



Combating illicit trade of electronic nicotine delivery systems (ENDS)

Report by the Convention Secretariat

Purpose of the document

This report provides context for work that could be undertaken to support Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products in their efforts to address the issue of illicit trade of electronic nicotine delivery systems. It is intended to facilitate the deliberations of Parties under the item “Combating illicit trade of electronic nicotine delivery systems (ENDS)”, proposed by the Parties.

Action by the Meeting of the Parties

The Meeting of the Parties (MOP) is invited to note the present report and provide further guidance.

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): FCTC/COP7(9); FCTC/COP/7/11; FCTC/COP6(9); FCTC/COP/6/10/Rev.1; previous decisions of the Conference of the Parties to the WHO Framework Convention on Tobacco Control concerning electronic nicotine delivery systems and electronic non-nicotine delivery systems, including reports by the World Health Organization and the Convention Secretariat.

Background

1. Several Parties to the Protocol to Eliminate Illicit Trade in Tobacco Products proposed that the matter of combating illicit trade of electronic nicotine delivery systems (ENDS) be considered at the Fourth session of the Meeting of the Parties (MOP4) to the Protocol. These Parties were of the view that discussion on the matter, both supported by and in support of decisions taken by the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) in respect of ENDS – and electronic non-nicotine delivery systems (ENNDS) – would contribute to tobacco control.
2. The present report provides context for work that could be undertaken to support Parties to the Protocol in their efforts to combat illicit trade in ENDS/ENNDS, in order to facilitate the deliberations of Parties.

Work undertaken at the COP in relation to ENDS/ENNDS

3. Starting with the Third session of the COP, Parties to the WHO FCTC considered it important to address the matter of ENDS (and later also ENNDS),¹ recognizing the need to regulate these products effectively. To inform the work of the COP, both the Convention Secretariat² and the World Health Organization (WHO)³ provided reports to the COP, taking stock of Party experience and the latest science in respect of ENDS/ENNDS. While the work of the COP in respect of ENDS/ENNDS is ongoing, two decisions, taken at the Sixth and Seventh sessions of the COP, can be recalled.
4. In decision FCTC/COP6(9), the COP invited Parties, “when addressing the challenge posed by ENDS/ENNDS, to consider taking measures such as those referred to in document FCTC/COP/6/10 Rev.1 in order to achieve at least the following objectives, in accordance with national law: (a) prevent the initiation of ENDS/ENNDS by non-smokers and youth with special attention to vulnerable groups; (b) minimize as far as possible potential health risks to ENDS/ENNDS users and protect non-users from exposure to their emissions; (c) prevent unproven health claims from being made about ENDS/ENNDS; and (d) protect tobacco-control activities from all commercial and other vested interests related to ENDS/ENNDS, including interests of the tobacco industry”. Parties were also invited “to consider prohibiting or regulating ENDS/ENNDS, including as tobacco products, medicinal products, consumer products, or other categories, as appropriate, taking into account a high level of protection for human health”.
5. Further, in decision FCTC/COP7(9), the COP invited Parties “to consider applying regulatory measures such as those referred to in document FCTC/COP/7/11 to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of ENDS/ENNDS, as appropriate to their national laws and public health objectives”. It is to be noted that, among the regulatory options contained in report FCTC/COP/7/11, Parties were invited to consider measures to combat illicit trade in ENDS/ENNDS. These measures would contribute to the objective of preventing “the initiation of ENDS/ENNDS by non-smokers and youth with special attention to vulnerable groups” outlined in decision FCTC/COP6(9).

¹ Decisions FCTC/COP3(9), FCTC/COP4(14), FCTC/COP5(10), FCTC/COP6(9) and FCTC/COP7(14).

² Documents FCTC/COP/4/12 and FCTC/COP/8/10.

³ Documents FCTC/COP/4/INF.DOC./2, FCTC/COP/6/10/Rev.1, FCTC/COP/7/11, FCTC/COP/9/8 and FCTC/COP/10/7.

6. In addition, pursuant to decision FCTC/COP8(22), in which the COP recognized that heated tobacco products (HTPs) are tobacco products and therefore subject to the provisions of the WHO FCTC, WHO and the Convention Secretariat reported, among others, on challenges posed by and classification of these products.⁴ In the context of this work, it was reported that tobacco companies used a number of tactics in pursuing reduced regulation for HTPs, including by conflating HTPs and ENDS. In these reports Parties were informed of policy options that they could consider to address this matter.

7. By way of background, in its 2023 Illicit Trade Report,⁵ the World Customs Organization continued to report on the seizures of electronic cigarettes and cartridges, alongside tobacco products. This further reflects the prominence of ENDS in global illicit trade.

Combating illicit trade in ENDS/ENNDS in the context of the Protocol

8. Article 3 of the WHO FCTC outlines that it is the objective of the Convention and its protocols to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. Article 3 of the Protocol states that its objective is to eliminate all forms of illicit trade in tobacco products, in accordance with Article 15 of the WHO Framework Convention on Tobacco Control. The objectives of the two treaties are thus intertwined.

9. Article 2 of the Protocol further states that the provisions of the WHO FCTC that apply to its protocols shall apply to this Protocol. Article 4 of the Protocol, in outlining the general obligations under the Protocol, refers to the provisions of Article 5 of the WHO FCTC as being part of those obligations. It is recalled that Article 5.2(b) of the Convention obliges Parties, among others, to adopt and implement effective legislative, executive, administrative and/or other measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing nicotine addiction.

10. The COP, as the governing body for the WHO FCTC, has used its authority under Article 23 of the Convention to keep under regular review the implementation of the treaty, and to take the decisions necessary to promote its effective implementation. As described in the present report, the COP has considered ENDS (and later ENNDS) as of its third session by monitoring Party experience in regulating these products, as well as by reviewing evidence and the latest science provided by WHO, with the support of the Convention Secretariat. At its tenth session, the COP also decided to improve the reporting system of the WHO FCTC; in decision FCTC/COP10(19) it adopted a revised reporting instrument, which invites Parties to report on ENDS/ENNDS. Similarly, at its third session, the MOP decided to improve the reporting system of the Protocol, and in decision FCTC/MOP3(17) welcomed the proposed revised reporting instrument of the Protocol, which invites Parties to report, among others, on seizures of ENDS/ENNDS (and certain related products, such as e-liquids).

11. The MOP, as the governing body for the Protocol, has the authority under Article 33 of the Protocol to keep under regular review the implementation of the treaty, and to take the decisions necessary to promote its effective implementation. In this respect, the MOP may decide to consider how to support and reinforce the COP decisions on ENDS/ENNDS by implementing the

⁴ Convention Secretariat report FCTC/COP/10/9 (an update of document FCTC/COP/9/10) and WHO report FCTC/COP/10/10 (an update of document FCTC/COP/9/9).

⁵ [Illicit Trade Report 2023](#). Brussels: World Customs Organization; 2023 (accessed 7 July 2025).

Protocol in matters related to illicit trade of these products, as appropriate. Parties could consider sharing information about measures to combat illicit trade in relevant products.

12. In light of the concern posed by illicit trade in ENDS (and ENNDS, as appropriate) and affirming the need to strengthen mechanisms to combat illicit trade in these products effectively, several Parties proposed this item for discussion by the MOP.

Action by the Meeting of the Parties

13. The MOP is invited to note the present report and provide further guidance.
