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**global progress report  
on implementation of the  
Protocol to Eliminate Illicit  
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# 2021 global progress report on implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products



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# Contents

<b>Acknowledgements</b>	<b>iv</b>
<b>Executive summary</b>	<b>v</b>
<b>1. Introduction</b>	<b>1</b>
Methodological notes	2
<b>2. Overall implementation of the Protocol</b>	<b>3</b>
<b>3. Implementation of the Protocol by provisions</b>	<b>4</b>
<b>General obligations</b>	<b>4</b>
Protection of personal data (Article 5)	4
<b>Supply chain control</b>	<b>5</b>
Licence, equivalent approval or control system (Article 6)	5
Due diligence (Article 7)	11
Tracking and tracing (Article 8)	12
Record-keeping (Article 9)	15
Security and preventive measures (Article 10)	18
Sale by Internet, telecommunication or any other evolving technology (Article 11)	20
Free zones and international transit (Article 12)	21
<b>Offences</b>	<b>24</b>
Unlawful conduct including criminal offences (Article 14)	24
Liability of legal persons (Article 15), prosecutions and sanctions (Article 16)	27
Seizure payments (Article 17) and disposal or destruction (Article 18)	27
Special investigative techniques (Article 19)	30
<b>International cooperation</b>	<b>31</b>
General information sharing (Article 20), enforcement information sharing (Article 21) and confidentiality and protection of information (Article 22)	31
Assistance and cooperation in training, technical assistance and cooperation in scientific, technical and technological matters (Article 23) and in investigation and prosecution of offences (Article 24)	31
Jurisdiction (Article 26) and law enforcement cooperation (Article 27)	33
Mutual administrative assistance (Article 28) and mutual legal assistance (Article 29)	34
Extradition (Article 30) and measures to ensure extradition (Article 31)	34
<b>4. Priorities and comments</b>	<b>39</b>
<b>5. Conclusions</b>	<b>41</b>
Annex: Key indicators and implementation status by indicators as reported in the 2020 reporting cycle	42

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## Executive summary

The Protocol to Eliminate Illicit Trade in Tobacco Products entered into force on 25 September 2018. It is an international treaty that was negotiated by the Parties to the WHO Framework Convention on Tobacco Control (WHO FCTC) and is based on the requirements of Article 15 of the WHO FCTC.

Article 32 of the Protocol requires Parties to report on the status of their implementation of the Protocol, highlighting progress, challenges, needs and barriers to Protocol implementation. Most Parties are in the early stages of implementation, and they could benefit from the knowledge, experiences and practices of those that are more advanced. Reporting on the challenges would also help the Meeting of the Parties (MOP) to the Protocol to define the way forward for comprehensive global action to eliminate illicit trade in tobacco products. In addition, a decision from the First Session of the MOP – FCTC/MOP1(10) – further guides the establishment of the reporting system for the Protocol.<sup>1</sup>

As of 14 October 2021, 63 Parties ratified or acceded to the Protocol, of which 57 were required to report for the first time in 2020. This *2021 Global Progress Report on Implementation of the Protocol to Eliminate*

*Illicit Trade in Tobacco Products* provides an overview of the implementation status of the Protocol based on the information received in this first cycle.<sup>2</sup>

Out of the 57 Parties, 30 full responses were received, including 29 responses from State Parties and one response from the European Union, which responded on its own behalf as a Party to the Protocol and on behalf of its 15 Member States that are State Parties to the Protocol. Additionally, two State Parties provided some data on the reporting platform without formally submitting their full report.

Based on these initial data, implementation seems to be very uneven among the various articles of the Protocol and also among the different elements of a single article. The following articles are those that the highest number of respondents<sup>3</sup> reported as being implemented, at least in part: Article 6 (Licence, equivalent approval or control system); Article 14 (Unlawful conduct including criminal offences); and Article 16 (Prosecutions and sanctions). With regard to Article 8 (Tracking and tracing), 16 respondents reported that they had established a tracking and tracing system. Few respondents reported on measures being implemented that relate to Part V of the Protocol (International cooperation), and thus it may have great potential for improvement.



<sup>1</sup> [https://cms.partnership.who.int/fctc/publications/m/item/fctc-mop1\(10\)-working-group-on-assistance-and-cooperation](https://cms.partnership.who.int/fctc/publications/m/item/fctc-mop1(10)-working-group-on-assistance-and-cooperation)

<sup>2</sup> This report has been published in 2021, as the MOP to the Protocol to be held in 2020 was postponed, due to the COVID-19 pandemic, until November 2021.

<sup>3</sup> The respondents include the European Union, which responded on its own behalf as a Party to the Protocol and on behalf of its 15 Member States that are State Parties to the Protocol.





## 1. Introduction

The Protocol to Eliminate Illicit Trade in Tobacco Products is an international treaty aiming to eliminate all forms of illicit trade in tobacco products. The Protocol was developed in response to a growing concern over illicit trade in tobacco products and its role in fuelling the tobacco epidemic. It was negotiated by the Parties to the WHO Framework Convention on Tobacco Control (WHO FCTC) and was adopted in the Fifth Session of the Conference of Parties (COP) to the WHO FCTC in November 2012.

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. For this purpose, globally, the Protocol foresees the establishment of a global tracking and tracing regime within five years of Protocol's entry into force on 25 September 2018. This global tracking and tracing regime comprises national and/or regional tracking and tracing systems established by the Parties and a Global Information-sharing Focal Point to be set up at the Convention Secretariat. Also, Parties should require unique identification markings for cigarettes within five years – and for other tobacco products within 10 years – of the entry into force of the Protocol for that Party.

Other measures prescribed in the Protocol to enhance controls in the supply chain include: licensing; due diligence; record-keeping; security and preventive actions; regulation of Internet and duty-free sales; duty-free zones; and international transit.

The Protocol also covers offences and related measures as well as international cooperation, including information sharing, administrative and legal cooperation and assistance, jurisdiction and extradition, among others. Article 32 (Reporting and exchange of information) requires Parties to report not only on implementation but also on the constraints or barriers encountered in the implementation of the Protocol and the measures taken to overcome them.

The *2021 Global Progress Report on Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products* provides an overview of the status of implementation of the Protocol based on respondents' official implementation reports submitted for the 2020 reporting cycle.<sup>4</sup> 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.

From the current 63 Parties to the Protocol, 57 Parties were required to report in the 2020 reporting cycle. Thirty reports were uploaded to the online reporting platform by the cut-off date of 25 May 2020;<sup>5</sup> this number includes 29 State Parties and the European Union (EU), which responded on its own behalf as a Party to the Protocol and on behalf of its 15 Member States that are State Parties to the Protocol.<sup>6</sup>

4 Party reports are available in the Implementation Database of the WHO Convention Secretariat (<https://fctc.who.int/who-fctc/reporting/implementation-database>).

5 The cut-off date concerns information inclusion from those individual reports in this Global Progress Report. The reporting platform remained open after the cut-off date and was ready to accept other Parties' reports. The original deadline given to Parties was 31 March 2020. Nonetheless, to accommodate the challenges related to the COVID-19 pandemic, the reporting timeline was extended and the final data for the analysis was extracted as of 25 May 2020.

6 The respondents include: Benin, Burkina Faso, Cabo Verde, Chad, Comoros, Congo, Costa Rica, Cote d'Ivoire, Ecuador, Fiji, Islamic Republic of Iran, Iraq, Kuwait, Mali, Mauritius, Montenegro, Nicaragua, Niger, Norway, Panama, Qatar, Samoa, Saudi Arabia, Senegal, Serbia, Togo, Turkey, United Kingdom of Great Britain and Northern Ireland, and Uruguay, and the European Union (one report submitted on behalf of 15 State Parties: Austria, Belgium, Croatia, Cyprus, Czechia, France, Germany, Latvia, Lithuania, Luxembourg, Malta, Portugal, Slovakia, Spain and Sweden).

## Methodological notes

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In this Global Progress Report, implementation of the Protocol is measured through the responses in the reporting instrument, which is an online questionnaire. Unless specified otherwise, the implementation figures provided for key provisions in this report refer to the number of respondents who answered “yes” to a specific question. Measures should apply nationally to the whole Party (or to the regional economic integration organization in case of EU), as appropriate. Subnational regulations are not considered as affirmative responses; however, they are taken into account during the analysis of the open-ended questions.

Apart from the respondents that officially submitted their reports, an additional two State Parties<sup>7</sup> inserted a limited amount of data in their report forms, but they did not submit officially their full reports. Overall, the data available for this first implementation analysis is relatively limited; therefore, articlewise implementation rate calculations were not conducted. The complete list of indicators used in the reporting instrument and the reported implementation under these indicators are presented in the Annex.

An added value, the 2021 Protocol Global Progress Report – despite the relatively limited dataset – presents concrete examples of implementation for each article of the Protocol, based on the responses to the open-ended questions. Text boxes with case studies and relevant information for the implementation of the Protocol are also provided.

For purposes of reporting on sections related to Articles 14–31 of the Protocol, the data has 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 implementation, enforcement or compliance. Responses are not subject to systematic validation against the text of the laws, regulations and/or policy documents. In addition, many countries have been severely affected by the coronavirus disease 2019 (COVID-19) pandemic since the beginning of 2020, and this may have impeded the efforts of some respondents to collect some information or to submit their report on time.

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*When considering the data received in the reporting cycle, the term “respondents” refers to all State Parties plus the European Union, which reported on its own behalf as a Party to the Protocol plus its 15 Member States that also are Parties to the Protocol. When term “State Parties” is used in reference to the data, it refers to data collected from Parties to the Protocol, excluding the European Union and its 15 Member States that are Parties to the Protocol.*

<sup>7</sup> Gambia, Madagascar.

## 2. Overall implementation of the Protocol

One hundred and forty-five indicators were included in the analysis contained in this Global Progress Report, across 21 substantive articles of the Protocol.<sup>8</sup> In this first reporting cycle for the Protocol, the measures most commonly reported as implemented (fully or partially) were the following, in descending order:

- Article 14 (Unlawful conduct including criminal offences)  
The following were the types of conduct most frequently included as unlawful under domestic law:
  - Smuggling of tobacco and tobacco products (28 respondents)
  - Falsification of markings for tobacco (27 respondents) and tobacco products (26 respondents)
  - Tax evasion for tobacco and tobacco products (26 respondents)
  - Money laundering (26 respondents),
  - Concealment of tobacco products (25 respondents)
  - Obstructing illicit trade prevention or investigation (25 respondents),
  - Fraud (25 respondents)
  - All of the above activities constitute criminal offences (25 respondents).
- Article 16 (Prosecutions and sanctions): Persons held liable for the unlawful conduct are subjected to criminal or non-criminal sanctions (25 respondents).
- Article 6 (Licence, equivalent approval or control system): Licencing system for the import of tobacco products (25 respondents).

Article 8 (Tracking and tracing) of the Protocol requires that some of its provisions be implemented within a specific time frame. For instance, each Party needs to ensure that cigarette 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 17 and 15 respondents, respectively. 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 first reporting cycle, 16 respondents reported having established a tracking and tracing system.

The least implemented measures, reported by less than 10 respondents, were the following:

- Article 6 (Licence, equivalent approval or control system):
  - Licencing system in place for manufacturing equipment and equipment exports
  - Authority prerogatives related to manufacturing equipment licences and equipment export licences
  - Licence required for tobacco growing.
- Article 7 (Due diligence):
  - Identification of the bank accounts required for customer identification as part of due diligence.
- Article 8 (Tracking and tracing):
  - Information available for the machine used to manufacture tobacco products
  - Information available of the production shift or time of manufacture
  - Recorded information accessible to the Global Information-sharing Focal Point, when the latter becomes available, through a secure electronic interface.
- Article 9 (Record-keeping):
  - Records maintained of transactions and natural or legal persons engaged in manufacturing equipment supply chain
  - Records sharing system established;
  - Cooperation in sharing and developing improved record-keeping systems.
- Measures under Part V: International Cooperation (Articles 20–30).

<sup>8</sup> Articles for which implementation measures are required.

### 3. Implementation of the Protocol by provision

#### General obligations

##### Protection of personal data (Article 5)

###### Key observations

- **Over the past few years, several respondents have strengthened their legislation to protect individuals' personal data in relation to the implementation of the Protocol.**

Serbia reported the adoption of the Law on the Protection of Personal Data (RS 87/2018), which regulates the right to protection of an individual's personal data. The law also regulates free flow of such data, the principles of data processing, the rights of data subjects, and the obligations of controllers and personal data processors, as well as a code of conduct for controllers and processors. It also regulates the transfer of personal data to other countries and international organizations and provides for oversight of the implementation of this law, as well as remedies, liabilities and penalties in case of the violation of the rights of natural persons in connection with the processing of their personal data. It also describes special cases of data processing.

Currently in the EU, three main regulations are in place to protect personal data. The Data Protection Directive (Directive 95/46/EC), enacted in October 1995, is an EU directive that regulates the processing of personal data within

the EU and the free movement of such data. Directive 2016/680 (updated in 2019) concerns the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, as well as the free movement of such data. Finally, Regulation 2018/1725 covers the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies and on the free movement of such data.

In Mauritius, a new law on data protection – the Data Protection Act 2017 – came into force in 2018. This law governs privacy rights of individuals in relation to requirements of collection, processing, storage, transfer and handling of personal information.

In Ecuador, the Organic Bill for the Protection of Personal Data was presented to the National Assembly in September 2019 and was being debated in the Parliament at the time Ecuador submitted its report. The bill under negotiation foresees sanctions for the disclosure of production and sales information to third parties without authorization. Ecuador adopted standards such as International Organization for Standardization (ISO) 29 001 to protect individuals when treating their personal data. The *Personal Data Protection Guide for the Central Public Administration* has also been issued, aiming at being applied by the organs of the executive function of the Ecuadorian state.



## Supply chain control

### Licence, equivalent approval or control system (Article 6)

#### Key observations

- **Licensing the import of tobacco products was the most common type of licencing system established by respondents.**
- **Among respondents with licence requirements, most of them mentioned an obligation to report any change relevant to the licenced activities or any acquisition or disposal of manufacturing equipment.**

Regarding the point of the supply chain where licencing is applied, 25 respondents reported having a licencing system in place for the import of tobacco products, 19 for the manufacture of tobacco products and 19 for the export of tobacco products.

Licencing systems for the manufacture, import and export of the manufacturing equipment were less common, reported only by 10 respondents. Parties to the Protocol are also expected to require a licencing system to control or regulate production and distribution of tobacco in order to prevent illicit trade.

Altogether 21 respondents reported that they require licences for a natural or legal person to be engaged in tobacco wholesaling, brokering, warehousing or distributing. However, 16 respondents reported licencing of tobacco retailing, 11 respondents require licences for transporting tobacco products or manufacturing equipment in commercial quantities, while only eight reported the requirement of a licence for growing tobacco (except for small-scale growers, farmers and producers).

Of the respondents that reported having established or designated competent authorities with regards to licencing, this authority was in most cases under the ministries of trade, health or finance.

Twenty-four State Parties reported that their competent authorities have the prerogative to issue, renew, suspend or revoke licences for tobacco import. The prerogative in relation to tobacco exports (19 respondents) and manufacturing (18 respondents) is much more limited. As an example, in Serbia the licencing system is established through the Tobacco Act and the internal procedures of the tobacco administration provide for the necessary legal procedures before the licence is issued. In addition, periodic internal and external audits take place to ensure conformity.

In several reporting State Parties, licence fees are collected annually (Burkina Faso, Cabo Verde, Fiji, Qatar, Samoa and Togo) or every two years (the Islamic Republic of Iran and Nicaragua). In some other State Parties, licence fees are collected when licences are issued or renewed (Côte d'Ivoire, Montenegro, Serbia and Turkey). A couple of reporting State Parties do not collect fees at all (the United Kingdom of Great Britain and Northern Ireland, and Uruguay).

Regarding the information required for a licence application, 24 respondents reported that they request a business registration number, trade name and the identity, including the full name of the natural person who is the licence applicant, and 22 require proof of a tax registration number. For applicants who are legal persons, 24 respondents require proof of the legal name, trade name, business registration number, incorporation date and place, the location of the headquarters, and the names of directors and legal representatives.

For the same applicant, 23 respondents require proof of a tax registration number, 21 require copies of incorporation articles and 20 require details of corporate affiliates. However, only half of the State Parties notified the requirement of corporate affiliates to be reported when the entity is a legal person.

In addition to the applicant information, over 20 respondents request further information to enable an informed decision on licence applications. Only 12 State Parties with a licencing system in place reported that they ask for a complete identification of the bank accounts or payment details intended to be used in the relevant transactions.



## Case study

### UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

## Future of licencing and registration scheme during new tracking and tracing regime

The United Kingdom has a wide range of current approval requirements for the majority of the tobacco supply chain. However, to date it has not introduced a United Kingdom-wide scheme of licencing for tobacco retailers. It has so far been judged that the introduction of a licencing scheme for this part of the supply chain would not have significant enough impact on the illicit trade to merit introducing a scheme for that reason. However, the three Devolved Administrations (Scotland, Wales and Northern Ireland) already have or are implementing effective registration schemes for tobacco retailers to assist with enforcement of other tobacco control legislation, for example those related to health.

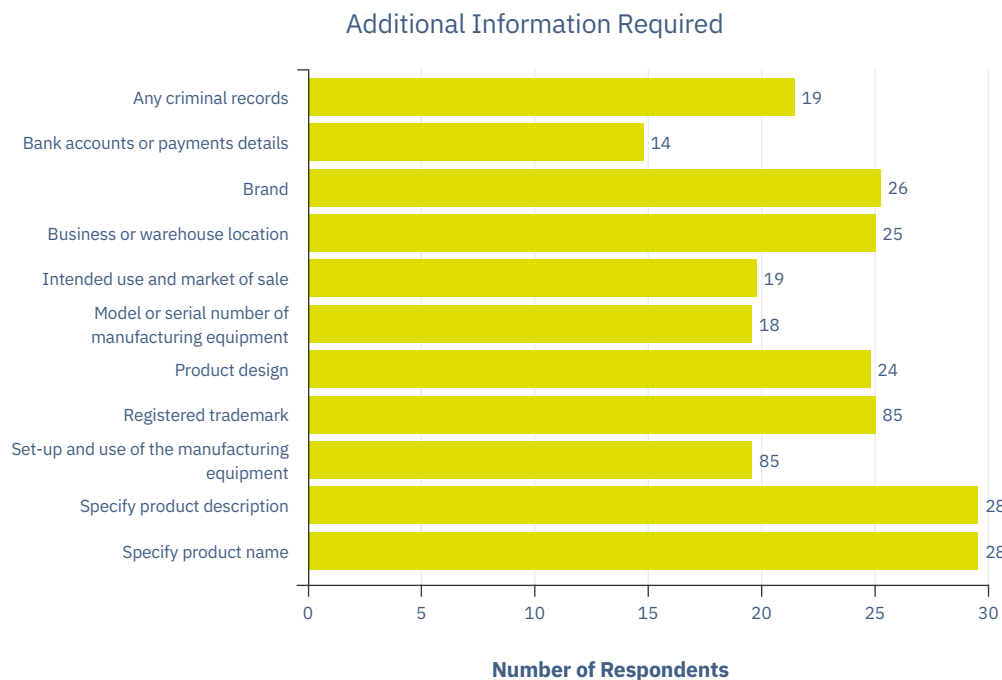
There is, however, no tobacco licencing scheme in England, nor does the Department of Health currently have plans for such a scheme. However, the Government continuously reviews its approach to tobacco control, and any further consideration of such a scheme in England will be based on an assessment of the evidence in the context of wider tobacco control legislation. Her Majesty's Revenue and Customs (HMRC) department will continue to work closely with the Department of Health in any further consideration of such schemes.

Another recent development that is relevant to this issue is that the United Kingdom has implemented a tracking and tracing system for tobacco products to comply with the Protocol. There is a requirement within this scheme for economic operators dealing in tobacco, including first retailer outlets, to obtain an operator identification from the United Kingdom ID Issuer, who is appointed by HMRC. Evidence of non-compliance can potentially lead to the operator ID being withdrawn, which would affect the ability to trade. HMRC has also recently consulted on sanctions associated with this scheme and plans legislation to strengthen these. The tracking and tracing scheme can, therefore, be potentially used as a compliance tool for parts of the supply chain, such as retailers.

HMRC continuously reviews the nature of tobacco fraud and adapts its approach to tackle illicit trade accordingly. This process will continue in the future, including further consideration of the merits of licencing and registration schemes where and when appropriate.

*Source:* Her Majesty's Revenue and Customs 2021



**Fig. 1** Information required for a licence application (N = 32)

Details of licence applications (in addition to basic requirements) in accordance with Article 6.3(b) of the Protocol can be seen in Fig. 1.

In their notes regarding the functioning of their licencing system, several respondents provided more information. For example, several measures have been reported by the respondents to prevent, detect and investigate irregular or fraudulent practices in the operation of the licencing system.

The EU explained that the issuance of a licence is subject to conditions that authorities are entitled to set out to prevent any possible evasion or abuse. For example, authorized warehouse keepers are required to provide a guarantee, keep accounts of stock and movements of excise goods, and consent to all monitoring and stock checks. Moreover, some EU Member States have set out further requirements for the establishment of bonded warehouses or rules that ensure that any breach of conditions of authorization may result in revocation of the authorization. Customs authorities may examine whether the business activity is legitimate and may carry out audits.

In Nicaragua, registration of tobacco importers and distributors is compulsory since 2019. Licences are granted to registered importers, distributors and manufacturers who comply with the mandatory labelling requirements of the country and allow inspection of the premises of their companies.

In addition, some of the State Parties reported that they undertake periodic reviews, inspections and audits of licences. Many of them reported doing it once a year (Burkina Faso, Cabo Verde, Fiji, Qatar, Samoa, Serbia and Togo) or once every two years (the Islamic Republic of Iran and Nicaragua); however, for some other State Parties there is no specific review period prescribed. They undertake audits as and when required (Comoros, Mauritius, the United Kingdom of Great Britain and Northern Ireland and a few Member States of the EU).

Twenty-two respondents reported that natural or legal persons have an obligation to inform the competent authority of any change of location of their business or any significant change in the licencing conditions. Additionally, in 14 respondents, natural or legal persons are obliged to report any acquisition or disposal of manufacturing equipment to the competent authority.

Benin and Samoa reported that they had initiated the legislative process to develop new licencing legislation. In 2019, Samoa developed a new regulation on the licensing of tobacco manufacturers, but the draft still awaits Cabinet approval.

In Norway, new licencing system legislation has been approved by the Parliament and was expected to come into force as domestic law in the fall of 2020. With this new legislation in place, licences will only be issued to legal persons, including legal persons with sole proprietorship. In addition, since January 2018 retailers are prohibited from selling tobacco products and tobacco surrogates to consumers, unless they are registered with an agency commissioned by the Norwegian Directorate of Health. Wholesalers of tobacco products and tobacco surrogates are also required to register. Tobacco products and tobacco surrogates can be sold to consumers only if they are lawfully imported or bought from a wholesaler who is registered.



## Case study

### TURKEY

## Elements of a comprehensive licencing system

Licencing procedures for the production, import and export of tobacco and tobacco products in Turkey are based on Law No. 4733 on the Regulation of Tobacco, Tobacco Products and Alcohol Market.<sup>9</sup> This law includes:

- Regulation on the Procedures and Principles Regarding Tobacco Production, Processing, Domestic and Foreign Trade (Tobacco Regulation)
- Regulation on Procedures and Principles Regarding Production and Trade of Tobacco Products (Tobacco Products Regulation)
- Regulation on Procedures and Principles Regarding the Production Method, Labelling and Inspection of Tobacco Products (Label Regulation).

In order to be able to trade tobacco in Turkey, a Tobacco Trade Authorization Certificate must be obtained from the Ministry of Agriculture and Forestry. For example, tobacco-processing facilities can only be established by legal persons holding a Tobacco Trade Authorization Certificate.

For the production of tobacco products, licencing consists of the issuance of a Certificate of Conformity for Establishing a Facility within the scope of Articles 5 and 6 of the Tobacco Products Regulation. The application procedure requires, among others, information on the applicant, certificate of activity, zoning status of the area where the facility is located and a disclaimer that the certificate would be suspended if it is found that the applicant violated the provisions of the relevant law. The application is examined by an expert appointed by the ministry to assess the applicant's eligibility for the Certificate of Conformity for Establishing a Facility. The certificate is valid for three years from the date of issue.

Companies with a Certificate of Conformity for Production and Activity and wishing to sell or distribute tobacco products produced within the country shall apply for Certificate of Conformity for the Market Supply within the scope of Articles 11 and 12 of the Tobacco Products Regulation and the provisions of the Label Regulation. In the application form, physical and chemical properties, a table of tobacco usage rates, ingredients notification and toxicological data tables, unit package and group designs, health warnings, production coding or similar marking information, and a trademark registration certificate are requested. The Certificate of Conformity for the Market Supply can only be issued after determining the conformity of the product to the relevant regulations.

<sup>9</sup> Law No. 4733 on the "Regulation of Tobacco, Tobacco Products and Alcohol Market" is available at: <https://www.tobaccocontrolaws.org/files/live/Turkey/Turkey%20-%20Law%20No.%204733.pdf>

## Due diligence (Article 7)

### Key observations

- **Less than half of the State Parties confirmed that they conduct due diligence before a business linkage is established with regards to customer identification.**
- **Only a few Parties reported having blocked a legal or natural person as customer on the basis of due diligence.**

Due diligence mechanisms are used to get information regarding business partners and to identify suspicious suppliers and partners in the supply chain so that the natural or legal person in question can make an informed decision whether to continue or to discontinue the business relationships. Conducting due diligence concerning business relationships of individuals and businesses involved in the supply chain of tobacco, tobacco products and manufacturing equipment is a key measure to prevent illicit trade.

Article 7 of the Protocol provides details on recommended requirements for due diligence, especially in terms of customer identification. However, only 15 State Parties described requiring due diligence before a business linkage is established with regards to customer identification for actors in the supply chain of tobacco, while 17 State Parties mentioned similar due diligence requirements for tobacco products. Some examples of due diligence activities carried out by the Parties are presented below.

In the United Kingdom of Great Britain and Northern Ireland, due diligence is an obligation with respect to tobacco manufacturers and any other person involved in the supply chain up until the point where the excise duty is payable; however, due diligence is not an obligation on points lower down the tobacco supply chain after the point at which the excise duty is paid.

As part of due diligence process of the supply chain, documentation or a declaration regarding any criminal records is required for customer identification purposes in 16 State Parties. Regarding use of the bank account for identifying customers, 12 State Parties reported resorting to it as part of the customer identification due diligence process.

In the 2020 reporting cycle, only six State Parties (Comoros, Fiji, the Islamic Republic of Iran, Iraq, Saudi Arabia and Serbia) reported that at least one legal or natural person has been “blocked” as customers within their jurisdiction as a result of due diligence process.

In addition to the new licencing system legislation reported under Article 6, Norway plans to introduce the following requirements for tobacco and tobacco products (already approved by Norwegian domestic law at the time of submission of Norway’s report, but not yet in force):

- the conduct of due diligence before the commencement of and during the course of a business relationship, including making sure that a licence and/or registration is in place when required;
- monitoring the sales to their customers to ensure that the quantities are commensurate with the demand for such products within the intended market of sale and use; and
- reporting to the Norwegian Directorate of Health any evidence that the customer is engaged in activities in contravention of the Norwegian Tobacco Act.



## Tracking and tracing (Article 8)

### Key observations

- **Despite being one of the time-bound measures of the Protocol, only 16 respondents have reported having a tracking and tracing system in place.**
- **A similar number of respondents noted that they require unique identification markings on unit packets, packages or outside packaging for cigarettes and also for other tobacco products.**

Based on the information presented in successive Global Progress Reports on the implementation of the WHO FCTC,<sup>10</sup> the number of Parties requiring markings and implementing tracking and tracing regimes increased notably over the past few years.

In the implementation reports submitted by the WHO FCTC Parties in the 2020 reporting cycle, around two thirds of WHO FCTC Parties reported requiring markings, and over one third of WHO FCTC Parties reported developing or implementing a practical tracking and tracing regime to secure the distribution system.

A global tracking and tracing regime comprising national and/or regional systems is a key requirement of the Protocol and a critical tool to fight against illicit trade. It is also one of the time-bound measures of the Protocol. With a view to enabling effective tracking and tracing, Parties are expected to ensure that cigarette packages bear unique identification markings containing essential information regarding the products within a period of five years of the entry into force of the Protocol and other tobacco product packages within 10 years.

In the 2020 reporting cycle, only 16 respondents reported that they have established a tracking and tracing system in their jurisdiction. Additionally, 17 respondents require that unique, secure and non-removable identification markings, such as codes or stamps, be affixed to or form part of all unit packets of cigarettes; 15 require the same for unit packages of cigarettes; and 14 for any outside packaging of cigarettes. Only 14 respondents require it for the unit packets of other tobacco products, and 13 for unit packages or any outside packaging of other tobacco products. In Ecuador, the Internal Revenue Service established a system of identification, marking, authentication, tracking and fiscal traceability (SIMAR) for alcoholic beverages, beer and domestically produced

<sup>10</sup> Please see WHO FCTC Global Progress Reports at [Global progress reports \(who.int\)](https://www.who.int/global-progress-reports)

cigarettes. This system has been in operation since February 2017, and between 2017 and 2019 almost 2 billion physical security codes have been issued.

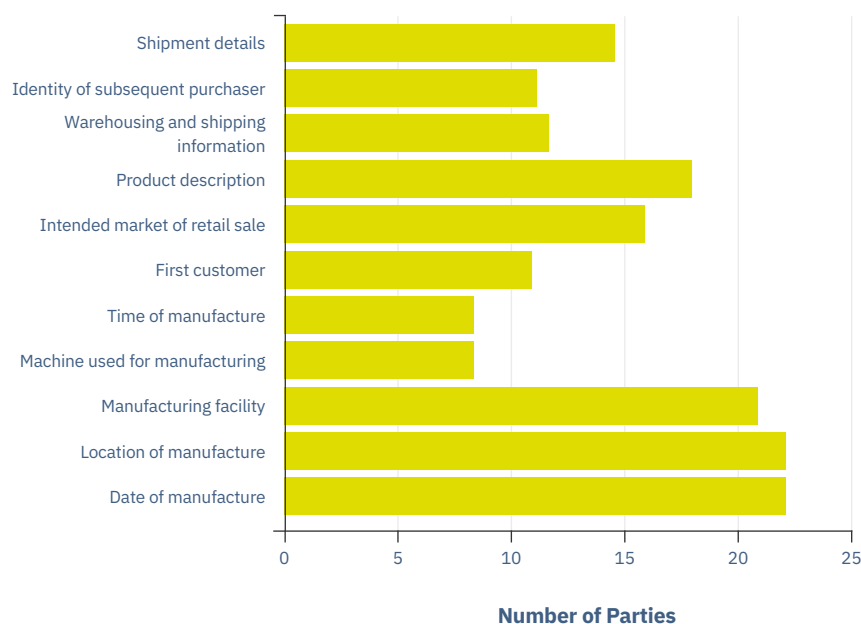
In the EU, the traceability system has been operational since May 2019. Member States may charge fees to manufacturers or importers for generating and issuing unique identifiers (traceability codes). In terms of storage of traceability data, manufacturers or importers bear all costs related to the establishment, operation and maintenance of the data storage system. The EU also requires that the charges incurred from manufacturers and importers should be fair, reasonable and proportionate to the costs. Manufacturers of tobacco products are also required to provide all other economic operators involved in the trade of tobacco products with equipment necessary for traceability.

In 2019, Serbia adopted a new law on Trade (Official Gazette of the Republic of Serbia, No. 52/2019) which introduced the obligation to label goods, without exception, with a machine-readable tag that provides the ability to obtain product information and enables the tracking of the supply chain – global trade item numbers (GTINs) for identification, quick response (QR) codes, etc., to more effectively prevent illicit trade.

Most of the respondents that provided more information on how they carry out their monitoring activities reported that the data beneath the unique identification marking is recorded by the customs authority or revenue administration authority. This information is also included in the tracking and tracing system of some respondents such as the EU, where the information is encoded in unique identification markings as part of the traceability system. Samoa also has a standard template and a tracking and tracing system in place for recording information regarding tobacco.

As part of the information collected or monitored by the respondents in their jurisdiction, 22 of them have reported that they record information of the manufacturing location and the date of manufacture in the unique identifier. However, some of the respondents require more detailed information, such as a product description and warehouse and shipment details, to be recorded under the unique code. It was reported that the least-common information to be collected was information on the production shift or time of manufacture and the machine used to manufacture tobacco products. More information on the required content of unique identification markings is shown in Fig. 2.

**Fig. 2** Number of respondents in the 2020 reporting cycle reporting the requirement of the following information in the unique identification marking (N = 32)



In the reporting instrument, Parties were asked in what ways they have ensured that any of the obligations assigned to their governments – in relation to tracking and tracing – are not delegated to or performed by the tobacco industry. Further, the requirements under Article 8.13 call on each Party to ensure that they only interact with the tobacco industry when strictly necessary.

For instance, the EU in its report provided examples of the obligations under Article 8.12 of the Protocol that cannot be delegated to the tobacco industry, which include the establishment and control of a tracking and tracing system and putting in place the requirement for unique, secure and non-removable identification markings; the availability of prescribed information, recorded at a specific time, properly formatted and accessible via the Global Information-sharing Focal Point on request; and the further development and expansion of its system scope.

On the development and features of the unique identifiers, the EU reported that the identifiers are generated by an independent third party to be appointed by Member States; the verification process of identifiers is protected with an anti-tampering device supplied and installed by a third party; the unique identifiers must

be secured as part of the generation process so that they cannot be tampered with once delivered to an economic operator; the data encoded in the identifiers, once delivered to the data storage services, cannot be altered or accessed by any other economic operator; and clearly defined rules are in place for the validation of data and its instantaneous access by national authorities and the European Commission via the central functionalities provided by the secondary data repository.

Further, in Senegal, the Tobacco Control Law of 28 March 2014 stipulates that “the State formally prohibits any interference from the tobacco industry in national health policies”. Along the same lines, Panama has incorporated into the functions of the National Council for Health without Tobacco (Executive Decree 178, 2018) and of the Inter-institutional Commission for the Implementation of the Protocol (Executive Decree 237, 2019) the role of monitoring and compliance with the implementation of the provisions of the WHO FCTC, as a form of control of tobacco industry interference in government health decisions. As in the case of Panama, many Parties to the WHO FCTC have adopted appropriate measures to prevent tobacco industry interference, providing a good basis for compliance with this requirement of the Protocol.



The United Kingdom of Great Britain and Northern Ireland reported that the costs of all components of its tracking and tracing system are borne by the tobacco industry. However, in several other reports by State Parties, this is not the case. On the other hand, a growing number of respondents mentioned the requirement to purchase excise stamps by importers and thus to partially bear the costs associated with their tracking and tracing systems.

For instance, in Mauritius, importers of tobacco products are required to purchase excise stamps from the Mauritius Revenue Authority. These stamps are an essential component of the tracking and tracing system, and importers are expected to submit monthly a report on the number of excise stamps used or damaged. A mobile application has also been developed by the Mauritius Revenue Authority for enforcement purposes.

Recently, the Norwegian Parliament has approved new legislation stating that 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 provisions of the new legislation.

## Record-keeping (Article 9)

### Key observations

- **Around 20 respondents reported requiring individuals or businesses involved in the supply chain of tobacco products to keep records of all relevant transactions.**
- **Only few Parties reported having established a record-sharing system and cooperating with other Parties and with competent international organizations in sharing their records and developing improved record-keeping systems.**

Customs administrations around the world, as per their relevant laws and regulations, usually require maintaining and keeping records of all transactions of cross-border movements of goods (and services) including export, import and transit for a specific duration. In their 2020 reports, 20 respondents mentioned requiring maintenance of complete and accurate records

of all relevant transactions of cross-border trade in tobacco and tobacco products, for all natural and legal persons engaged in the supply chain of tobacco while 19 of them require the same maintenance of records for trade in tobacco. However, only seven of them reported the same for manufacturing equipment.

In Mauritius, a wide range of data are collected on importers and imports. This includes, among other things, information pertaining to the importation company such as the address and the business registration number; details on the products being imported including their Harmonized System Codes, the country of importation, the amount being imported and the shipping details. The record-keeping system further safeguards data collected from importers with regards to duty paid on goods; cost, insurance freight; brands imported; airway bill references; and customs declarations. The database is subject to scrutiny by the customs authorities and is secured for future references.

The EU has specific legislation regarding information in relation to tobacco products. Directive 2008/118 sets out that authorized warehouse officials are required to keep, for each tax warehouse, accounts of stock and movements of excise goods, and consent to all monitoring and stock checks. Regulation 684/2009 sets out in detail information to be sent when moving excise goods, such as tobacco products under suspension of excise duty, and Directive 2014/40 requires complete and accurate records of all relevant transactions. Records are stored for at least five years. In addition, Member States have adopted national measures to ensure that relevant information, in line with Article 6 of the Protocol, is recorded and provided to authorities.



## Case study

### SERBIA

## Strengthening the record-keeping system

In 2005 Serbia introduced the Law on Tobacco that has established a licencing system and record-keeping for all persons licenced. Since then, Ministry of Finance's Tobacco Administration has been issuing licences for all entities in tobacco sector that are obligated to submit reports on their activities on a regular basis.

New amendments to the Law on Tobacco were adopted in Serbia in 2018 and 2019, and these require measures that correspond to Article 9 of the Protocol. A series of measures have been introduced, including an e-government portal and new requirements for recording tobacco production contracts electronically. These improvements are expected to make the record-keeping process more efficient in the coming years, as well as create conditions for better control in the tobacco sector as part of the effort to combat against illicit trade.

The Law on Tobacco details the obligations in terms of record-keeping for persons licenced in accordance with Article 6 of the Protocol. To ensure full implementation of Article 9, additional supporting documentation has been developed such as a rulebook on the content and method of keeping registers and lists of records of the production, processing and trade in tobacco and tobacco products.

Licenced entities are obliged to submit reports containing the recorded data to the Tobacco Administration on a regular basis. Production and trading entities (buying and selling, import and export) of tobacco and tobacco products are obliged to keep records on the quantity of seeds used, growing areas by lot number, type of tobacco leaves, tobacco growers, produced tobacco quantities, yield, processed quantities, bought and sold quantities, and stocks of processed tobacco.

For manufacture and trade (wholesale, retail, import and export) of tobacco and tobacco products, record-keeping requirements include quantities of manufactured, purchased and sold tobacco products; tobacco product stocks by type of tobacco product for each brand; and information on concluded contracts, warehouses, means of transport and prices of tobacco products.

In parallel, the Tobacco Administration keeps records and monitors changes of all tobacco products retail prices by brands, producers and importers who determine those prices.

There are other examples of specific legislative or administrative measures for tobacco or tobacco products that have been adopted by State Parties for record-keeping. In Fiji, for example, the Tobacco Control Act requires such records to be kept for two years.

In Qatar, the tobacco control programme has established a template to be used by tobacco dealers to collect information for the purposes of record-keeping. Tobacco dealers are required to maintain complete and accurate records of all relevant transactions in which they engage in, and they are required to make records available to the competent authorities at any time.

In Turkey, tobacco firms have to notify the Ministry of Agriculture and Forestry in the form of approved reports of raw material movements, production quantities, product quantities shipped from the production warehouse and other warehouses established within the country, sales, returns and tax stamp movements. Administrative fines are issued for those who do not submit the activity reports within the specified time period. In addition, the firms are required to keep records of imported tobacco and domestic tobacco used in the production of tobacco products; processed

products, such as fine cut tobacco; and of tobacco products that are produced, imported, placed in the market, returned from the market, exported, destroyed or otherwise released. Similarly, records of the supplied, used, unused, discarded, destroyed and returned tax stamps must be kept. In addition, manufacturers of tobacco products must keep records of the equipment that exist in their facilities.

Article 9 of the Protocol also provides Parties with provisions on how they should aim to share with each other the information recorded. Six State Parties (Burkina Faso, Fiji, the Islamic Republic of Iran, Mauritius, Qatar and Saudi Arabia), reported having established a system for sharing with other Parties details they keep records for, in accordance with Article 9. A few State Parties (Burkina Faso, Ecuador, Fiji, Mauritius, Nicaragua, Samoa, Saudi Arabia and the United Kingdom of Great Britain and Northern Ireland) reported that they shared experiences and cooperate with other Parties and with competent international organizations in sharing information and developing improved systems for record-keeping. Within the EU, Member States also have access to records stored under the EU traceability system and the excise movement control system.





## Security and preventive measures (Article 10)

### Key observations

- **Sanctions and preventive measures widely vary among respondents across level of affluence and geographical locations.**
- **Among the respondents with a licencing system, 18 respondents reported having dissuasive sanctions, such as penalties, in place to penalize any contravention of the requirements of this article.**

Parties were asked to provide examples of measures that are in place in their jurisdictions to prevent diversion of tobacco products into illicit trade channels. Several respondents reported various measures and also on efforts to ensure that contraventions are subject to appropriate criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions.

Among other examples, Norway reported that the Currency Register Act, which was amended in 2016, helps prevent crime and contributes to the correct tax and fee payment by giving the control and investigating bodies access to information

on currency exchanges and physical or electronic transfers of funds in and out of Norway.

In Mauritius, a bill of entry is validated in the Customs Management System for all importations and removal of goods from warehouses (so-called ex-warehousing) for home consumption upon payment of duties and taxes, and all consignments of imported cigarettes are escorted by customs from the port to the importer's bonded warehouse. In addition, all importers of cigarettes and operators of duty-free shops are legally required to submit a monthly return to customs, and the cigarettes intended for duty-free sale are also escorted by customs.

In Ecuador, in accordance with the Competences of the National Customs Service of Ecuador, several preventive measures have been implemented regarding the control of illicit trade. These include the creation of a specific task force for smuggling control, coordinated execution of control operations with inter-institutional patrols, and strengthening of customs intelligence. In addition, these new measures encourage bilateral exchange of information with counterparts at the borders for the execution of specific controls.

Altogether, 18 respondents reported that they apply sanctions when licensees do not adhere to the provisions of Article 10 of the Protocol. These sanctions usually take the form of penalties, criminal proceedings, licence removal or a combination of those measures. Some of the respondents provided details on their sanctions.

For instance,<sup>11</sup> Côte d'Ivoire has provisions to proceed with confiscation of goods, fines, closure of the establishment and suspension or withdrawal of the operating licence. In addition, penal sanctions are provided for by the penal code to sanction licensees who do not adhere to the provisions of Article 10.

In the EU, there are various sanctions in place relating to Article 10. For cross-border transfers of cash not declared or breaches of provisions of the Fifth Anti-Money Laundering Directive – which was adopted in 2018 and was expected to be applied in Member States in their national jurisdictions by 10 January 2020 – Member States are obliged to introduce effective, proportionate and dissuasive penalties. Some EU Member States have also legislated for revocation of licence and sanctions, as appropriate.

In Fiji, the Financial Transaction Reporting Act 2004 includes penalties for non-compliance; for example, avoidance of duty is sanctioned by strong penalties in the customs legislation – up to two or three times the value of the goods. In addition, the Tobacco Control Act

and Regulations have provisions to enable suspension or revocation of licences or registration for wholesalers or retailers if they are convicted of such crimes.

In Saudi Arabia, in accordance with the regulations for controlling tobacco violations, financial fines of up to 20 000 Saudi Riyals (US\$ 5000) are imposed on violators of measures that correspond to the requirements of Article 10 of the Protocol. Other judicial prosecution may apply as well, including imprisonment.

Serbia has criminal sanctions prescribed, security measures in place for the seizure of the items of the criminal offence of illicit trafficking, and misdemeanour penalties for unregistered activity. The imposition of criminal sanctions leads to a reconsideration of the conditions for further activity and may lead to the revocation of a licence for the licenced person involved in criminal activities, such as the diversion of tobacco products into illicit trade channels.

In Togo, manufacturers and accomplices of any contraband or counterfeit activity on tobacco and tobacco products are liable to imprisonment for three months to two years and/or to a fine between 20 million to 100 million West African francs (US\$ 35 000 to US\$ 170 000). Moreover, the penalty can be combined with the confiscation and destruction of smuggled and counterfeit tobacco or derivative products, the revocation of the right to exercise trade activity and publication of a judicial decision.



11 Some examples provided here also cross-cut with the implementation of Articles 14 and 16 of the Protocol.

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

### Key observations

- **Only 13 State Parties declared having a ban on online sales of tobacco products, but 22 respondents reported that they apply measures required under the Protocol to online sales.**

Several State Parties (Benin, Burkina Faso, Congo, Cote d'Ivoire, Qatar, Saudi Arabia, Togo and Turkey) reported having specific legislation prohibiting the selling of tobacco products through Internet and other related technology. In many cases, reports informed that fines are imposed on violators. As a successful example, in Samoa, since the issuance of Tobacco Control Act 2008, no case of sale of tobacco on the Internet or using any other evolving technology was reported.

In Serbia, Tobacco Control Act does not require a licence to sell tobacco and tobacco products using the Internet, telecommunication or any other evolving technology. Tobacco products can be sold only in certain type of stores, and they can be sold only in person, and not through self-service.

In the EU, the legislation does not prohibit sales of tobacco products through the Internet telecommunication or any other evolving technology, but Member States are allowed to prohibit cross-border distance sales. Many Member States already 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.

Ecuador, Qatar and Saudi Arabia reported that regular monitoring of the websites that sell tobacco products on the Internet is performed by regulatory authorities. In Iraq, the Ministry of Communications monitors violations in promoting tobacco products via websites and they block websites in case illegal promotion is detected.



## Free zones and international transit (Article 12)



Cargo seized in with more than 15 million units of cigarettes in Veraguas Province, Panama  
(Photo: National Revenue Authority, Panama)

### Key observations

- **Seventeen respondents indicated that they have authorization to conduct controls in free zones.**
- **Fourteen State Parties indicated that they prohibit the intermingling of tobacco and non-tobacco products.**
- **Twenty respondents reported that they control transit or transhipment of tobacco products or manufacturing equipment.**

Article 12 is another of the time-bound requirements under the Protocol. Under it, Parties are required to implement effective controls on the manufacturing of – and transactions in – tobacco products in free zones within three years of entry into force of the Protocol.

In Turkey, the production of tobacco and tobacco products in free zones is not permitted and applications for such operating licences are rejected. Leaf tobacco purchases and sales in free zones require an authorization certificate issued by the Tobacco and Alcohol Market Regulatory Authority. The purchase and sale of tobacco products is generally prohibited in the free zones,

and only companies operating in the catering sector and duty-free stores are exempted.

Since February 2020, Montenegro has improved the Port Information System operating in the Free Zone of the Port of Bar. This system now includes an improved user interface and access control system for the port area, and contains an improved truck-traffic monitoring model. Moreover, in May 2018, the customs administration developed a new set of instructions entitled *Procedures in free zones and free warehouses*, which describes procedures related to the establishment, management, business and monitoring in free zones.

Qatar has reported that new regulations have been developed to manage and control sales of tobacco products in free zones, including limitation in the amount allowed to be sold at free zones per type of tobacco products. In addition, a working group has been established to coordinate activities to control sales of tobacco products in free zones.

Some of the respondents provided examples of controls implemented in free zones for a study conducted by the Convention Secretariat (see text box on page 29). However, only 14 State

## The Convention Secretariat launches report on examples to combat tobacco smuggling in free zones

The Convention Secretariat published a report on *Examples of current practices on the implementation of Article 12 (Free zones and international transit) of the Protocol to Eliminate Illicit Trade in Tobacco Products* in March 2021 showcasing international best practices in the operation and control of free zones.

The report was based on the information provided by 11 Parties to the WHO FCTC that responded to questions sent to them on their experience with free zones and conducting smuggling-related investigations.

The report was launched on 18 March 2021 during a technical webinar organized by the Convention Secretariat. (Photo: Convention Secretariat)



The report noted that many customs administrations require a special declaration with detailed information for tobacco products, which help to guarantee more effective risk management and electronic record-keeping. The report further found that many countries are prohibiting the intermingling of tobacco products by adopting a policy that prohibits cigarettes from being shipped in a container that also contains other commodities and requires that containers be weighed to ensure that the goods declaration is compatible with the reported contents. Greater transparency in the movement of goods and harmonization of data for better record-keeping were some other best practices presented in the report.

One of the important dimensions unearthed was that free zones should be considered “outside the Customs territory” only when duties and taxes are considered; in the case of non-tariff rules and procedures, such as compliance and enforcement practices, the same level of controls are to be exercised as outside free zones.

The report was launched in a technical webinar, *Curbing Illicit Tobacco in Free Zones: Time to Close the Pandora’s Box*, organized by the Convention Secretariat on 18 March 2021.

The report may be accessed at: <https://extranet.who.int/iris/restricted/bitstream/handle/10665/340212/9789240022171-eng.pdf?sequence=1&isAllowed=y&ua=1>

## Case study

### PANAMA

## Strengthening tobacco-related controls in free zones

On 4 April 2019, the Board of Directors of the Colon Free Zone – the second largest free port in the world after that in Hong Kong SAR (China) – adopted Resolution 008/201912 introducing measures regulating operations in free zones. These measures are summarized below.

Article 33 of the regulation establishes a special permit to authorize the import, transfer, export and re-export of cigarettes and tobacco products, raw materials and finished products.

Article 34 establishes that every company interested in obtaining a special permit for tobacco products, must submit a direct request through a note signed by their legal representative and accompanied by the following documents:

- a. declaration of the destination markets for the goods to be re-exported
- b. declaration of the suppliers and manufacturers of products to be marketed
- c. a valid Public Registry Certificate.

Article 35 states that companies to which this special permit is granted must know, identify and verify their suppliers, customers and buyers in order to avoid smuggling practices and prevent any criminal activity. Based on the “know your client” policy, a quarterly report in which it is shown that the health warnings corresponding to the destination market are verified, must be presented. In addition, Article 35 also regulates intermingling of tobacco products in the free zone. The legislation stipulates that the companies that have applied and have been granted a “special marketing to export, re-export, import and transfer their products” (the tobacco products) must do so by using separate containers or boxes, but those containers or boxes could be carried by the same means of transport, together with other products. The containers or boxes filled with cigarettes or tobacco products should be covered with a transparent plastic film, and on the four sides of the box it should be clearly marked that contains tobacco or tobacco products.

This new resolution strengthens previous custom legislation in place since 2008 (Law No. 13 of 24 January 2008), including monitoring and control of tobacco products that are in suspension of taxes or duties, and inspection and suspension of a merchandise, subject to any customs destination that does not comply with sanitary and health regulations or does not have the corresponding authorizations.

Moreover, the legislation prohibits the transit of products bearing markings on packages that have been counterfeited, altered or imitated. Customs authorities are empowered to inspect and detain goods in transit if they suspect them of being counterfeit.

Natural and legal persons operating in free zones are obliged to submit monthly reports on commercial movements related to tobacco products.

In addition, Panama keeps data on smuggling, actively enforces the regulation on intermingling described above, regularly controls potential intermingling with scanners and uses multi-tax audits and post-seizure investigations to address illicit trade in free zones.

<sup>12</sup> <https://www.panamalibredetabaco.com/documents/20182/99249/Resoluci%C3%B3n+008+ANA.pdf/9d85b4e2-9559-4667-afa4-0f82c4c132b7>



Parties stated that they prohibit 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.

Transit of cigarettes through the customs territory of Turkey is only allowed if each package and any outer packaging have health warnings in the official languages of the country of destination.

## Duty-free sales (Article 13)

### Key observations

- **Fourteen respondents reported that they impose Protocol provisions to duty-free sales.**
- **Seventeen respondents allow duty-free sales in their jurisdiction, out of which 15 reported duty-free sales actually took place in their jurisdiction.**

Many respondents have regulations on duty-free sales and require retailers to be registered.

And also, many are cross-referencing Article 6 (Price and tax measures to reduce the demand for tobacco) of the Convention and reporting their policies on prohibiting/restricting duty-free sales to and importations by international travellers of such products.

For example, in Norway, the obligation to register in a public national register maintained by the Norwegian Directorate of Health, in order to be allowed to sell tobacco products and tobacco surrogates, also applies to duty-free sales. In Serbia, the amendments to the Law on Tobacco made in 2018 regulate duty-free sales. In particular, legal persons involved in duty free sales are required to register with the relevant authority in the country and report all tobacco products brands intended to be sold. Duty free retailers should also be registered in Fiji.

In Benin, Article 23 of Law No. 2017-27 of 18 December 2017 prohibits the sale to international travellers and importation by them of tax- and duty-free tobacco, its derivatives or similar items.

*Please note that information in the next sections has been aggregated to comply with the confidentiality clauses of the respective Articles of the Protocol. Implementation examples are highlighted, but no specific countries are mentioned unless with the agreement of such countries.*

## Offences

### Unlawful conduct including criminal offences (Article 14)

#### Key observations

- **Smuggling is most often considered by respondents an unlawful criminal offence. Further, according to domestic laws, smuggling is associated with the falsification of markings and the evasion of taxes and duties in the manufacturing and cross-border trade of tobacco and tobacco products.**
- **Smuggling and the falsification of markings in case of manufacturing equipment is less often considered unlawful as the same activities in tobacco and tobacco products.**
- **Many respondents also reported that they consider money laundering, fraud, obstructing illicit trade prevention and investigation, and concealment of tobacco products as unlawful conduct.**

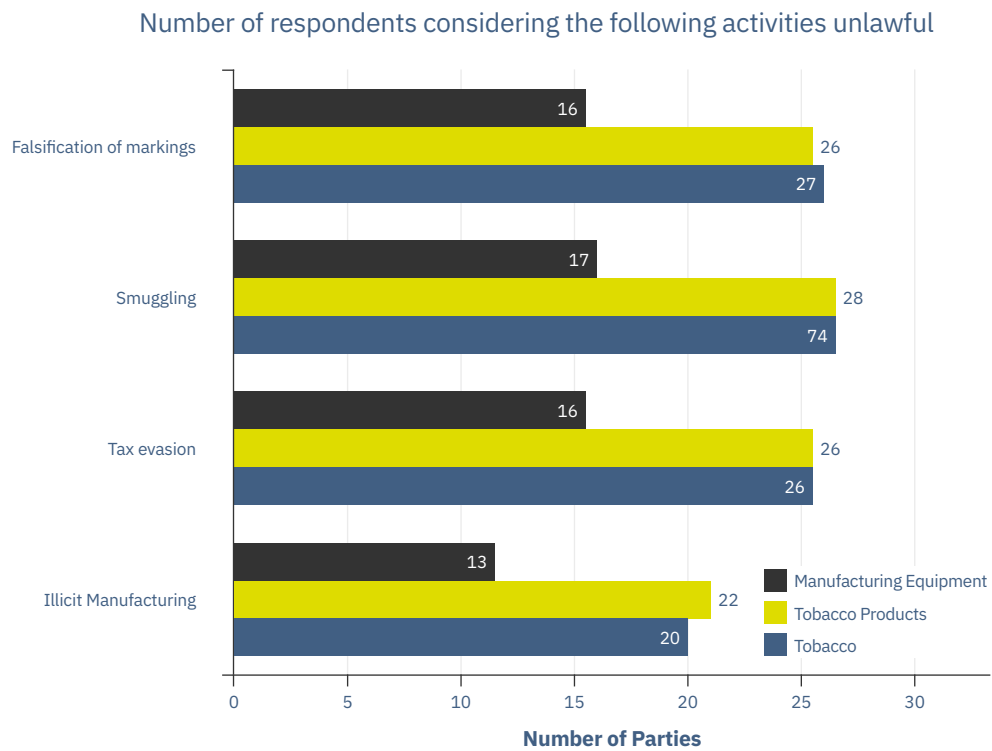
Figs. 3a and 3b present whether or not the activities listed constitute unlawful conduct in the respondents' jurisdictions, under their domestic laws. The numbers are provided for three items/product categories: 1) illicit trade of manufacturing equipment; 2) tobacco; and 3) tobacco products.

As is seen in Figs. 3a and 3b, not many respondents consider smuggling 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.

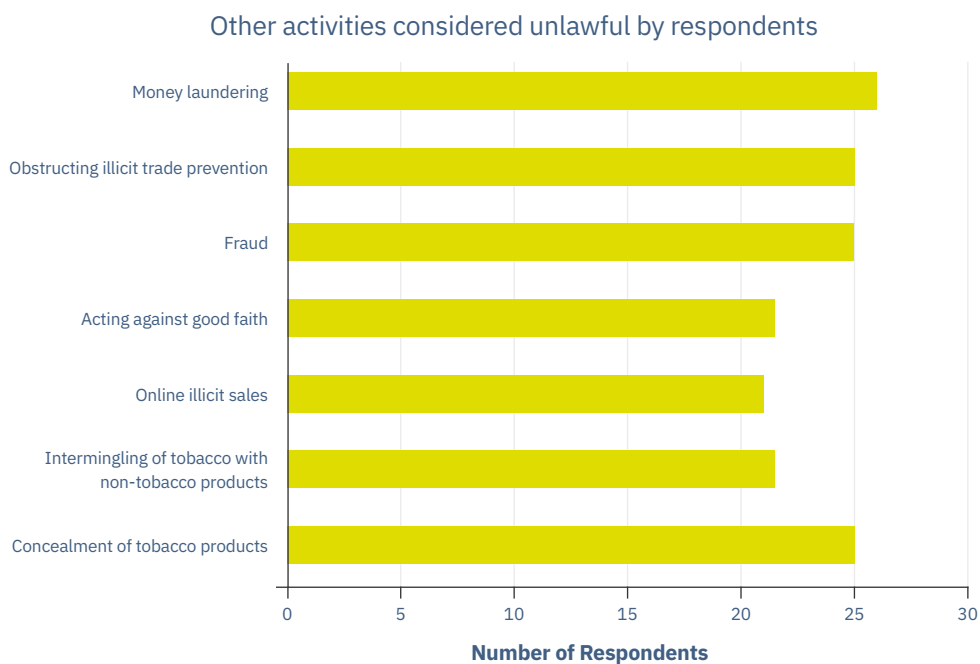
In accordance with the Protocol, money laundering is also considered unlawful conduct among 26 respondents. For many of respondents, other conducts such as fraud, obstructing illicit trade prevention or investigation efforts, and concealment of tobacco products are described as unlawful conduct in the

country’s domestic law. For 25 respondents, this unlawful conduct constitutes a criminal offence. Additionally, 24 State Parties consider acting against good faith unlawful, while intermingling of tobacco and non-tobacco products constitute an unlawful conduct in only 24 State Parties.

**Fig. 3a** Major activities in the 2020 reporting cycle considered unlawful by the respondents related to tobacco, tobacco products and manufacturing equipment [N = 32]



**Fig. 3b** Other activities considered unlawful by the respondents in the 2020 reporting cycle [N = 32]



## Case study

### EUROPEAN UNION

## Addressing Article 14 of the Protocol

The EU has adopted a series of legal instruments to establish liability of legal and natural persons relevant for some of the unlawful conduct set out in Article 14. These instruments include:

- Directive (EU) 2017/1371 harmonizes the definition of fraud and other criminal offences affecting the EU's financial interests and related sanctions (for natural and legal persons). This directive, known as the PIF directive, requires Member States to ensure that criminal offences (that is, fraud, corruption, money laundering and misappropriation) affecting the EU's financial interests (including evasion of customs duties) are punishable by effective, proportionate and dissuasive criminal sanctions. The deadline for transposition of the directive by EU Member States expired in July 2019 and systematic checks assessing the transposition in national law were to be carried out.
- Directive (EU) 2018/1673 combating money laundering by criminal law requires Member States to take necessary measures to ensure that offences are punishable by effective, proportionate and dissuasive penalties for breaches of customs legislation. These penalties can be administrative or criminal in nature.

Other relevant legislation includes Regulation (EC) No 1889/2005 and (EU) 2018/1672 on cash controls (not yet in force by the time of the submission of the implementation report – were to be applied from 3 June 2021) and Directive (EU) 2018/843 (Fifth Anti Money Laundering Directive).

In implementing the Protocol, some Member States have had to update their penal code or other national legislation to align them with the requirements of Article 14. While these directives have given support to EU Member States for the implementation of certain measures also relevant for Article 14 within their jurisdictions, in some Member States all Protocol offences listed in Article 14 may be punishable as criminal offences.



## Liability of legal persons (Article 15), prosecutions and sanctions (Article 16)

### Key observations

- **Twenty-one respondents declared having established the liability of legal persons for unlawful conduct.**
- **Twenty-five respondents reported that legal and natural persons held liable for unlawful conduct are subjected to criminal or non-criminal sanctions.**

**Liability of legal persons.** 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.

The EU reported that some of its Member States already had direct criminal liability of legal persons. In addition, when any of the activities affect EU's financial interests, for example, evasion of customs duties, EU Directive 2017/1371 (PIF Directive) established liability of legal persons. The directive combatting money laundering also established liability of legal persons. Some of the State Parties have independent institutions to deal with liability of legal persons, such as the Office of the Director of Public Prosecution in Mauritius and the Independent Commission Against Corruption in Fiji, while many other countries ministries of internal affairs oversee the related issues.

**Prosecutions and sanctions.** Overall, 25 respondents reported having adopted or implemented measures to ensure that natural and legal persons held liable for the unlawful conduct established under Article 14 are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, in accordance with their national law.

In order to better analyse the responses regarding legislative provisions of Parties on the liability of natural and legal persons and related criminal and non-criminal sanctions, future iterations of the questions in the reporting instrument may need to be more detailed to permit greater accuracy in responses.

## Seizure payments (Article 17) and disposal or destruction (Article 18)

### Key observations

- **Fifteen respondents mentioned having adopted legislation or other measures to recover taxes and duties related to seizures.**
- **Many State Parties reported seizure of tobacco products in their jurisdiction.**

**Seizure payments.** Overall, 15 respondents reported having adopted legislation or other measures to authorize competent authorities to levy an amount proportionate to lost taxes and duties from those involved in the illicit trade, such as the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products or manufacturing equipment.

**Disposal or destruction.** The confiscation and destruction of proceeds derived from illicit trade in tobacco products is a provision under the WHO FCTC, which has been reported as implemented by 73% of WHO FCTC Parties over the past two years. Not surprisingly, many Protocol Parties reported seizure and destruction of tobacco products in their jurisdiction. This includes control of illegal plantings and destruction of plantations. Tobacco products seized are usually destroyed or disposed of by burning, shredding and by making them completely worthless or unusable in appropriate recycling facilities.

## World Customs Organization released its Illicit Trade Report 2019



(Photo: WCO Website)

The World Customs Organization (WCO) released its *Illicit Trade Report 2019*, an annual publication in which it endeavours to quantify and map the situation concerning illicit markets in the key areas of customs enforcement including tobacco control.

Every year since 2012, WCO has published a report on illicit trade with robust and in-depth data analysis based on voluntary submission of seizure data and case studies by the WCO Member countries around the globe. The report provides comparative analysis of illicit trade data with that of previous years.

According to the 2019 Report, 86 countries reported 26 285 cases comprised of 32 426 seizures of smuggled alcohol and tobacco products, 83.8% of which involved tobacco products. Out of the goods that posed revenue risks, cigarettes constituted 55.2% of the cases as a single product. In terms of detection of smuggled products, the most effective control mechanisms were proved to be routine control, risk profiling and intelligence-led investigations.

According to the report, there was a 98.9% increase in the number of seizures of the tobacco products (cigars, e-cigarettes, etc.) in 2019, compared to the volume in 2018; the subcategory of hand-rolling and pipe tobacco showed an increase of 3644.1% over the same period.

It was found that 15 countries reported 20 468 cases, and 91.9% of the cases were detected at the time of imports. The two countries with most reported cases, Ireland and Saudi Arabia, both reported 99.7% of their cases as occurring at import.

The five countries that reported most seizures in 2019 – Ireland, Italy, Kuwait, Saudi Arabia and Slovakia – all reported the majority of their seizures as cigarettes.

The report may be accessed from the WCO website (link: [http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr\\_2019\\_en.pdf?db=web](http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/enforcement-and-compliance/activities-and-programmes/illicit-trade-report/itr_2019_en.pdf?db=web))

## Case study

### MAURITIUS

## Systematic destruction of seized tobacco products

The Government of Mauritius is fully committed to implementation of measures corresponding to Article 18 of the Protocol. Destruction procedures are well established and applied. For example, 180 000 cigarettes sticks were seized and destroyed in 2018, and in 2019 this quantity increased to 200 000 sticks.

The legal basis for the procedures is the amended version of Customs Act 1994. This law includes specific provisions to subject all seized tobacco products to destruction procedures. Cigarettes seized by the Customs Department are destroyed on a quarterly basis.

In accordance with Article 18, the destruction process follows strict methods and principles of accountability. Destruction certificates are issued for each product seized and destroyed. The destruction certificates are produced on demand by the relevant authority and available for verification. A copy of the original certificate is secured and archived for potential legal procedures.

The destruction is usually done on a sanitary landfill site using a cut-and-crush system and disposed of accordingly. In some cases, the Mauritius Revenue Authority may opt for destruction by incineration on the premises of private companies. The destruction is strictly monitored to be in compliance with the environmental standards in place and all methods of disposal adopted are environmentally friendly.

The destruction activity is conducted under the close supervision of representatives from the Customs Department and Ministry of Finance, Economic Planning and Development. This supervision includes verification of the goods prior to destruction, supervision of the operations while proceeding with destruction and the signing of forms indicating destruction took place. In addition, an officer from the National Agricultural Products Regulatory Office oversees the verification of the consignments prior to destruction.



Photo: Mauritius Revenue Authority

## Special investigative techniques (Article 19)

### Key observations

- **Fifteen respondents reported using special investigative techniques to combat illicit trade.**
- **Eleven respondents noted having concluded agreements or arrangements for the use of special investigative techniques.**

In the 2020 reporting cycle, 15 respondents reported that they allow the use of special investigative techniques to effectively combat illicit trade in tobacco, tobacco products or manufacturing equipment. Some State Parties mentioned establishment of special investigation bodies to tackle illicit trade such as Ministerio Público y Fiscalía Adjunta de Delitos Económicos, Tributarios Aduaneros y Propiedad Intelectual in Costa Rica and the Customs Control Section in Serbia.

Moreover, Article 19 of the Protocol encourage Parties to cooperate with one another in helping to build capacity in the use of special investigative techniques, but only 11 respondents noted having concluded bilateral or multilateral agreements or arrangements for the use of such techniques when investigating the criminal offences established in accordance with Article 14 of the Protocol.

Several respondents reported using special investigation techniques to control illicit trade in tobacco products using electronic tools or means. Other reporting respondents rely on joint investigations, including bilateral and multinational actions to exchange strategic information to combat smuggling of tobacco products between borders.

In its report, the EU mentioned a few special practices and procedures such as a special watch, simultaneous control, controlled delivery, covert investigations and the use of joint investigation teams.



Container seized for transporting 28 million units of allegedly smuggled cigarettes in Panama (Photo: National Customs Authority, Panama)

## International cooperation

### General information sharing (Article 20), enforcement information sharing (Article 21) and confidentiality and protection of information (Article 22)

#### Key observations

- **Eight State Parties reported that they exchanged information on enforcement, an area of cooperation that might improve as Protocol implementation moves ahead globally.**
- **Although it is mandatory to designate competent national authorities to which data referred to in Articles 20, 21 and 24 are supplied and to notify Parties of such designation through the Convention Secretariat, only 10 respondents notified the Convention Secretariat of such a designee.**

**General information sharing** is an important mechanism of the Protocol. Parties to the Protocol are expected to report through the reporting instrument provided by the Convention Secretariat on details of seizures of tobacco, tobacco products or manufacturing equipment; taxes evaded; the quantity or value of the production of tobacco, tobacco products or manufacturing equipment; and methods used in illicit trade, among other information. Several respondents already have a mechanism in place for information sharing with national authorities and international organizations. Information-sharing systems are reported to be used by an increasing number of Parties for the daily exchange of information related to the movement of cigarettes or information on seizures.

**Enforcement information sharing.** Article 21 further encourages the exchange of information on enforcement of the Protocol among Parties, either on their own initiative or on the request of a Party that provides due justification for the need of such information. In particular, information such as licencing records; identification information; records of investigations and prosecutions; records of payment for import, export or duty-free sales; and details of seizures should be

exchanged for the purposes of risk management or the investigation of illicit trade. Nonetheless, this article remains largely underutilized, with only eight State Parties reporting that they exchanged enforcement information with another Party on their initiative or on the other Party's request. Some reporting Parties have shared information with other jurisdictions, but in many cases, the exchange of information occurs through international platforms and cooperation networks using secure communication channels.

**Confidentiality and protection of information shared.** Overall, 10 respondents reported having designated competent a national authority or authorities to which data referred to in Articles 20, 21 and 24 of the Protocol are supplied, while nine of them have, at least, shared the names of the designated national (or regional) authorities with the Convention Secretariat.

### Assistance and cooperation in training, technical assistance and cooperation in scientific, technical and technological matters (Article 23) and in investigation and prosecution of offences (Article 24)

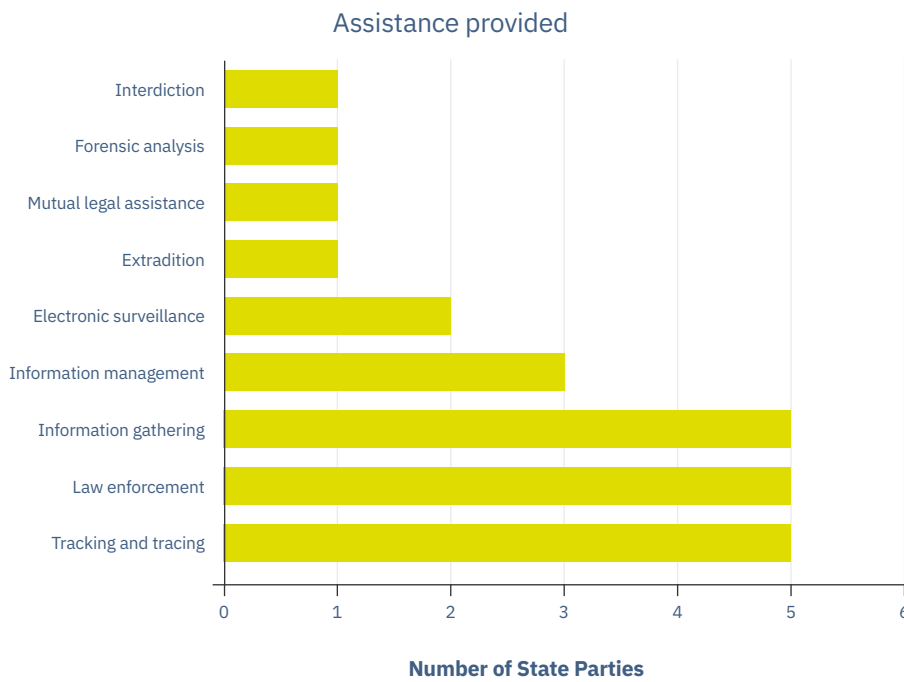
#### Key observations

- **Only a very small number of State Parties reported providing or receiving assistance from other State Parties in relation to any aspect related to Article 23 of the Protocol.**
- **Only seven respondents mentioned having cooperated and exchanged relevant information on investigations and prosecutions in relation to Article 24 of the Protocol.**

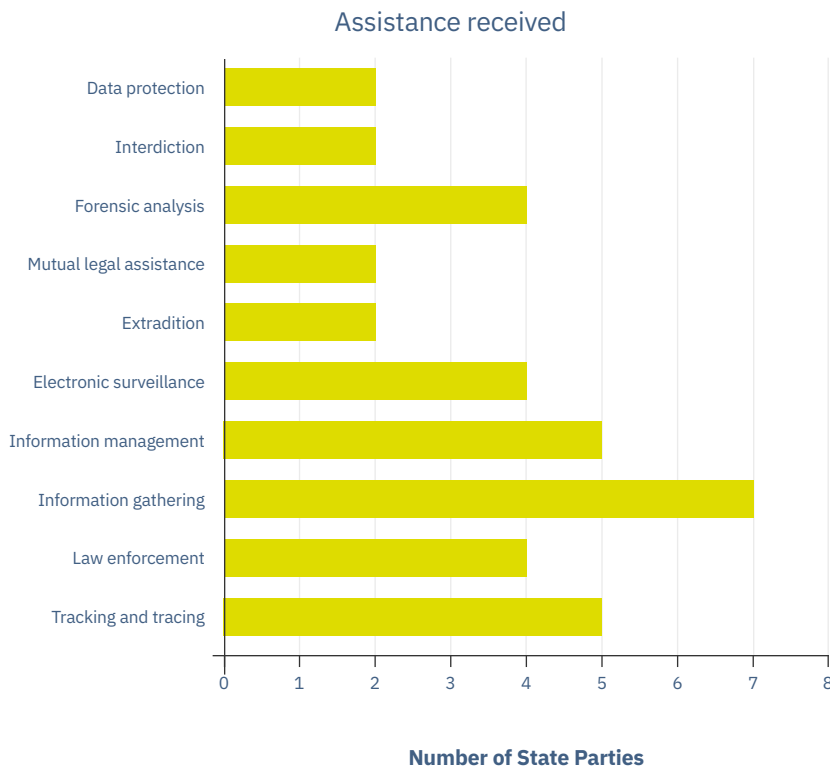
**Areas of assistance.** Both the provision and reception of financial or technical assistance to or from other Parties was uncommon, reported by less than 10 State Parties. Such cooperation was most commonly reported in the areas of tracking and tracing, law enforcement or information gathering (4a and 4b). No provision of assistance was reported in the area of data protection.



**Fig. 4a** Number of State Parties in the 2020 reporting cycle that reported providing assistance, by areas of assistance



**Fig. 4b** Number of State Parties in the 2020 reporting cycle that reported receiving assistance, by areas of assistance



**Research on the geographical origin of seized tobacco.** Only two respondents 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.

**Investigation and prosecution.** A few respondents mentioned having measures in place to strengthen cooperation for the prevention, detection, investigation, prosecution and punishment of persons or businesses engaged in illicit trade. Seven respondents reported that they entered in multilateral, regional or bilateral arrangements for the purpose of the advancement of investigation and prosecution of offences in accordance to Article 24 of the Protocol. For example, some of the respondents mentioned that they are Parties to the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention) and that has also been used by them as a platform for data exchanges on seizures.

Seven respondents have reported that they cooperated and exchanged relevant information on investigation and prosecution with a view to eliminating illicit trade in tobacco products. In most cases, the exchange of information take place at the regional level. Moreover, several Parties mentioned that they are pursuing efforts to improve international cooperation and to expand cooperation networks.

## **Jurisdiction (Article 26) and law enforcement cooperation (Article 27)**

### **Key observations**

- **Thirteen respondents reported having a jurisdiction established over criminal offences.**
- **Additional, 20 respondents reported having established mechanisms for effective domestic cooperation between customs, police and other law enforcement agencies, for the benefit of information sharing and law enforcement to counter illicit trade.**
- **A much lower number of respondents indicated having mechanisms of**

### **cooperation in law enforcement, mainly through bilateral or multilateral agreement established with other Parties.**

**Jurisdiction.** Thirteen respondents reported having adopted measures to establish jurisdiction over the unlawful conduct established in accordance with Article 14 of the Protocol. For many respondents, specific regulations (for example, as part of an act) in relation to jurisdictional matters are part of their criminal or penal code. Several Parties with no established jurisdiction over such offences yet indicated that they are currently working on transposing these Protocol requirements in their legislation.

**Law enforcement cooperation.** Twenty respondents reported having established mechanisms for effective domestic cooperation among relevant government departments, such as customs, police and other law enforcement agencies, for the benefit of information sharing, data exchange and law enforcement. The cooperation is usually understood as sharing of information and intelligence, joint operational activity or investigations carried out by police, border force and customs authorities, and some other agencies, as required. Occasionally, departments of health and related agencies, such as departments of narcotics, drug administration, clinical research and tobacco control, are involved as well.

In addition, eight respondents reported that they established channels of communication among one another through bilateral or multilateral arrangements for the benefit of information sharing and law enforcement. Most of them (six respondents) used bilateral or multilateral agreements as the basis of cooperation. For example, some respondents have mentioned that they are Parties to the Nairobi Convention, which has also been used by them as a platform for information exchange.

## Mutual administrative assistance (Article 28) and mutual legal assistance (Article 29)

### Key observations

- **Only two State Parties reported having entered into mutual administrative assistance procedures with another Party and only one State Party reported the same for a mutual legal assistance procedures. The reports received provided little details about such collaboration.**
- **Seven respondents have reported that they designated a central authority for mutual legal assistance.**

**Mutual administrative assistance.** There is still room for improvement regarding the use of mutual administrative assistance as a tool to ensure the proper application of customs and other relevant law in the prevention, detection, investigation, prosecution and combating of illicit trade. Only two State Parties reported they have entered into a procedure of mutual administrative assistance with another Party in implementation of Protocol provisions.

**Mutual legal assistance.** Regarding mutual legal assistance in investigations, prosecutions and judicial proceedings, seven respondents declared having designated a central authority for the purpose of mutual legal assistance. In most cases, the designated authority is under the ministry of justice or legal affairs. Moreover, some State Parties reported that their domestic legislation was updated to facilitate the provision of assistance to law enforcement and judicial authorities abroad. However, only one State Party reported having entered into mutual legal assistance procedures with another Party as suggested in the Protocol.

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

### Key observations

- **Using the Protocol for the purpose of extradition is not a mechanism widely used by respondents.**

In this reporting cycle, only one Party reported using the Protocol for the purposes of extradition but has not provided further details. There is still room for improvement in using the Protocol for situations in which extradition may apply to criminal offences established in accordance with Article 14. On the bright side, several Parties such as Costa Rica, the EU, Fiji, United Kingdom of Great Britain and Northern Ireland, and Uruguay have bilateral agreements and comprehensive regulations in place for extradition measures. Therefore, if a situation arises requiring extradition, legal steps towards extradition may be agreed using Protocol provisions.

## Case study

### European Union

## Mutual Administrative Assistance (MAA) in customs matters

Mutual administrative assistance (MAA) in customs matters is an important element of administrative cooperation among customs authorities in order to ensure the proper application of customs legislation, as well as and the prevention, investigation and combating of customs irregularities and fraud.

MAA is often documented in international, legally binding agreements and protocols.

The agreements provide a legal basis to perform the MAA between the customs authorities of the Parties and establish a logistics framework to facilitate the exchange of information on suspicious consignments as well as investigative visits and on-the-spot checks.

The MAA agreements include provisions that allow for:

- the exchange of information between the Parties' competent authorities, either upon request or spontaneously, with regard to traders, goods, places or modes of transport involved or suspected of being involved in customs irregularities or fraud, with an automatic exchange also possibly envisaged; and
- investigative visits and on-the-spot checks by authorized officials of one Party on the territory of the other Party.

All information exchanged, particularly personal data, is subject to strict confidentiality requirements.

There are specific circumstances that allow for exceptions to the above obligations, namely, issues relating to sovereignty, public policy, security or professional secrecy.

At the time of publication of this report, the EU has more than 50 agreements in force including MAA provisions. They cover around 87 third countries and territories (i.e. countries and territories that are not Member States of the EU).

Link to the EU Customs MAA provisions: [https://ec.europa.eu/anti-fraud/policy/preventing-fraud/customs-cooperation-non-eu-countries\\_en](https://ec.europa.eu/anti-fraud/policy/preventing-fraud/customs-cooperation-non-eu-countries_en)



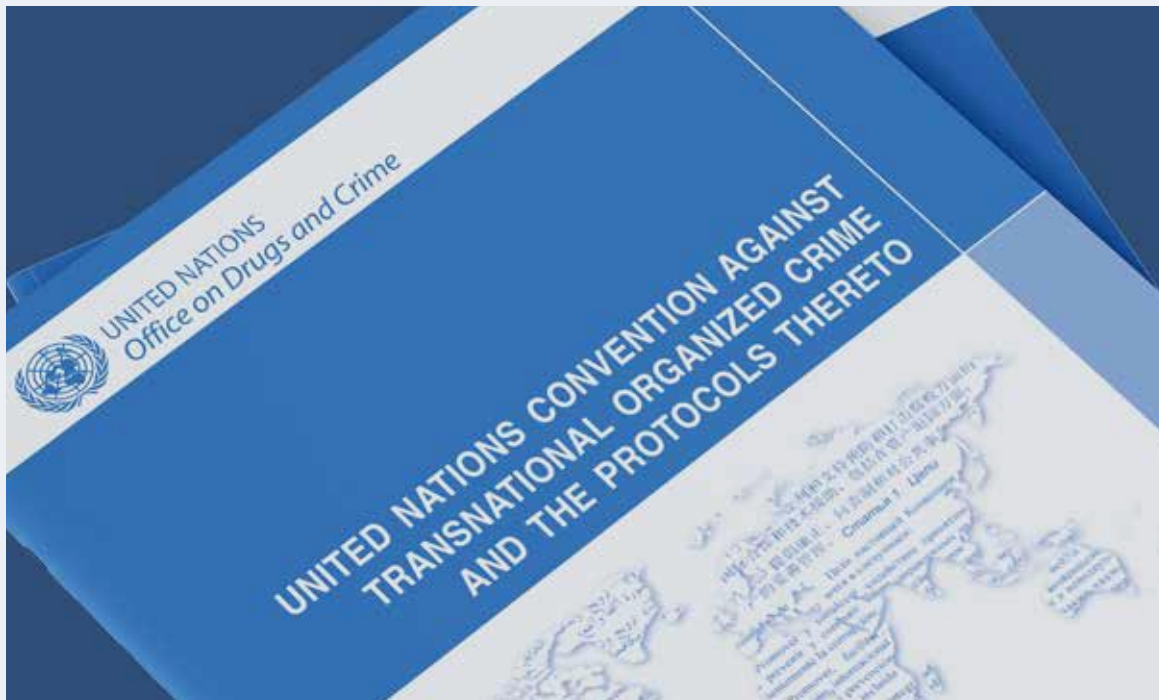


Photo: UNODC Website

### The United Nations Convention against Transnational Organized Crime: an instrument in the service of tobacco control

The Protocol does not provide much detail on procedures of extradition while, the Article 16 of the United Nations Convention against Transnational Organized Crime gives specific steps, procedures and details of extradition that may be useful for the Protocol Parties and interested readers. The Article is appended below.

#### Article 16: Extradition

1. This article shall apply to the offences covered by this Convention or in cases where an offence referred to in article 3, paragraph 1 (a) or (b), involves an organized criminal group and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.
3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.
5. States Parties that make extradition conditional on the existence of a treaty shall: (a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this

Convention; and (b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.
8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.
9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.
11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.
12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.
13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.
14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.
16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.
17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.





## 4. Priorities and comments

**Priorities for the implementation of the Protocol.** Almost all respondents commented on their priorities in implementing the Protocol. For many respondents the highest priority appears to be the implementation of a tracking and tracing system (Article 8) for tobacco products. This was followed by general obligations under Article 4 of the Protocol. These obligations include measures to control the supply chain, promote cooperation to enhance law enforcement, support the exchange of information, increase the effectiveness of relevant authorities and services, and ensure that the necessary assistance, technical support and capacity-building are provided. Strengthening tobacco control policies and defining a national strategy for the application of the Protocol were also mentioned by several respondents.

**Financing of national activities.** Fourteen respondents reported that their national activities related to the Protocol were financed in accordance with their national plans and priorities. The amount devoted to the implementation of this treaty vary greatly among respondents, and in many occasions, respondents underlined that the budgets for activities that could be related to the

implementation of the Protocol are subsumed in the budgets of various departments.

**Gaps between the resources available and the needs assessed.** When asked if they have identified any specific gaps between the resources available and the needs assessed for implementing the Protocol, only eight State Parties responded affirmatively, and out of those only four have provided details on the gaps identified. Three evoked the lack of resources (material, financial or human) for the implementation of the Protocol, the need for technical assistance, for the training of stakeholders involved, and for sharing of experiences through national and international meetings. One State Party mentioned the need for relevant research (without specifying exactly the subject) and one expressed the need for standard operating procedures for the implementation of the Protocol. One Party indicated the lack of capacity for reporting due to the COVID-19 pandemic.

**Constraints and barriers other than lack of resources.** Many State Parties commented on constraints or barriers encountered while implementing the Protocol. The constraints and barriers enumerated by the respondents can be classified under three main categories: technical and capacity-related barriers; barriers in terms of governance; and policy-related obstacles.



The lack of technical resources and the lack of capacity to implement the Protocol and monitor its implementation were reported as immediate barriers, followed by a lack of experience on the part of stakeholders, and relatedly, a lack of training and capacity-building. The lack of effective regional and international collaboration, as well as information exchanges on best practices and experiences in relation to the Protocol, was also mentioned as an additional capacity-related barrier. Two State Parties have mentioned the lack of guidance on implementation of the Protocol; one Party specifically referred to Article 8 as an implementation barrier.

Most State Parties reported having challenges in terms of governance, indicated a lack of inter-institutional coordination that could promote the implementation of the Protocol and the lack of engagement of some key actors, such as customs and police. Two State Parties (Panama and Samoa) also referred to tobacco industry interference as an implementation barrier.

Policy-related obstacles were also noted, such as an insufficiently broad legal framework that could not ensure a comprehensive approach to controlling illicit trade and difficulties in establishing an appropriate tracking and tracing system.



Photo: Jamaica Customs Agency

## 5. Conclusions

This *2021 Global Progress on the Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products* is aimed at assisting Parties in their implementation of the Protocol through sharing information and promoting mutual learning experiences.

Implementation highly varies among respondents. Article 6 (Licence, equivalent approval or control system), Article 14 (Unlawful conduct) and Article 16 (Prosecutions and sanctions) show the greatest level of implementation.

The measures related to international cooperation showed a low level of implementation and thus have a great potential for improvement.

With regard to the time-bound measures included in Article 8, almost half of the respondents confirmed the establishment of a tracking and tracing system, which constitutes leverage for implementation of a wide range of other Protocol articles. The tracking and tracing systems that are already functional or in the process of being established are key to the establishment and

functioning of the Global Information-sharing Focal Point, mandated by the Protocol to be set up at the Convention Secretariat.

Many respondents mentioned the lack of technical capacities and poor coordination among government agencies as barriers hindering the efficient implementation of the provisions.

Several reports submitted by developing-country Parties and Parties with economies in transition also refer to the mismatch between the level of financial resources and the actual needs for meeting their obligations under the Protocol. To address this, implementation of some requirements of the Protocol (such as Articles 6 and 36) could generate additional resources for governments.

Proper implementation of the articles under international cooperation might address some of the problems, for example, capacity support among Parties in scientific, technical and technological matters and in investigations and prosecutions, and have the potential to significantly improve implementation of the Protocol.

## ANNEX. Key indicators and implementation status by indicators as reported in the 2020 reporting cycle

Protocol articles	Substantive or similar measures	Number of Respondents
<b>Article 6</b>	<b>Licence, equivalent approval or control system</b>	
Licencing system in place for	Manufacture of tobacco products	19
	Manufacture of manufacturing equipment	8
	Import of tobacco products	25
	Export of tobacco products	19
	Import of manufacturing equipment	10
	Export of manufacturing equipment	7
Licence required for any natural or legal person engaged in	Tobacco retailing	16
	Tobacco growing	8
	Tobacco and manufacturing equipment transport	11
	Tobacco wholesaling, warehousing or distributing	21
Competent authority has the prerogative to issue, renew, suspend, revoke and/or cancel licences for	Tobacco manufacturing	18
	Tobacco import	24
	Tobacco export	19
	Manufacture of manufacturing equipment	7
	Import of manufacturing equipment	10
	Export of manufacturing equipment	9
Proof required for natural person licence applicant	Identity	24
	Tradename	24
	Business registration number	24
	Tax registration number	22
Proof required for legal person licence applicant	Legal name	24
	Tradename	24
	Business registration number	24
	Incorporation date and place	24
	Headquarter location	24
	Tax registration number	23
	Copies of incorporation articles	21
	Corporate affiliates	20
	Names of directors and legal representatives	24
Licence applicant are required to specify	Business or warehouse location	22
	Specify product description	24
	Specify product name	23
	Registered trademark	22
	Product design	20
	Brand	22
	Model or serial number of manufacturing equipment	15
	Set-up and use of the manufacturing equipment	15
	Any criminal records	17
	Bank accounts or payment details	12
	Intended use and market of sale	16
Obligation to report	Obligation to report any change relevant to the licenced activities	22
	Obligation to report any acquisition or disposal of manufacturing equipment	14

<b>Article 7</b>		<b>Due diligence</b>	
Due diligence required for all natural and legal persons engaged in	Supply chain of tobacco before a business relationship		13
	Supply chain of tobacco products before a business relationship		15
	Supply chain of tobacco during business		14
	Supply chain of tobacco products during business		15
	Due diligence required with regards to customer identification		14
	Criminal records declaration required for customer identification		12
	Identification of the bank accounts required for customer identification		9
	Legal or natural persons “blocked” as customers		6
<b>Article 8</b>		<b>Tracking and tracing</b>	
Unique identification markings required on	Tracking and tracing system established		16
	All unit packets of cigarettes		17
	All unit packages of cigarettes		15
	Any outside packaging of cigarettes		14
	All unit packets of other tobacco products		14
	All unit packages of other tobacco products		13
	Any outside packaging of other tobacco products		13
	Manufacture date		22
	Manufacture location		22
	Manufacturing facility		20
Information available on	Machine used for manufacturing		7
	Manufacture time		7
	First customer		10
	Intended market of retail sale		15
	Product description		18
	Warehousing and shipping		12
	Subsequent purchaser identity		11
	Shipment details		14
	Recorded information accessible to the Global Information-sharing Focal Point through a secure electronic interface		6
	<b>Article 9</b>		<b>Record-keeping</b>
Records maintained of transactions and natural or legal persons engaged in	Tobacco supply chain		19
	Tobacco products supply chain		20
	Manufacturing equipment supply chain		7
	Tobacco products and manufacturing equipment manufactured for export		8
	Records sharing system established		6
	Cooperation in sharing and developing improved record-keeping systems		8
<b>Article 10</b>		<b>Security and preventive measures</b>	
	Sanctions in place for licensees		18
<b>Article 11</b>		<b>Sales by Internet, telecommunication or any other evolving technology</b>	
	Protocol application to online sales		22
	Ban on sales of online tobacco products		13

Protocol articles	Substantive or similar measures	Number of Respondents
<b>Article 12</b>	<b>Free zones and international transit</b>	
	Authorization to conduct controls in free zones	17
	Prohibition of tobacco and non-tobacco products intermingling	14
	Control of transit or transshipment	22
<b>Article 13</b>	<b>Duty-free sales</b>	
	Duty-free sales allowed	17
	Evidence of duty-free sales	15
	Duty-free sales subject to protocol provisions	14
<b>Article 14</b>	<b>Unlawful conduct including criminal offences</b>	
Illicit manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting	Tobacco	22
	Tobacco products	22
	Manufacturing equipment	13
Tax evasion	Tobacco	26
	Tobacco products	26
	Manufacturing equipment	16
Smuggling	Tobacco	28
	Tobacco products	28
	Manufacturing equipment	17
Falsification of markings	Tobacco	27
	Tobacco products	26
	Manufacturing equipment	16
Counterfeiting	Tobacco	27
	Tobacco products	27
	Manufacturing equipment	17
Unlawful conduct in domestic laws	Concealment of tobacco products	25
	Intermingling of tobacco and non-tobacco products	22
	Online illicit trade	21
	Acting against good faith	22
	Obstructing illicit trade prevention or investigation	25
	Fraud	25
	Money laundering	26
	Above activities constitute criminal offences	25
<b>Article 15</b>	<b>Liability of legal persons</b>	
	Liability of legal persons established for unlawful conduct	21
<b>Article 16</b>	<b>Prosecutions and sanctions</b>	
	Persons held liable for the unlawful conduct are subjected to criminal or non-criminal sanctions	25
<b>Article 17</b>	<b>Seizure payments</b>	
	Legislation and/or other measures adopted to recover taxes and duties related to seizures	15
<b>Article 19</b>	<b>Special investigative techniques</b>	
	The use of special investigative techniques allowed to combat illicit trade	15
	Bilateral or multilateral agreements or arrangements for the use of above techniques when investigating criminal offences	11

<b>Article 21</b>	<b>Enforcement information sharing</b>	
	Enforcement information exchanged	8
<b>Article 22</b>	<b>Information sharing: confidentiality and protection of information</b>	
	Competent authorities designated for information sharing	10
<b>Article 23</b>	<b>Assistance and cooperation: training, technical assistance and cooperation</b>	
Assistance provided on	Information gathering	5
	Law enforcement	5
	Tracking and tracing	5
	Information management	3
	Protection of personal data	0
	Interdiction	1
	Electronic surveillance	2
	Forensic analysis	1
	Mutual legal assistance	1
	Extradition	1
Assistance received on	Information gathering	7
	Law enforcement	4
	Tracking and tracing	5
	Information management	5
	Protection of personal data	2
	Interdiction	2
	Electronic surveillance	4
	Forensic analysis	4
	Mutual legal assistance	2
	Extradition	2
	Research on geographical origin of seized tobacco conducted	2
<b>Article 24</b>	<b>Assistance and cooperation: investigation and prosecution of offences</b>	
	Arrangements in place for the advancement of investigations and prosecutions	7
	Cooperation and information exchange on investigation and prosecution	7
<b>Article 26</b>	<b>Jurisdiction</b>	
	Jurisdiction established over criminal offences	13
<b>Article 27</b>	<b>Law enforcement cooperation</b>	
	Mechanisms for effective law enforcement domestic cooperation established	20
	Mechanisms of cooperation in law enforcement established with other Parties	8
	Bilateral or multilateral agreements for cooperation with other Parties	6
<b>Article 28</b>	<b>Mutual administrative assistance</b>	
	Mutual administrative assistance procedure with another Party	2
<b>Article 29</b>	<b>Mutual legal assistance</b>	
	Mutual legal assistance procedures with another Party	1
	Central authority designated for mutual legal assistance	7
<b>Article 30</b>	<b>Extradition</b>	
	The Protocol used for the purposes of extradition	1









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