



PROTOCOL
TO ELIMINATE
ILLCIT TRADE IN
TOBACCO PRODUCTS

**MEETING OF THE PARTIES TO THE PROTOCOL
TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS**

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Global progress in implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products

Report by the Convention Secretariat

Purpose of the document

The present report describes the status of implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products based on implementation reports submitted by Parties to the Protocol in the 2023 reporting cycle.

The full version of the *2023 Global Progress Report on Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products* will be made available before the Third session of the Meeting of the Parties to the Protocol at <https://fctc.who.int/protocol/reporting/global-progress-reports>. Individual reports from the Parties will be available at <https://fctc.who.int/who-fctc/reporting/implementation-database>.

Action by the Meeting of the Parties

The Meeting of the Parties is invited to note the present report.

Contribution to the Sustainable Development Goals (SDGs): All SDGs; in particular SDG 3 and Target 3.a, as well as SDG 16.

Link to Workplan and Budget item: None.

Additional financial implications, if not included in the Workplan and Budget: None.

Related document(s): None.

BACKGROUND

1. The Convention Secretariat conducted the 2023 reporting cycle for the Protocol to Eliminate Illicit Trade in Tobacco Products in accordance with decision FCTC/MOP1(10), in conjunction with the reporting cycle of the WHO Framework Convention on Tobacco Control (WHO FCTC). Of the 62 Parties to the Protocol required to report in the 2023 cycle, 53 (85%) formally submitted their implementation reports.¹ Nevertheless, most of the Parties that have not formally submitted their reports updated their data in the reporting platform, and the updated data were reflected in the present report.

2. The present report summarizes the key observations on the implementation of the Protocol as well as a few related priorities, gaps and constraints identified by the Parties. A detailed analysis of the information provided by the Parties, including examples of progress made by the Parties and case studies of advanced implementation of the Protocol, will be presented in the full version of the *2023 Global Progress Report on the Implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products*. The full report will be available on the WHO FCTC website.

OVERALL PROGRESS IN THE IMPLEMENTATION OF THE PROTOCOL

3. The overall status of the implementation of the Protocol was assessed based on key indicators under each substantive article. Implementation rates for each article continue to vary and will be presented in the sections below.

4. Articles on which Parties reported the most progress include Article 16 (Prosecutions and sanctions), Article 10 (Security and preventive measures) and Article 14 (Unlawful conduct including criminal offences). In relation to implementation of the time-bound requirements under Article 8 (Tracking and tracing), 35 Parties (57%) informed the Convention Secretariat about the establishment of a tracking and tracing system. Lower implementation was observed for measures related to articles under Part V of the Protocol (International cooperation), in particular Article 30 (Extradition), Article 29 (Mutual legal assistance) and Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters).

PROGRESS REPORTED BY THE PARTIES, BY PROVISION

Protection of personal data (Article 5)

5. Most of the Parties reported on their existing legislation to protect personal data in relation to the implementation of the Protocol; many of them mentioned the relevant law or regulation. A few Parties reported having issued data protection regulations since the submission of their previous reports. For example, Ecuador issued its law on the protection of personal data in 2021; the law applies to the public

¹ At the time this report was prepared, the Protocol had 67 Parties, but only 62 Parties were required to report on their implementation of the Protocol provisions in 2023. For the analysis presented here, all reports submitted and updated in the reporting platform were extracted on 16 May 2023. The following Parties had formally submitted reports by that time: Austria, Belgium, Benin, Brazil, Burkina Faso, Chad, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Ecuador, European Union, Fiji, France, Gambia, Ghana, Greece, Guinea, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Kuwait, Latvia, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mauritius, Montenegro, Netherlands (Kingdom of the), Nicaragua, Niger, Norway, Panama, Paraguay, Portugal, Qatar, Samoa, Saudi Arabia, Senegal, Seychelles, Slovakia, Spain, Sweden, Togo, Türkiye, United Kingdom of Great Britain and Northern Ireland and Uruguay. The status of submitted reports is available at <https://fctc.who.int/protocol/reporting/parties-reporting-timeline>.

and private sectors in relation to processing and subsequent use of personal data. The European Union (EU) mentioned its General Data Protection Regulation (2016/679), Data Protection Law Enforcement Directive (2016/680) and Regulation 2018/1725, which have been in place since 2018; it also touched upon mechanisms to transfer personal data from the EU to third countries. A few Parties reported efforts to develop similar data protection regulations. However, nine Parties reported that no specific regulation on protection of personal data exists in their jurisdictions.

Supply chain control (Articles 6–13)

6. In relation to **Article 6 (Licence, equivalent approval or control system)**, 38 Parties (61%) indicated having a licensing system in place for the importation of tobacco products, 32 Parties (52%) reported requiring licences for producing tobacco products, and 29 Parties (47%) reported having the same requirements for exporters. Few Parties reported having in place requirements for the import (23%), export (16%) and manufacture of manufacturing equipment (13%), despite these being mandatory requirements under the Protocol. Approximately half of the Parties (53%) require licences for any natural or legal person to be engaged in wholesaling, brokering, warehousing or distribution of tobacco, tobacco products or manufacturing equipment. A significantly lower number of Parties require licences for legal and natural persons in respect of activities such as retailing (39%), transporting commercial quantities (29%), and growing of tobacco, except for traditional small-scale growers, farmers and producers (18%).

7. The competent authority responsible for the issuance, renewal, suspension, revocation or cancellation of licenses varies among Parties. The ministries (or departments and units within these ministries) responsible for these matters range from customs and excise to finance, economic affairs, trade, tobacco control, health and agriculture. In 41 Parties (66%), the competent authority has the prerogative to issue, renew, suspend, revoke or cancel licences for importers of tobacco products. The competent authority has such prerogative in relation to manufacturers of tobacco products in 33 Parties (53%) and in relation to exporters of tobacco products in 28 Parties (45%).

8. In most Parties, licence fees are monitored and collected once a year, whereas some Parties use a longer tenure. A few Parties collect licence fees once, at the time of issuance of the licence, and some others do not charge a fee on issuance of a licence. Sanctions for fraudulent practices in relation to licensing vary widely from Party to Party and include both administrative and judicial sanctions. Sanctions range from suspension, revocation and cancellation of licences to fines and imprisonment of up to six years.

9. In relation to **Article 7 (Due diligence)**, only 19 Parties (31%) reported requiring that due diligence be conducted for all natural and legal persons engaged in the supply chain of tobacco, both before the commencement and in the course of a business relationship. The implementation rate is lower in respect of manufacturing equipment (20%). Nineteen Parties (31%) reported due diligence measures with regard to customer identification in respect of actors in the supply chain of tobacco and tobacco products and 12 of them (19%) reported requiring documentation (or a declaration) regarding any criminal records for customer identification purposes. In addition, eight Parties (13%) indicated conducting due diligence in identifying bank accounts used for trade transactions.

10. In relation to **Article 8 (Tracking and tracing)**, more than half of the Parties (57%) reported having established a tracking and tracing system in their jurisdiction; however, there is not sufficient information in the submitted reports to assess whether such systems contain all the essential components of a tracking and tracing system required under the Protocol. Parties were also asked to report whether they require that unique, secure and non-removable identification markings (UIMs) in the form of codes

or stamps need to be applied or affixed to or form part of all unit packets and packages and any outside packaging of cigarettes and other tobacco products. Fifty-seven per cent of the Parties reported requiring UIMs on unit packets (the cigarette packs), and 53% reported the same for unit packages (for example, cartons) and outside packages of cigarettes (for example, master cases). Fewer Parties (around 45%) reported the same for other tobacco products. These responses should be assessed with caution, as the understanding of the Parties on the features of the UIMs might substantially differ.

11. The tracking and tracing systems of Parties vary as far as the technology used, scope and coverage, capacity to capture data fields, serviceability, and user-friendliness are concerned. EU Member States reported that the system they used requires that information be encoded in UIMs, and that it should not exceed 50 alphanumeric characters. In the EU tracking and tracing system, each “ID issuer” (an entity that is appointed by each EU Member State and responsible for generating and issuing UIMs and is not affiliated with the tobacco industry) prepares its own coding structure based on basic elements indicated in the secondary legislation (adopted by each Member State). In the United Kingdom of Great Britain and Northern Ireland, data fields are captured in a central repository, which is only accessible to authorized government officials via a user interface. Most of the Parties reported that they do not require the tobacco industry to pay – in part or in full – for the establishment of tracking and tracing systems or the production of excise stamps. The ID issuers appointed at the level of EU Member States may charge proportionate and non-discriminatory fees to manufacturers or importers for generating and issuing UIMs.

12. In implementing **Article 9 (Record-keeping)**, 41 Parties (66%) reported requiring all natural and legal persons engaged in the supply chain of tobacco products to maintain complete and accurate records of all relevant transactions. However, the rates of implementation are lower in respect of licensees engaged in the supply chain of tobacco (50% of Parties) and in respect of manufacturing equipment (21% of Parties).

13. Many Parties reported the implementation of a range of measures to prevent the diversion of tobacco products into illicit trade channels, in line with **Article 10 of the Protocol (Security and preventive measures)**. For example, Panama elaborated on various articles in its domestic legislation that prevent natural and legal persons from being engaged in the illicit possession and trade of tobacco products. In the EU, cross-border transfers of cash amounting to over €10 000 need to be declared to customs authorities. Further, 44 Parties (71%) reported having established sanctions in their legislation to address situations when licensees do not adhere to the provisions of Article 10.

14. In relation to **Article 11 (Sale by Internet, telecommunication or any other evolving technology)**, 36 Parties (58%) reported applying measures to all sales of tobacco products covered by this article, while 29 of them (47%) imposed a complete ban on online sales and sales using telecommunications and similar technologies. Two Parties (Saudi Arabia and Serbia) do not issue licences to sell tobacco and tobacco products through the Internet-, telecommunication- or any other evolving technology-based mode of sale. In the Kingdom of the Netherlands, the ban on sales of tobacco products through the Internet is reported to be effective from 1 July 2023.

15. In relation to **Article 12 (Free zones and international transit)**, 38 Parties (61%) reported having the authority to conduct controls in free zones in accordance with its provisions. However, only 21 Parties (34%) prohibit the intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones. When goods are in transit or transshipment, 39 Parties (63%) require that controls be exercised for tobacco products and/or manufacturing equipment. Some Parties explicitly mentioned the absence of free zones in their territories. In terms of policies applied to free zones, for example, Montenegro has prohibited

the storage of tobacco products in the Luka Bar free zone since 2021. Türkiye reported that it does not allow production of tobacco and tobacco products in the free zones. Further, 11 Parties (18%) reported that they do not have effective controls in free zones.

16. In relation to **Article 13 (Duty free sales)**, 37 Parties (60%) reported that all relevant provisions of the Protocol apply to duty free sales of tobacco and tobacco products in their jurisdictions. Most of the Parties regulate the sale of cigarettes in duty free outlets by means of specific rules and conditions, whereas 15 Parties (24%) do not permit duty free sales in their jurisdictions. Comoros and Nicaragua reported that they only permit duty free sales of tobacco and tobacco products at airport terminals.

Offences (Articles 14–19)

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

18. In relation to **Article 15 (Liability of legal persons)**, 43 Parties (69%) reported that they held legal persons liable for established unlawful conduct, whereas 46 Parties (74%) reported ensuring that the natural and legal persons held liable for unlawful conduct are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, in accordance with their national law, pursuant to **Article 16 (Prosecutions and sanctions)**. The legislation in Latvia provides for criminal liability for the illegal sale of tobacco products even in small amounts – the illegal sale of a single pack of cigarettes sold illegally may give rise to criminal liability.

19. In relation to **Article 17 (Seizure payments)**, 36 Parties (58%) reported having adopted legislation or other measures to authorize competent authorities to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products or manufacturing equipment.

20. In relation to **Article 18 (Disposal or destruction)**, 28 Parties (45%) reported that all confiscated tobacco, tobacco products and manufacturing equipment had been destroyed in their jurisdictions; and 26 of them (42%) added that they use environmentally friendly methods for destroying or disposing of the confiscated tobacco products. Türkiye reported that tobacco products seized in the last two years were destroyed or disposed of by burning, shredding and rendering them unusable by appropriate methods in recycling facilities. The United Kingdom of Great Britain and Northern Ireland reported using environmentally friendly destruction methods, whereby tobacco products are destroyed via incineration, with the heat used to generate electricity, or via shredding; before destroying the seized cigarettes, the Party ensures that all packaging materials are removed and recycled where possible, whereas manufacturing equipment is broken down for scrap with any useable metal recycled.

21. Under **Article 19 (Special investigative techniques)**, 36 Parties (58%) confirmed using special investigative techniques to combat illicit trade in tobacco, tobacco products or manufacturing equipment. Further, 24 Parties (39%) notified the Convention Secretariat that they had signed bilateral or multilateral agreements or arrangements for using such techniques for the purpose of investigating the criminal offences established in accordance with Article 14 of the Protocol.

International cooperation (Articles 20–31)

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

23. In relation to **Article 21 (Enforcement information sharing)**, only 17 Parties (27%) reported having exchanged enforcement information with another Party on their own or at the request of the other Party in the previous two years for the purpose of detection or investigation of illicit trade in tobacco, tobacco products or manufacturing equipment for tobacco products. In relation to **Article 22 (Information sharing: confidentiality and protection of information)**, 22 Parties (36%) indicated that they notified the Convention Secretariat of their designated competent national authority for the purposes of Articles 20, 21 and 24.

24. In relation to **Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters)**, only a handful of Parties reported having engaged in providing and receiving financial or technical assistance to or by other Parties. As far as cooperation for capacity-building (training) between Parties is concerned, the most commonly cited areas of cooperation are law enforcement and information gathering. Ten Parties (16%) reported having developed or conducted research on identifying the exact geographical origin of seized tobacco and tobacco products. Implementation of **Article 24 (Assistance and cooperation: investigation and prosecution of offences)** has been low; only 14 Parties (23%) reported collaborative arrangement in this regard.

25. In relation to **Article 26 (Jurisdiction)**, (27 Parties 44%) reported having adopted measures to establish jurisdiction over the criminal offences established in accordance with Article 14.

26. In relation to **Article 27 (Law enforcement cooperation)**, 39 Parties (63%) reported having established a domestic coordination mechanism among enforcement agencies, and 39% of Parties reported having established coordination with law enforcement agencies in other Parties (mostly through bilateral or multilateral agreements).

27. In relation to **Article 28 (Mutual administrative assistance)**, 17 Parties (27%) reported having signed bilateral, regional or multilateral agreements with other Parties to enable mutual administrative assistance. The EU leads in implementing this article, having reported 87 mutual administrative assistance agreements with third countries in customs matters. Congo has similar agreements with Australia and the Central African Economic and Monetary Community, while Côte d'Ivoire has an agreement with Morocco. Brazil and Paraguay agreed to support each other and exchange best practices in countering illicit trade in tobacco.

28. In relation to **Article 29 (Mutual legal assistance)**, 18 Parties (29%) reported having designated a central authority for the purpose of mutual legal assistance. However, only seven Parties (11%) reported that they had participated in mutual legal assistance initiatives with another Party or Parties.

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

PRIORITIES, NEEDS, GAPS AND CHALLENGES TO IMPLEMENTATION

30. Almost all the Parties reported on their national priorities for implementation of the Protocol, many of them prioritizing the fight against illicit trade in tobacco products as a general matter. In the 2020 reporting cycle (the first reporting cycle for the Protocol), the main priority identified by the Parties was the implementation of a tracking and tracing system for tobacco products. In the 2023 reporting cycle, Parties continued to consider the establishment of a tracking and tracing system for tobacco and tobacco products (in accordance with the requirements of Article 8 of the Protocol) of high importance. Other measures prioritized by the Parties include the establishment of institutional mechanisms for coordination and cooperation of various agencies responsible for the implementation of the Protocol at the national level, as well as the development of comprehensive legislation or the revision of existing legislation to enable and strengthen implementation of the Protocol. Other measures considered as priorities include capacity-building of relevant staff and stakeholders, cooperation between Parties to the Protocol, mobilization of resources for implementation of the Protocol, and strengthening provisions for licensing by incorporating requirements for licences to import and manufacture manufacturing equipment for tobacco products.

31. Further, 12 Parties (19%) reported gaps between resources available and needs assessed for the implementation of the Protocol. Of these, nine Parties provided details on the gaps identified. Six Parties (10%) evoked the lack of financial, material or human resources for implementation of the Protocol. Other gaps identified by Parties in respect of implementation of the Protocol included lack of research, insufficient sharing of good practices and experiences of implementation, and inadequate mobility for border control and market surveillance. Some Parties highlighted the need for technical assistance and capacity-building of actors relevant to the implementation of the Protocol. In relation to **Article 36 (Financial resources)**, 23 Parties (37%) reported that financing national activities intended to achieve the objective of the Protocol in accordance with national plans, priorities and programmes. Some Parties indicated an amount allocated for implementation of the Protocol (including the establishment of a tracking and tracing system), while many others reported that they do not have budget allocations from the government exchequer for implementation of the national tobacco control strategy for the Protocol provisions.

32. In respect of constraints and barriers to implementation of the Protocol, 37 Parties (60%) provided information. Several Parties referred to interference by the tobacco industry as a constraint in the implementation of the Protocol. In addition to a lack of resources, the most reported constraints and barriers included a lack of comprehensive legislation and national strategy, technical and capacity- related barriers, and challenges related to domestic coordination.

33. Many Parties identified a lack of knowledge and guidance at the national and regional levels to implement an efficient tracking and tracing system as one of the biggest challenges to implementing the Protocol. For the EU and its Member States, the limited geographic coverage of the Protocol and the relatively low number of Parties that implement tracking and tracing systems constitute a challenge in benefiting from implementation of Protocol provisions. Some Parties mentioned that the ministries responsible for implementation of the Protocol have limited mandates and support from the political leadership. Some Parties identified inadequate knowledge and capacity for implementation of the Protocol at the domestic level as a major issue. Some Parties reported challenges with the set-up or operationalization of national coordination mechanisms or platforms for implementation (they may be lacking altogether, or ineffective). A few Parties identified the general lack of understanding of the needs and awareness of illicit trade in tobacco products at the domestic level as factors that impede implementation of the Protocol.

CONCLUSIONS

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

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

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

ACTION BY THE MEETING OF THE PARTIES

37. The Meeting of the Parties is invited to note the present report.

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