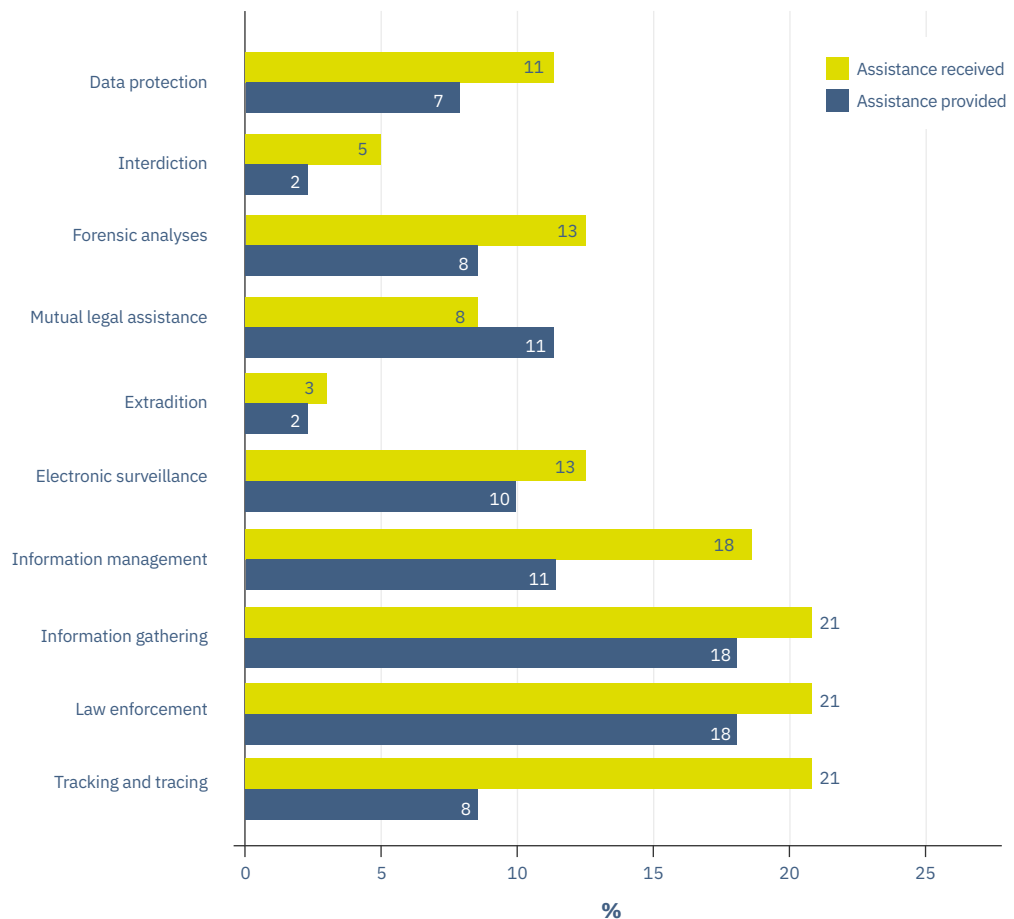
- There are more technical assistance programmes reported in the current reporting cycle than in the previous one.
- Several Parties reported receiving technical support from neighbouring countries and Parties from the same region.
- The five main areas where most of the technical assistance is reported are tracking and tracing, law enforcement, information gathering, information management and electronic surveillance.

The current reporting cycle is an active period compared to the previous cycle in terms of provision or receipt of financial and technical

assistance between the Parties on a bilateral or triangular basis. As shown in Fig. 9, several Parties shared their experiences and supported each other in the areas of tracking and tracing, law enforcement, information gathering and information management through unilateral, bilateral and multilateral agreements, or through international and regional organizations. It is envisaged that more Parties would be engaged in providing support as new Parties are gradually joining the Protocol, and they need support, in addition to the Parties that are not new, but are at a lower level in implementation of the required measures.

In the section on priorities, gaps, needs and constraints, some of the Parties discussed areas in which they are facing challenges. It is expected that the other Parties having expertise in those areas would be increasing support to the Parties in need. The Convention Secretariat will continue to coordinate provision of assistance to Parties, including connecting those Parties that are able to help those in need with technical and/or financial resources.

Fig. 9 Percentage (%) of Parties reporting on provided or received assistance, by areas of assistance



Some examples of technical cooperation among the Parties are presented below. The EU's Anti-Fraud Programme (Hercule component) finances projects and training events and provides technical equipment to combat revenue fraud and other crimes against EU financial interests. Moreover, through its Health Programme, the EU financed a project through the Convention Secretariat to support implementation of the WHO FCTC and the Protocol, including on the identifying good practices in tracking and tracing systems for tobacco products and key requirements for the establishment of a global information-sharing focal point.

Serbia took part in a regional project for the Western Balkan countries supported by Germany in the field of creating quality infrastructure and market surveillance.

Serbia was also part of the Policy and Legal Advice Centre (PLAC) Project that supports legal harmonization with the European Community laws (Acquis Communautaire) in the field of consumer protection and public health (including tobacco control). The project also covered capacity-building in combating illicit trade of tobacco and tobacco products. Serbia also reported that it benefited from the exchange of information on tobacco seizures with liaison officers of the United Kingdom of Great Britain and Northern Ireland, France, Germany and Romania and customs administrations in central Europe, as well as with Parties to the Convention of the Southeast European Law Enforcement Centre (SELEC) and OLAF.



Photo courtesy of Ministry of Health, Saudi Arabia

Panama reported providing technical assistance to Paraguay (in promoting the accession to the Protocol), Ecuador (in relation to the tracking and tracing of tobacco products), and other neighbours and thorough participating in the virtual training organized by the WHO Regional Office for the Americas. The support to Paraguay for the ratification of the Protocol included virtual participation in debate sessions in the Paraguayan Congress and media interviews. Panama also provided legal assistance to Colombia and Costa Rica on the framework of an investigation carried out by Panama to obtain evidence for illicit tobacco-related cases under investigation.

Lithuanian Customs assisted (training, support in drafting strategies, legal instruments, controls, technical equipment, study visits) customs departments of North Macedonia, the Republic of Moldova, Ukraine and the General Administration for Borders and Crossings (GABC) through an EU project.

In the last two years, Türkiye reported providing technical support to Albania, Azerbaijan, Bahrain, Bangladesh, Bosnia-Herzegovina, China, Palestine, Gambia, Ghana, Georgia, Jordan, Montenegro, Qatar, Kazakhstan, Kenya, Kyrgyzstan, the Turkish Republic of Northern Cyprus, Mongolia, Moldova, Uzbekistan, Pakistan, Romania, the Russian Federation, Serbia, Somalia, Sudan, Tajikistan, Thailand, Tunisia, Turkmenistan and Ukraine in various areas including advanced criminal intelligence analysis, criminal investigations and techniques, police leadership and operational management, anti-corruption techniques, anti-money laundering and anti-terrorism techniques, airport risk analysis and search techniques, smuggling crimes risk analysis, anti-smuggling training and tracking techniques.

Fiji reported hosting a study tour in 2019 for Samoa's Ministry of Health and Police officials to observe tobacco control enforcement operations. On the other hand, Fiji received capacity support from the Oceania Customs Organization (OCO), the United Nations Conference on Trade and Development, the Australian Federal Police and the New Zealand Police. India reviewed tracking and tracing systems established in Brazil, the EU and Kenya through connecting with experts in those

Parties. Gambia participated in regional capacity-building workshops organized by the Economic Community of West African States and WHO. Sweden and Portugal reported that they received support from other EU Member States.

Samoa reported that it received financial and technical assistance from the Convention Secretariat through FCTC 2030 Project, and Nicaragua received similar support from the WHO Regional Office for the Americas. Uruguay had an initial meeting with the experts in the Convention Secretariat in their efforts to implement the tracking and tracing system and exchanged experience with the countries of the Southern Common Market, commonly known by the Spanish Abbreviation MERCOSUR, including Chile and Panama.

Slovakia received support from the United Kingdom's HMRC in its fight against illicit trade in tobacco and from the EU in strengthening traffic control systems for combating fraud on the external border of the EU in Slovakia (under the Hercule III programme). Slovakia and Croatia received modern detection equipment under the technical assistance programme of the EU.

Only 10 Parties (16%) reported that they have developed or conducted research on identifying the exact geographical origin of seized tobacco and tobacco products, as recommended under Article 23.3.

The European Commission established an independent tobacco laboratory (TOBLAB) to determine the geographical origin of seized tobacco. TOBLAB has a growing repository of samples (currently over 1000 samples from over 70 countries) of cigarettes. EU Member States send samples of seized cigarettes to TOBLAB for analysis. Some of the EU Member States reported that they also used their own laboratories to analyse tobacco products. Benin reported that it analyses samples of tobacco products at the Cellule d'analyse politique et de développement (CAPOD) of the Ministry of Planning, which was financed by the African Capacity Building Foundation (ACBF).

Assistance and cooperation: investigation and prosecution of offences (Article 24)

Key observations

- **Only a handful of Parties reported that they entered into multilateral, regional or bilateral agreements with other Parties to advancing investigation and prosecution of offences.**
- **Few Parties reported that they sustain a network to exchange information and intelligence, and to coordinate among law enforcement agencies.**

Only 14 Parties (23%) mentioned having entered multilateral, regional or bilateral arrangements for the purpose of the advancement of investigation and prosecution of offences in accordance with Article 24 of the Protocol. Furthermore, 21 Parties (34%) reported that they had cooperated and exchanged relevant information with another Party.

Some examples of assistance and cooperation are presented below. Türkiye reported that it has security cooperation agreements with 91 countries, and agreements in the fight against smuggling with 89 countries, many of which are Parties to the Protocol. The State Revenue Service of Latvia signed a memorandum of understanding (MOU) with the Tax and Customs

Board of Estonia on cooperation and another one with the Financial Crime Investigation Service under the Ministry of Lithuania on cooperation in their fight against fiscal and other offences.

The United Kingdom of Great Britain and Northern Ireland has many bilateral arrangements with individual countries to share information in customs matters. These are normally underpinned by a treaty, such as a customs mutual assistance agreement (CMA). Several treaties have been drafted in the last two years following the United Kingdom's exit from the EU as several third-country agreements were based on the EU CMA.

Some Member States of the EU (also Parties to the Protocol) reported that they are Parties to International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention), and they use this Convention in sharing information on investigations and offences.

The EU has a range of instruments strengthening cooperation among its Member States. The main instruments on cooperation are Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities in relation to criminal investigations or criminal intelligence operations; Regulation (EU) 2016/794 on the European Union Agency



Photo courtesy of Spanish Ministry of Health, Spain

for Law Enforcement Cooperation (Europol) that supports cooperation among law enforcement authorities in the EU responsible for preventing and combating criminal offences; the European Union Agency for Criminal Justice Cooperation (“Eurojust” – Regulation (EU) 2018/1727) that coordinates cross-border prosecutions; and the European Union Agency for Law Enforcement Training (CEPOL) that brings together a network of training institutes for law enforcement officials in EU Member States and supports them in providing frontline training on various matters, including law enforcement cooperation and information exchange. CEPOL also works with the EU bodies, international organizations and third countries.

Portugal reviews requests of assistance and cooperation on case-to-case basis and checks if they are feasible under the domestic and EU regulations, where applicable. Spain reported that it played a leading role by participating in different operational activities aimed at combating illicit trade in tobacco and tobacco products within the framework of EUROPOL’s EMPACT. Spain took part in collaborative efforts to combat illicit trade in water-pipe tobacco, fictitious tobacco exports, illicit manufacture of tobacco products, and illegal tobacco exports both within other EU Member States and in third countries. The United Kingdom of Great Britain and Northern Ireland, through its Fiscal Crime Liaison Officers (FCLOs), develops new customs MOUs with countries to begin or enhance information exchange.

Jurisdiction (Article 26)

Key observations

- **Many Parties established their national jurisdiction under penal code or criminal code.**
- **In most cases, jurisdiction already established by other laws and regulations is equally applied for actions against tobacco-related offences.**

Twenty-seven Parties (44%) reported that they adopted measures to establish their jurisdiction over criminal offences in accordance with Article 14 of the Protocol.

The EU reported that its Member States have national legislation in place in relation to jurisdictional matters. For offences committed on the territory of the EU (such as under PIF Directive/Money Laundering Directive), Member States take all necessary measures to establish jurisdiction over criminal offences when they occur in the whole or in a part of its territory and the offender is one of its nationals. Member States may extend their jurisdiction to criminal offences committed by an offender habitually resident in its territory, or those committed for the benefit of a legal person established in its territory.

In Brazil, regarding criminal offenses, jurisdiction is established according to the Criminal Procedure Code, DL No. 3689/1941 and provisions on criminal offenses, in general, are established in the Criminal Code, DL No. 689/1941. Matters related to money laundering are regulated by Law No. 9613/1998.

In Panama, the Criminal Code, in Chapter II, titled Application of Criminal Law in Space, establishes that criminal law shall apply to punishable acts committed in the national territory and other places subject to the jurisdiction of the State, except for the exceptions provided in the relevant international conventions and regulations in force. Further, the Criminal Code specifies that, for the purposes of criminal law, the territory of the republic includes the continental and insular area, territorial sea, the continental shelf, the subsoil and the airspace that covers them. It also includes Panamanian ships and aircraft and everything that, according to the rules of international law, corresponds to this concept.

The United Kingdom of Great Britain and Northern Ireland reported that it has long-standing legislation covering jurisdiction.

CASE STUDY**SLOVAKIA****Establishing jurisdiction over criminal offences**

Slovakia reported that the jurisdiction is established through the Sections 3 to 6 of the Penal Code and no further measures are necessary to establish jurisdiction for implementation of the Protocol. The relevant sections of the Penal Code (Act No. 300/2005 Coll.) are as follows:

Section 3

- (1) The criminal liability of an act committed on the territory of the Slovak Republic shall be assessed pursuant to this Act.
- (2) A criminal offence shall be deemed committed on the territory of the Slovak Republic if an offender:
 - c. committed an act on its territory, either in part or entirely, if the violation or endangering of an interest protected by this Act occurred or was supposed to occur, either in whole or in part, outside of its territory; or
 - d. committed an act outside the territory of the Slovak Republic, if the violation or endangering of an interest protected by this Act was intended to take place, or such a consequence was supposed to occur, either in whole or in part, on its territory.
- (3) The criminal liability of an act committed outside the territory of the Slovak Republic, aboard a vessel sailing under the State flag of the Slovak Republic or aboard an aircraft registered in the Aircraft Registry of the Slovak Republic, shall also be assessed pursuant to this Act.

Section 4

The criminal liability of an act committed outside the territory of the Slovak Republic by a Slovak national or a foreign national who has been granted permanent residence in the Slovak Republic shall also be assessed under this Act.

Section 5

The criminal liability of a particularly serious crime, if the act was committed outside the territory of the Slovak Republic against a Slovak national and the act is punishable in the place of its commission or if the place of the commission of an act is not liable to any criminal competency, shall also be assessed pursuant to this Act.

Section 6

- (1) The criminal liability of an act committed outside the territory of the Slovak Republic by a foreign national who was not granted permanent residence in the territory of the Slovak Republic shall also be assessed pursuant to this Act, even if:
 - a. the act is punishable under the law effective in the territory where it was committed;
 - b. the offender was apprehended or arrested in the territory of the Slovak Republic; and
 - c. was not extradited to another State for criminal prosecution.
- (2) However, the offender referred to in Subsection 1 may not be imposed a more severe punishment than that stipulated by the law of the State on the territory where the criminal offence was committed.

Law enforcement cooperation (Article 27)

Key observations

- **Almost two thirds of the Parties reported that they established mechanisms for effective domestic coordination among customs, police and other law enforcement agencies.**
- **On the other hand, only a little more than one third of the Parties reported that they coordinate with law enforcement agencies in other Parties, mostly through bilateral or multilateral agreements.**

Overall, 39 Parties (63%) reported having established mechanisms for effective domestic cooperation among customs, police and other law enforcement agencies for the benefit of information sharing and law enforcement to counter illicit trade. Twenty-four Parties (39%) established mechanisms for cooperation with other Parties for the benefit of information sharing and law enforcement, and out of those 24, 22 Parties (36%) have done so through bilateral or multilateral agreement with the other Parties.

In terms of coordination of domestic cooperation, in most cases, an inter-ministerial commission or committee takes the responsibility to oversee and coordinate actions by the various law enforcement agencies in their fights against illicit trade in tobacco products. Ghana, Samoa, Saudi Arabia and Uruguay established national tobacco control committees with representatives from health, revenue, customs and excise, and police and other enforcement agencies. In Cote d'Ivoire, the inter-agency technical committee is responsible mainly for the marking, monitoring, traceability and fiscal verification of tobacco products manufactured or imported into the country. In Fiji, Ministry of Health and Fiji Revenue and Customs Service signed an MOU to formalize their joint action against illicit tobacco, while the Police also joins when needed.

In Iraq, the Ministry of Finance, General Authority of Customs and Ministry of Interior monitor and follow up on violations and take necessary actions against offenders. In Norway, customs, police and tax authorities share intelligence and

information, when suitable and possible. The Turkish Customs Enforcement, National Police, Coast Guard Command and the Gendarmerie entered a joint protocol aiming enhanced cooperation in terms of combating illicit trade.

In some cases, more than one MOU was signed between subunits of the same authorities to ensure greater coverage.

In Ecuador, National Customs Service with support from Customs Surveillance Corps, Armed Forces, National Police and provincial governorates work together controlling illicit trade in tobacco products. In Serbia, Ministry of Trade, Tourism and Telecommunications and the Market Inspection Sector cooperate with Ministry of Interior in investigating illicit trade of tobacco and tobacco products, while the Customs Administration leads in the field of identification and elimination counterfeiting goods. In Slovakia, Ministry of Interior and Ministry of Finance signed few protocols on cooperation and sharing of data to conduct joint control against illicit trade.

In France, joint controls are regularly carried out by Customs, Police and the national Gendarmerie. Local cooperation protocols among government agencies were signed, and a national agreement links the Directorate General of Customs and Excise and the Directorate General of the National Gendarmerie. The 2023–2025 action plan to combat tobacco and cigarette smuggling provides for intensified cooperation among the various ministerial departments in the fight against tobacco smuggling. This cooperation is also provided for in the National Tobacco Control Plan (PNLT), coordinated by the Ministry of Health.

Bilateral or multilateral agreements also provide platforms for information sharing and law enforcement cooperation. EU-level relevant legislation on coordination among different agencies and departments include: the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union; Council Framework Decision 2002/465/JHA on joint investigation teams (also Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT)); Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities in relation to criminal investigations or

criminal intelligence operations; and Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol) that supports cooperation among law enforcement authorities in the EU responsible for preventing and combating criminal offences.

Latvia engaged in cooperation with Europol, INTERPOL and other international enforcement agencies (for the details of Latvian experience, please see the text box below). The EU and its Member States mentioned United Nations Convention against Transnational Organized Crime and United Nations Convention against Corruption as two important instruments that provided further basis for law enforcement

cooperation. Togo reported that it is Party to a few international agreements and benefitted from international organizations through projects and programmes. The United Nations Office on Drugs and Crime (UNODC) has been supporting Togo through the framework of the AIRCOP (establishment of secure real-time communication between airports), the Container Control Programme (CCP) and the Cooperation in Criminal Justice (CRIMJUST) programmes. The UNODC also provided computer equipment to the Airport Anti-Trafficking Unit. Cooperation with the EU, France and the United States of America was beneficial, with Togo receiving capacity support from them.



Photo courtesy of Ministry of Health, Spain

CASE STUDY

LATVIA

National mechanisms for information sharing and law enforcement

According to the Instruction No. 1 of the Cabinet of Ministers on procedures for cooperation of law enforcement agencies in preventing and combating crime, the coordination committee develops and implements the national Criminal Intelligence Model in law enforcement institutions and state security agencies. Following the same instruction, a Law Enforcement Management Working Group was set up to ensure the exchange of necessary information among enforcement agencies and coordinate their actions to ensure optimum results.



Photo courtesy of State Revenue Service of the Republic of Latvia

A working group of law enforcement experts (inter-institutional expert group) was also set up to coordinate ongoing cooperation between law enforcement agencies in the field of collection and analysis of criminal intelligence information, preparation of analytical reports on criminal intelligence and methodological management, as well as to make proposals on the tasks to be carried out and measures to prevent and combat crime.

The inter-institutional expert group, together with law enforcement and security institutions, conducts a situational assessment twice a year and prepares criminal intelligence analytical reports for the working group. The reports are discussed at the meetings of the Law Enforcement Management Working Group, the crime situation is evaluated and trends in the development of crime compared to the previous period are identified, their possible solutions are provided and a description of the progress of the implementation of these solutions is provided.

According to the opinion provided by an expert of the Law Enforcement Management Working Group, the level of threats caused by different offences had been determined, with increased focus on combating serious crimes.

In 2011, based on the conclusions of the Council of the EU on establishment and implementation of an EU policy cycle on serious and transnational organized crime (adopted by the Council of the EU on 8–9 November 2010; document 15358/10 of 25 October 2010), a European Multidisciplinary Platform Against Criminal Threats (EMPACT) was created.

Experts from State Police, State Border Guard and Tax and Customs Police of the State Revenue Service participate in EMPACT. The Council of Europe Conclusions of 12 May 2021 (No 8665/21) also confirmed 15 priority areas in the fight against serious and organized crime in the EU from 2022 to 2025. Latvia participated in the implementation of 14 priorities in 2022.

Mutual administrative assistance (Article 28)

Key observations

- **Only a quarter of Parties reported having signed bilateral, regional or multilateral agreements with other Parties to enable mutual administrative assistance.**
- **The EU leads in implementing this article, having reported 87 mutual administrative assistance agreements with third countries in customs matters.**

Only 17 Parties (27%) reported having entered a procedure of mutual administrative assistance with another Party based on the Protocol.

The European Union Member States and OLAF are in regular contact with the authorities in the EU and third countries to fight the illicit tobacco trade. The EU reported that it concluded mutual administrative assistance agreements in customs matters with 87 countries, and more recently a trade and cooperation agreement with the United Kingdom of Great Britain and Northern Ireland. Paraguay reported it signed mutual administrative assistance agreements with Cote d'Ivoire and Morocco.

The United Kingdom has many bilateral arrangements with individual countries to share information in customs matters. These are normally underpinned by a treaty, such as a Customs Mutual Assistance Agreement (CMA). Several treaties have been drafted in the past two years following the United Kingdom's exit from the EU, which resulted in signing of more agreements with third countries which were based on the EU CMA. In addition, the United Kingdom shares information for intelligence purposes through its Fiscal Crime Liaison Officers (FCLOs), presented in other sections of this Global Progress Report. In Gibraltar, a section was added to the Tobacco Act 1997 enabling mutual administrative assistance, either upon request or on the authorities' own initiative, to provide information described in Article 28 to the Parties of the Protocol.

Mutual legal assistance (Article 29)

Key observations

- **Many Parties shared details of their central authorities for mutual legal assistance with the Convention Secretariat.**
- **Very few Parties reported that they had participated in mutual legal assistance initiatives with another Party or Parties.**

Eighteen Parties (29%) reported having designated a central authority for the purpose of mutual legal assistance (MLA) and shared or in the process of sharing the information with the Convention Secretariat. Out of these 18 Parties, only Cyprus, Czechia, Mali, the Netherlands, Portugal, Slovakia, Sweden and the United Kingdom of Great Britain and Northern Ireland reported that they shared the name and contact details of the central authorities with the Convention Secretariat. Only seven Parties (11%) reported that they benefitted from MLA initiatives with another Party or Parties.

Paraguay has been in contact with few other Parties on MLA in investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable. The areas of collaboration included taking evidence or statements from persons, effecting service of judicial documents, and examining objects and sites. Latvia reported that in its case, international cooperation takes place through the execution of European Investigation Orders (EIRs) and legal assistance requests.

Qatar reported that the national organizations are exchanging legal assistance with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which legal persons may be held liable.

Most of the Parties designated ministries of justice as the central authority to request for and provide legal assistance under Article 29 of the Protocol. They include Brazil, Cote d'Ivoire, Cyprus, Paraguay, Serbia, Sweden and Türkiye. Türkiye also added the Directorate General of Foreign Relations and European Union Affairs as the other central authority. In Paraguay, the specific department responsible is the Department of Mutual Legal Assistance in Criminal Matters (AIRS). For Sweden, the Division for Criminal Cases and International Judicial Cooperation under Ministry of Justice will act as the central authority.

Latvia declared four different entities as the central authorities to receive and evaluate legal assistance under the Protocol for different purposes. The central authorities are the State Revenue Service (involving the State Police, if needed in an investigation), the Prosecutor General's Office (for prosecution), the Ministry of Justice (in legal proceedings and after issuance of the judgment) and the Prosecutor General's Office (in relation to the duties specified in Sections 30 and 31, which are related to the extradition of a person). In Slovakia, the central authority for the pretrial stage is the General Prosecutors Office and for the trial stage of the criminal proceedings is the Ministry of Justice.

In the case of the United Kingdom of Great Britain and Northern Ireland, for MLA on tax and fiscal customs matters in England, Wales and Northern Ireland, the Criminal Law Advisory Team of HMRC is the competent authority; for MLA requests related to Scotland, the Crown Office in Edinburgh plays that role; and for the requests related to Gibraltar, the competent authority would be the Office of Criminal Prosecutions and Litigation in Gibraltar. Panama designated the national Office of the Attorney General and the Ministry of Government through the Office for the Implementation of Treaties on Mutual Legal Assistance and International Cooperation of the Ministry of Government as the central authorities for the implementation of various multilateral or bilateral treaties on legal assistance in criminal matters.

Extradition (Article 30) and measures to ensure extradition (Article 31)

Key observations

- **Only three Parties reported that they had utilized the Protocol for the purposes of Extradition (Article 30), which makes this the least-implemented provision.**
- **Most Parties reported that they have extradition-related measures in their national legislation, but in general, not on tobacco control relations laws or regulations.**

Only three Parties reported that they utilized relevant provisions of the Protocol for the purposes of extradition.

The EU reported that among its Member States, a European Arrest Warrant (Council

Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) exists, which elaborates the legal procedure to speed up the handing over of suspects or criminals from one EU Member State to another, so they can face trial or serve a prison sentence in the country where they committed a crime. In addition, the EU has a few bilateral agreements on extradition with third countries. These include the Agreement on Extradition between the United States of America and the EU and an agreement among Iceland, Norway and the EU on the surrender procedure among the countries question. Norway reported that it set up a committee in 2020 that delivered a report that contains, among other things, a proposal for a new extradition and arrest warrant act. The deadline for public consultation was 22 March 2023, and a legislative proposal on arrest, the surrender procedure and extradition is being drafted stage at the time of publication of this report.

The United Kingdom of Great Britain and Northern Ireland reported that it works with other jurisdictions in handling extraditions, when needed. This action is "business as usual" and not explicitly impacted by the Protocol. However, in Gibraltar, extradition is covered by the Extradition Act 2018 and part VD of the Tobacco Act 1997, which applies the Extradition Act for requests for extradition made pursuant to the Protocol. Latvia designated the Office of the Prosecutor General as the competent authority in respect of the obligations relating to extradition laid down in Articles 30 and 31 of the Protocol.

Slovakia reported that there had not been any extradition executed between 2020 and 2022 based on the provisions of the Protocol; however, other instruments had been in use for the purpose of extradition of the offences covered by the Protocol.

CASE STUDY

PANAMA

New extradition procedure

Panama established passive extradition as an administrative–judicial process and made the executive branch (through the Ministry of Foreign Affairs) responsible to take a decision whether to grant extradition. In this regard, the extradition process is initially regulated by the provisions of the Judicial Code of the country, which was processed in writing in the administrative and judicial spheres, where the participants could only make their allegations and considerations in writing, through documents.

To adapt extradition to the new model of accusatory criminal proceedings, Law 35 of 27 May 2013 introduced a structural reform to the process. In this case, it should assurance that the requested person enjoys the rights and guarantees during the administrative–judicial procedure. The amendments to the procedure were introduced by Law 4 of 17 February 2017.

The legal framework of the passive extradition procedure is established in the Code of Criminal Procedure in Articles 517 to 544. However, according to Article 516 it is also governed by the international agreements to which Panama is a Party.

Since extradition is an administrative–judicial process, several stakeholders are involved. They are the requesting state through a diplomatic or consular official; the Public Prosecutor’s Office through the Attorney General’s Office and the Superior Prosecutor’s Office for International Affairs; the Superior Court of Appeals and the Second Criminal Chamber of the Supreme Court of Justice; the Ministry of Foreign Affairs; and the Directorate of Judicial Investigation through the INTERPOL Central Bureau. Extradition has special connotations since it does not involve a criminal trial on national territory, but rather the potential surrender of the person requested to be tried or to serve a sentence in a foreign country.

Reporting

Reporting and exchange of information (Article 32)

Key observations

- **Of the 62 Parties to the Protocol required to report in the 2023 cycle, 53 (85%) formally submitted their implementation reports.**
- **Compared to the previous reporting cycle, the reports received during this cycle are more complete, more informative and provide more examples and, as a result, a clearer picture of implementation progress.**

There were several challenges in the Protocol's first reporting cycle. It was difficult to assess the individual progress of some State Parties because progress was reported under the consolidated report submitted by a regional economic integration organization (for example, the EU) for its Member States. Some Parties did not answer all the questions, some answers were misplaced, and some other responses were out of context.

In this current reporting cycle, each Party submitted its own report, including EU Member States, which enabled the Convention Secretariat to provide a more comprehensive analysis of implementation progresses.

Additionally, because the Protocol deals with a wide range of issues from licensing to legal issues, such as extradition and coordination among different parts of government, completing the reports could contribute to better quality of the data and ease the reporting burden of Parties.

To align with efforts to improve the reporting system of the WHO FCTC, a review of the reporting system of the Protocol was also conducted. The aim of the review included decreasing the reporting burden on the Parties and improving the quality of the data collected. The review also included assessing potential official external sources of data to measure global progress in the implementation of the Protocol. Several potential sources of official external sources of data were identified, including the Customs Enforcement Network (CEN) of the World Customs Organization (WCO) and the FAOSTAT database of the Food and Agriculture Organization of the United Nations (FAO). The Convention Secretariat



Photo courtesy of Ministry of Health, Spain

assessed the usefulness of the data to inform the biennial reporting cycles of the Protocol. Based on the review of the reporting system, the Convention Secretariat developed a revised reporting instrument (questionnaire) of the Protocol for Parties' consideration at the Third session of the Meeting of the Parties in November 2023. The proposed revised reporting instrument is based on: 1) simplifying the current set of questions, deleting questions that are duplicative and impractical, and adding new and more refined questions; 2) rethinking questions used to collect quantitative data related to licit and illicit trade in tobacco products; and 3) using data from official external sources to assess global progress in the implementation of the Protocol.

Institutional arrangements and financial resources

Financial resources (Article 36)

In relation to Article 36 (Financial resources), 23 Parties (37%) reported that they have funds available for activities intended to achieve the objective of the Protocol in accordance with national plans, priorities and programmes. Some Parties indicated an amount allocated for implementation of the Protocol (including the establishment of a tracking and tracing system), while many others reported that they do not have budget allocations from the government exchequer for implementation of the Protocol provisions.



Photo courtesy of Spanish Ministry of Health, Spain

3. Priorities, needs and gaps constraints and barriers

General obligations

Priorities. Almost all the Parties reported on their national priorities for implementation of the Protocol, many of them prioritizing the fight against illicit trade in tobacco products as a general matter. In the 2020 reporting cycle, which was the first reporting cycle for the Protocol, the main priority identified by the Parties was the implementation of a tracking and tracing system for tobacco products. In the 2023 reporting cycle, Parties continued to consider the establishment of a tracking and tracing system for tobacco and tobacco products, in accordance with the requirements of Article 8 of the Protocol of high importance.

Parties that have already implemented a tracking and tracing system are now planning to upgrade the system as well as to expand coverage of tobacco products in the system. France and the United Kingdom of Great Britain and Northern Ireland prioritized sharing of tracking and tracing data through the global information-sharing focal point when it is established at the Convention Secretariat. The United Kingdom also plans to extend tracking and tracing requirements to other tobacco products from May 2024. Panama's priority is to have a marking and traceability solution totally independent of outside influence and in compliance with international obligations under the Protocol and the WHO FCTC.

Other measures prioritized by the Parties include the establishment of institutional mechanisms for coordination and cooperation of various agencies responsible for the implementation of the Protocol at the national level, as well as the development of comprehensive legislation or the revision of existing legislation to enable and strengthen implementation of the Protocol.

Other measures considered as priorities include capacity-building of relevant staff and stakeholders, cooperation between

Parties to the Protocol, mobilization of resources for implementation of the Protocol and the strengthening provisions for licensing by incorporating requirements for licences to import and manufacture manufacturing equipment for tobacco products. Fighting illicit trade in tobacco is the key priority for the EU and some other Parties. Some of the Parties reported that their focus is to implement various provisions of the Protocol and strict enforcement of related legislation. The priorities for Costa Rica include clear definition of institutional competences and defining a comprehensive national strategy for implementation of the Protocol. Samoa emphasizes strengthening communication among ministries, departments, other stakeholders and international organizations towards their fight against illicit trade. Raising awareness on tobacco control issues and building capacity of stakeholders remain key priorities for many Parties.

Needs and gaps. Only 12 Parties (19%) reported that they identified gaps between resources available and needs assessed for the implementation of the Protocol. Of these, nine Parties provided details on the gaps identified. Six Parties (10%) evoked a lack of financial, material or human resources for the implementation of the Protocol. Other gaps identified by Parties in respect of the implementation of the Protocol included a lack of research, insufficient sharing of good practices and experiences of implementation, and inadequate mobility for border control and market surveillance.

Some Parties highlighted the need for technical assistance and capacity-building of actors relevant to the implementation of the Protocol. One Party from the Western Pacific Region highlighted the fact that illicit trade is rampant in the open sea, but it is difficult to carry out inspections due to lack of available resources. Most of the respondents agreed that the lack of resources and capacity is the foremost gap in implementing the Protocol.

Constraints and barriers. In respect of constraints and barriers to implementation of the Protocol, 37 Parties (60 %) provided information. In addition to the lack of resources indicated by the Parties, the most reported constraints and barriers are

the lack of comprehensive legislation and national strategy, technical and capacity-related barriers, and challenges related to domestic coordination.

Many Parties identified a lack of knowledge and guidance at the national and regional levels to implement an efficient tracking and tracing system as one of the biggest challenges to implementing the Protocol. For the EU and its Member States, the still-limited number of Parties and, subsequently, the limited geographic coverage of the Protocol, as well as the relatively low number of Parties that implement a tracking and tracing system, constitute a challenge in benefiting from implementation of the Protocol provisions.

Some Parties mentioned that the ministries responsible for implementation of the Protocol have limited mandate and support from the political leadership. Some other Parties identified inadequate knowledge and capacity for implementation of the Protocol at the domestic level as a major issue.

A few Parties reported challenges with the set-up or operationalization of national coordination mechanisms or platforms for implementation, which may be lacking altogether or lack efficiency. Some Parties identified the general lack of understanding of the needs and awareness of illicit trade in tobacco products at the domestic level as factors that impede implementation of the Protocol.

A few Parties questioned the commitment from the leadership of the related ministries as one of the main constraints in implementation, while another pointed at the divergent interests of different stakeholders as one of the main hindrances. This is the reason most of Parties stressed the importance of establishing a strong inter-ministerial coordination mechanism so that the issues related to lack of commitment and competences may be addressed. Costa Rica emphasized the need for scientific studies and evidence-based research that would be useful, guiding decision-makers in their efforts against illicit trade. A few Parties mentioned that the interference by the tobacco industry also poses a threat to the implementation of the Protocol.



Photo courtesy of Ministry of Health, Spain

4. Conclusions

Considering that the Protocol is a relatively young treaty, the rate of implementation of most of its provisions is encouraging. The Parties report having focused their attention on supply chain control measures and on prosecutions and sanctions for illicit trade in tobacco, tobacco products and tobacco manufacturing equipment. However, implementation varies greatly among the articles to the Protocol and to the Parties across regions, which reflect a broad range of social and economic contexts.

The overall status of the implementation of the Protocol was assessed based on key indicators under each substantive article. In relation to implementation of the time-bound requirements under Article 8 (Tracking and tracing), 35 Parties (57%) reported to the Convention Secretariat about the establishment of a tracking and tracing system, even though there is not sufficient information in the submitted reports to assess whether such systems contain all the essential components of a tracking and tracing system as required under the Protocol.

Articles on which Parties reported most progress include Article 16 (Prosecutions and sanctions), Article 10 (Security and preventive measures) and Article 14 (Unlawful conduct including criminal offences). Lower implementation was observed for measures related to articles under Part V of the Protocol (International cooperation), in particular Article 30 (Extradition), Article 29 (Mutual legal assistance) and Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters).

The implementation reports of Parties suggest that many Parties continue to lack the financial resources and expertise required for implementation of the Protocol. Some Parties are in the process of creating national workplans towards effective implementation of the Protocol. More focus on international cooperation, assistance and sharing of information among Parties through bilateral, regional, multilateral, and South–South and Triangular Cooperation, as well as technical assistance in scientific, technical and technological matters, would assist the Parties in their efforts to eliminate illicit trade in tobacco products.

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ANNEX. Key indicators and implementation status by indicators as reported in the 2023 reporting cycle

Protocol articles	Substantive or similar measures	Number of Parties
Article 6	Licence, equivalent approval or control system	
Licensing system in place for	Manufacture of tobacco products	32
	Manufacture of manufacturing equipment	8
	Import of tobacco products	38
	Export of tobacco products	29
	Import of manufacturing equipment	14
	Export of manufacturing equipment	10
Licence required for any natural or legal person engaged in	Tobacco retailing	24
	Tobacco growing	11
	Tobacco and manufacturing equipment transport	18
	Tobacco wholesaling, warehousing or distributing	33
Competent authority has the prerogative to issue, renew, suspend, revoke and/or cancel licences for	Tobacco manufacturing	33
	Tobacco import	41
	Tobacco export	28
	Manufacture of manufacturing equipment	9
	Import of manufacturing equipment	16
	Export of manufacturing equipment	12
Proof required for natural person licence applicant	Identity	39
	Tradename	39
	Business registration number	39
	Tax registration number	38
Proof required for legal person licence applicant	Legal name	42
	Tradename	42
	Business registration number	42
	Incorporation date and place	41
	Headquarter location	41
	Tax registration number	41
	Copies of incorporation articles	32
	Corporate affiliates	25
Names of directors and legal representatives	38	
Licence applicant are required to specify	Business or warehouse location	36
	Specify product description	38
	Specify product name	37
	Registered trademark	30
	Product design	31
	Brand	36
	Model or serial number of manufacturing equipment	27
	Set-up and use of the manufacturing equipment	26
	Any criminal records	26
	Bank accounts or payment details	15
	Intended use and market of sale	35
Obligation to report	Obligation to report any change relevant to the licenced activities	39
	Obligation to report any acquisition or disposal of manufacturing equipment	27

Article 7	Due diligence	
Due diligence required for all natural and legal persons engaged in	Supply chain of tobacco before a business relationship	19
	Supply chain of tobacco products before a business relationship	23
	Supply chain of manufacturing equipment before a business relationship	11
	Supply chain of tobacco during business	19
	Supply chain of tobacco products during business	22
	Supply chain of manufacturing equipment during business	11
	Due diligence required with regards to customer identification	19
	Criminal records declaration required for customer identification	12
	Identification of the bank accounts required for customer identification	8
	Legal or natural persons “blocked” as customers	7
Article 8	Tracking and tracing	
Unique identification markings required on	Tracking and tracing system established	35
	All unit packets of cigarettes	35
	All unit packages of cigarettes	33
	Any outside packaging of cigarettes	33
	All unit packets of other tobacco products	28
	All unit packages of other tobacco products	27
	Any outside packaging of other tobacco products	27
	Manufacture date	36
	Manufacture location	38
	Manufacturing facility	33
	Machine used for manufacturing	21
	Manufacture time	22
	Information available on	First customer
	Intended market of retail sale	29
	Product description	34
	Warehousing and shipping	27
	Subsequent purchaser identity	25
	Shipment details	30
	Recorded information accessible to the Global Information-sharing Focal Point through a secure electronic interface	5
Article 9	Record-keeping	
Records maintained of transactions and natural or legal persons engaged in	Tobacco supply chain	31
	Tobacco products supply chain	41
	Manufacturing equipment supply chain	13
	Tobacco products and manufacturing equipment manufactured for export	17
	Records sharing system established	6
	Cooperation in sharing and developing improved record-keeping systems	10
Article 10	Security and preventive measures	
	Sanctions in place for licencees	44
Article 11	Sales by Internet, telecommunication or any other evolving technology	
	Protocol application to online sales	36
	Ban on sales of online tobacco products	29

Protocol articles	Substantive or similar measures	Number of Parties
Article 12	Free zones and international transit	
	Authorization to conduct controls in free zones	38
	Prohibition of tobacco and non-tobacco products intermingling	21
	Control of transit or transshipment	39
Article 13	Duty-free sales	
	Duty-free sales allowed	36
	Evidence of duty-free sales	36
	Duty-free sales subject to protocol provisions	37
Article 14	Unlawful conduct including criminal offences	
Illicit manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting	Tobacco	42
	Tobacco products	46
	Manufacturing equipment	24
Tax evasion	Tobacco	45
	Tobacco products	50
	Manufacturing equipment	30
Smuggling	Tobacco	50
	Tobacco products	52
	Manufacturing equipment	33
Falsification of markings	Tobacco	45
	Tobacco products	48
	Manufacturing equipment	27
Counterfeiting	Tobacco	46
	Tobacco products	50
	Manufacturing equipment	29
Unlawful conduct in domestic laws	Concealment of tobacco products	51
	Intermingling of tobacco and non-tobacco products	37
	Online illicit trade	42
	Acting against good faith	43
	Obstructing illicit trade prevention or investigation	49
	Fraud	50
Money laundering	50	
	Above activities constitute criminal offences	48
Article 15	Liability of legal persons	
	Liability of legal persons established for unlawful conduct	43
Article 16	Prosecutions and sanctions	
	Persons held liable for the unlawful conduct are subjected to criminal or non-criminal sanctions	46
Article 17	Seizure payments	
	Legislation and/or other measures adopted to recover taxes and duties related to seizures	36
Article 18	Disposal or destruction	
	Confiscated tobacco destroyed	28
	Destruction in an environmentally friendly method	26
Article 19	Special investigative techniques	
	The use of special investigative techniques allowed to combat illicit trade	36
	Bilateral or multilateral agreements or arrangements for the use of above techniques when investigating criminal offences	24

Article 21	Enforcement information sharing	
	Enforcement information exchanged	17
Article 22	Information sharing: confidentiality and protection of information	
	Competent authorities designated for information sharing	22
Article 23	Assistance and cooperation: training, technical assistance and cooperation	
Assistance provided on	Information gathering	11
	Law enforcement	11
	Tracking and tracing	5
	Information management	7
	Protection of personal data	4
	Interdiction	3
	Electronic surveillance	6
	Forensic analysis	5
	Mutual legal assistance	7
	Extradition	1
Assistance received on	Information gathering	13
	Law enforcement	13
	Tracking and tracing	13
	Information management	11
	Protection of personal data	7
	Interdiction	1
	Electronic surveillance	8
	Forensic analysis	8
	Mutual legal assistance	5
	Extradition	2
	Research on geographical origin of seized tobacco conducted	10
Article 24	Assistance and cooperation: investigation and prosecution of offences	
	Arrangements in place for the advancement of investigations and prosecutions	14
	Cooperation and information exchange on investigation and prosecution	21
Article 26	Jurisdiction	
	Jurisdiction established over criminal offences	27
Article 27	Law enforcement cooperation	
	Mechanisms for effective law enforcement domestic cooperation established	39
	Mechanisms of cooperation in law enforcement established with other Parties	24
	Bilateral or multilateral agreements for cooperation with other Parties	22
Article 28	Mutual administrative assistance	
	Mutual administrative assistance procedure with another Party	17
Article 29	Mutual legal assistance	
	Mutual legal assistance procedures with another Party	7
	Central authority designated for mutual legal assistance	18
Article 30	Extradition	
	The Protocol used for the purposes of extradition	3
Article 36	Extradition	
	Finance activities according to national priorities	23
	Identified gaps between needs and resources	12



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