



Waterpipes, waterpipe tobacco and waterpipe tobacco smoking: **guide to drafting regulation to implement the WHO FCTC**

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FCTC

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

S E C R E T A R I A T

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ISBN 978-92-4-009525-0 (electronic version)

ISBN 978-92-4-009526-7 (print version)

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(acting as the host organization for the Secretariat of the WHO Framework Convention on Tobacco Control and its Protocols (Convention Secretariat))

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Suggested citation. Waterpipes, waterpipe tobacco and waterpipe tobacco smoking: guide to drafting regulation to implement the WHO FCTC. Geneva: World Health Organization; 2024. Licence: CC BY-NC-SA 3.0 IGO.

Cataloguing-in-Publication (CIP) data. CIP data are available at <https://iris.who.int/>.

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Foreword

The Secretariat of the WHO Framework Convention on Tobacco Control (WHO FCTC or the Convention Secretariat) has developed this guide to provide technical support to Parties to the Convention in drafting legislation or regulations to implement the WHO FCTC with respect to waterpipes, waterpipe tobacco and waterpipe tobacco smoking. In addition to assisting Parties to meet their obligations under the Convention, the guide may be useful to the few countries that are not yet Parties but nevertheless want to protect their populations from the risks of tobacco use, including waterpipe tobacco use and second-hand smoke exposure, and may find this guide relevant in their jurisdiction and in their tobacco control efforts.

It is intended that the regulation of waterpipe tobacco will be part of comprehensive tobacco control legislation rather than separate legislation. Hence, this guide is intended as a tool for those involved in developing tobacco control legislation or regulations, including WHO FCTC focal points of the Parties and their counterparts in other ministries who are involved in drafting legislation or regulations. Other entities (e.g. tobacco control advocates of civil society organizations, which play a vital role in advocating for and promoting the adoption and implementation of such legislation or regulations) may also find the contents of this guide valuable.

The technical content provided here outlines the key domains of the WHO FCTC and its guidelines for implementation relevant to waterpipe tobacco, highlights country examples and reflects on additional factors to consider when drafting country legislation. The guide also provides a sample legislation template, which is intended to be used only as an example, while considering the specific country contextual factors.

Since the adoption of the WHO FCTC in May 2003, the Convention Secretariat has been providing technical assistance to Parties to support the implementation of national tobacco control legislation, in line with the mandates of the Convention and the guidelines for implementation of various Convention articles adopted by the Conference of the Parties, which is the governing body of the Convention. The Convention Secretariat is committed to continuing to help the Parties to accelerate their progress in implementing the Convention in accordance with the decisions of the Conference of the Parties.

The Convention Secretariat

Acknowledgements

This document – *Waterpipes, waterpipe tobacco and waterpipe tobacco smoking: guide to drafting regulation to implement the WHO FCTC* – was commissioned by the Secretariat of the WHO FCTC. The first draft of it was developed by the Campaign for Tobacco-Free Kids, an Observer to the Conference of the Parties to the WHO FCTC. Special recognition goes to the WHO FCTC Knowledge Hub for Waterpipe Tobacco Smoking and its Director, Professor Ghazi Zaatari, who contributed to the drafting and reviewing of the text and provided implementation examples.

The document was developed under the leadership of Adriana Blanco Marquizo, Head of the Convention Secretariat, and under the guidance of Tibor Szilagyi, Team Lead for Reporting and Knowledge Management.

Christina Kyriakos and Leticia Martinez Lopez from the Reporting and Knowledge Management team of the Convention Secretariat, along with representatives of other teams in the Secretariat, contributed to the review of the document.

The generous financial support of the Government of Norway is gratefully acknowledged.

Abbreviations and acronyms

COP	Conference of the Parties
EU	European Union
GSO	Gulf Cooperation Council Standardization Organization
NCD	noncommunicable disease
PDA	principal display area
SDGs	Sustainable Development Goals
TAPS	tobacco advertising, promotion and sponsorship
TobReg	WHO Study Group on Tobacco Product Regulation
WHO	World Health Organization
WHO FCTC	WHO Framework Convention on Tobacco Control
WTS	waterpipe tobacco smoking

1. Setting the scene

1.1 Objective and use of the guide

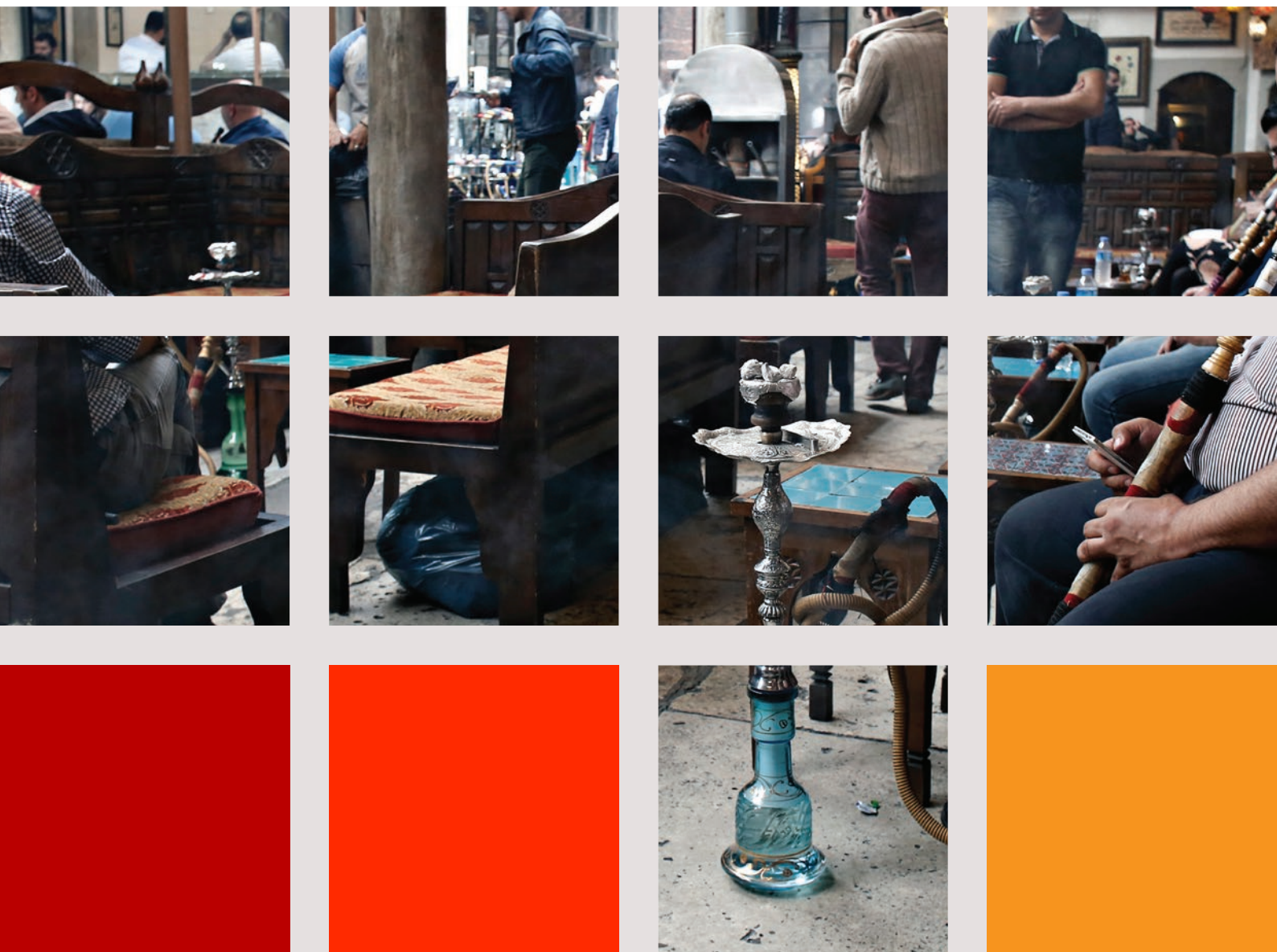
The purpose of this guide is to support efforts by Parties to the WHO Framework Convention on Tobacco Control (hereinafter referred to as “WHO FCTC” or “the Convention”) to ensure that their legal measures with respect to waterpipe tobacco smoking (WTS) are covered in their national legislation and regulations on tobacco control and are in line with the Convention. The guide further reflects recommendations from various guidelines for implementation of articles of the WHO FCTC and those of the relevant decisions adopted by the Conference of the Parties (COP). Effective implementation requires comprehensive regulation of waterpipe tobacco, as well as waterpipe and waterpipe accessory features that can affect the toxicity, addictiveness or attractiveness of WTS. The guide and the accompanying sample legislation template aim to help Parties identify and fill gaps that may exist in their regulation of WTS under their existing national tobacco control legislation and regulations. The guide does not aim to promote separate legislation for WTS; instead, it aims to ensure that Parties’ comprehensive tobacco control legislation or regulations cover WTS.

This chapter sets out the need for comprehensive regulation of WTS, discusses WTS under the WHO FCTC and in relevant COP decisions, and concludes with drivers of WTS and related challenges. Chapter 2 highlights the essential components of each article of the WHO FCTC and its guidelines for implementation (where available), assesses the article’s application to waterpipe tobacco and WTS, provides examples from implementing provisions in countries’ laws, and offers key observations to assist with Parties’ efforts to comprehensively regulate WTS. Chapter 3 offers a sample legislation template that comprehensively covers articles of the WHO FCTC that require legal measures for implementation.

The template in Chapter 3 is not intended to be inserted verbatim into a given country’s laws. The suggested measures must be tailored and developed in such a way as to meet a country’s legal requirements and customs and to otherwise fit within that country’s legal, political and cultural context.

Finally, although this guide takes the approach of strictly regulating WTS, some countries and territories have elected to ban the manufacture, import and sale of waterpipe tobacco, waterpipes and accessories. Thus, in countries where a ban would be legally possible *and* reasonably achievable owing to a low prevalence of WTS and other contextual factors, a ban could be justified on health grounds and under the authority of Article 2.1 of the WHO FCTC, which encourages Parties to enact measures that are stricter than those required by the Convention, as well as Article 5.2(b), which empowers Parties to develop appropriate policies for preventing tobacco consumption and nicotine addiction. Further, in decision FCTC/COP7(4), the COP invited Parties to consider a ban on “the sale and/or trade of waterpipe tobacco products”.¹

¹ FCTC/COP7(4): Control and prevention of water-pipe tobacco products. Conference of the Parties to the WHO Framework Convention on Tobacco Control. 12 November 2016 ([https://fctc.who.int/publications/m/item/fctc-cop7\(4\)-control-and-prevention-of-waterpipe-tobacco-products](https://fctc.who.int/publications/m/item/fctc-cop7(4)-control-and-prevention-of-waterpipe-tobacco-products)).



1.2 The need for comprehensive regulation to address the WTS epidemic

As with other tobacco products, WTS is associated with a variety of adverse short-term and long-term health outcomes,² including lung cancer, respiratory diseases, low birth weight and periodontal diseases.^{3,4} WTS also causes acute and long-term effects on the cardiovascular system.⁵ Waterpipe tobacco smoke contains substantial quantities of tar, nicotine, aldehydes, heavy metals and tobacco-specific nitrosamines.^{6,7} The burning

2 El-Zaatar ZM, Chami HA, Zaatar GS. Health effects associated with waterpipe smoking. *Tob Control*. 2015;24 Suppl 1:i31–i43. doi: <https://doi.org/10.1136/tobaccocontrol-2014-051908>.

3 Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The effects of waterpipe tobacco smoking on health outcomes: a systematic review. *Int J Epidemiol*. 2010;39:834–57. doi: <https://doi.org/10.1093/ije/dyq002>.

4 Raad D, Gaddam S, Schunemann HJ, Irani J, Abou Jaoude P, Honeine R, Akl EA. Effects of water-pipe smoking on lung function: a systematic review and meta-analysis. *Chest*. 2011;139:764–74. doi: <https://doi.org/10.1378/chest.10-0991>.

5 El-Zaatar ZM, Chami HA, Zaatar GS. Health effects associated with waterpipe smoking. *Tob Control*. 2015;24 Suppl 1:i31–i43. doi: <https://doi.org/10.1136/tobaccocontrol-2014-051908>.

6 Radwan G, Hecht SS, Carmella SG, Loffredo CA. Tobacco-specific nitrosamine exposures in smokers and nonsmokers exposed to cigarette or waterpipe tobacco smoke. *Nicotine Tob Res*. 2013;15:130–8. doi: <https://doi.org/10.1093/ntr/nts099>.

7 Shihadeh A. Investigation of mainstream smoke aerosol of the argileh water pipe. *Food Chem Toxicol*. 2003;41:143–52. doi: [https://doi.org/10.1016/s0278-6915\(02\)00220-x](https://doi.org/10.1016/s0278-6915(02)00220-x).

charcoal used as a heat source for WTS adds to the toxic mix by emitting heavy metals and high levels of carbon monoxide (CO) and polycyclic aromatic hydrocarbons, exposing both smokers and non-smokers to these toxicants.^{8,9} Some reports suggest that the amount of CO emitted from waterpipe charcoal in WTS can be 30 times higher than from cigarette smoking.¹⁰

WTS is considered a global epidemic owing to the surge in its use worldwide, including among diverse populations and social sectors over the past two decades.^{11,12,13} The rise in popularity of WTS has been driven by the dramatic rise in its use among young people, in large part due to widely available sweetened and flavoured waterpipe tobacco (“maassel” or “moassel”).^{14,15} According to the *2023 Global progress report on implementation of the WHO FCTC*, waterpipe tobacco remains the most common of the emerging products. In 2023, 79% of Parties to the WHO FCTC reported having waterpipe tobacco available on the national market, up from 75% in 2020. In 2023, 57% of Parties reported having implemented a policy or regulation specific to waterpipe tobacco – a slight improvement from 55% in 2020.¹⁶ Because regulatory gaps remain, this guide will address how governments can ensure that their laws comprehensively regulate WTS to help prevent and continually reduce waterpipe tobacco use.

Given the growing body of evidence of the harms caused by WTS and the increase in WTS worldwide, WHO has undertaken several actions to strengthen Parties’ ability to deal with WTS effectively. The WHO Study Group on Tobacco Product Regulation (TobReg) published two advisory notes on growing concerns about the increasing prevalence and potential health effects of WTS. The initial TobReg advisory note (2005) dealt with, for example, the need for more scientific research on waterpipe tobacco and the need to regulate waterpipe tobacco in the same manner as cigarettes.¹⁷ The second edition of the advisory note (2015) discussed the results of scientific studies and the general policy changes needed to make laws that align with the WHO FCTC.¹⁸

This work set the stage for subsequent decisions by the COP to the WHO FCTC, which will be referred to later in this guide. One of these actions is the launching of the WHO FCTC Knowledge Hub for Waterpipe Tobacco Smoking,¹⁹ which collects and disseminates information related to the research, prevention and control of WTS, thus assisting Parties

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- 8 Advisory note: waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators (2nd ed). Geneva: WHO Study Group on Tobacco Product Regulation (TobReg); 2015 (<https://www.who.int/publications/i/item/advisory-note-waterpipe-tobacco-smoking-health-effects-research-needs-and-recommended-actions-by-regulators-2nd-ed>).
 - 9 Shihadeh A. Investigation of mainstream smoke aerosol of the argileh water pipe. *Food Chem Toxicol*. 2003;41:143–52. doi: [https://doi.org/10.1016/s0278-6915\(02\)00220-x](https://doi.org/10.1016/s0278-6915(02)00220-x).
 - 10 Schubert J, Hahn J, Dettbarn G, Seidel A, Luch A, Schulz TG. Mainstream smoke of the waterpipe: does this environmental matrix reveal as significant source of toxic compounds? *Toxicol Lett*. 2011;205:279–84. doi: <https://doi.org/10.1016/j.toxlet.2011.06.017>.
 - 11 Maziak W. Commentary: The waterpipe—a global epidemic or a passing fad. *Int J Epidemiol*. 2010;39:857–9. doi: <https://doi.org/10.1093/ije/dyq054>.
 - 12 Maziak W. The global epidemic of waterpipe smoking. *Addict Behav*. 2011;36:1–5. doi: <https://doi.org/10.1016/j.add-beh.2010.08.030>.
 - 13 An overview of global regulatory practices in controlling water-pipe tobacco use. Geneva: WHO FCTC Secretariat’s Knowledge Hub on Water-pipe Tobacco Smoking; 2018 (<https://fctc.who.int/publications/m/item/an-overview-of-global-regulatory-practices-in-controlling-waterpipe-tobacco-use>).
 - 14 Maziak W. The global epidemic of waterpipe smoking. *Addict Behav*. 2011;36:1–5. doi: <https://doi.org/10.1016/j.add-beh.2010.08.030>.
 - 15 *Ibid*.
 - 16 2023 Global progress report on implementation of the WHO Framework Convention on Tobacco Control. Licence: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2024 (<https://fctc.who.int/publications/m/item/2023-global-progress-report>).
 - 17 Advisory note: waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators (2nd ed). Geneva: WHO Study Group on Tobacco Product Regulation (TobReg); 2015 (<https://www.who.int/publications/i/item/advisory-note-waterpipe-tobacco-smoking-health-effects-research-needs-and-recommended-actions-by-regulators-2nd-ed>).
 - 18 *Ibid*.
 - 19 WHO FCTC Knowledge Hub on Legal Challenges [website]. Geneva: WHO Framework Convention on Tobacco Control; 2023 (<https://extranet.who.int/fctcapps/fctcapps/fctc/kh/legalchallenges>).

to the WHO FCTC in their implementation of policies on waterpipes, waterpipe tobacco and WTS. Since its establishment in 2016 at the American University of Beirut, in Lebanon, the Knowledge Hub has not only engaged in disseminating such information, through training, webinars, conferences and social media, but has also generated new knowledge (e.g. on the relationship between coronavirus disease [COVID-19] and waterpipe tobacco use).

When the WHO FCTC entered into force on 27 February 2005, it became a powerful tool to address the devastating health, social, environmental and economic harms brought by the tobacco epidemic.

1.3 The WHO FCTC and WTS regulation

When the WHO FCTC entered into force on 27 February 2005, it became a powerful tool to address the devastating health, social, environmental and economic harms brought by the tobacco epidemic. Because tobacco use is one of the main risk factors for noncommunicable diseases (NCDs) such as cancer, lung infections and cardiovascular diseases, the Convention also plays an integral role in advancing the WHO NCD targets and the United Nations Sustainable Development Goals (SDGs). Moreover, implementation of the WHO FCTC has been included among the SDGs as Target 3.a (*“Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in all countries, as appropriate”*). When Parties successfully implement the WHO FCTC, their achievements reverberate well beyond the realms of tobacco control and public health.

Since the entry into force of the Convention in 2005, its Parties have made significant progress in implementing it; however, this progress has been uneven across Parties, regions, the articles of the Convention and tobacco product types. Waterpipe tobacco is subject to all the requirements of the WHO FCTC.^{20,21,22} Nevertheless, comprehensive regulation of waterpipe tobacco and WTS has lagged behind the regulation of cigarettes, partly because the unique design features of the waterpipe and the nature of its accessories make it more difficult to regulate.²³

1.3.1 COP reports and decisions relevant to WTS

At the sixth session of the COP, the Convention Secretariat invited Parties to note the information provided in document FCTC/COP/6/11, the report by the Convention

20 El-Zaatari, Z. M., Chami, H. A., & Zaatari, G. S. (2015). Health effects associated with water-pipe smoking. *Tobacco control*, 24 Suppl 1(Suppl 1), i31–i43. <https://doi.org/10.1136/tobaccocontrol-2014-051908>

21 Shihadeh A, Schubert J, Klaiany J, El Sabban M, Luch A, Saliba NA. Toxicant content, physical properties and biological activity of waterpipe tobacco smoke and its tobacco-free alternatives. *Tob Control*. 2015;24 Suppl 1:i22–i30. doi: <https://doi.org/10.1136/tobaccocontrol-2014-051907>.

22 Jacob P, 3rd, Abu Raddaha AH, Dempsey D, Havel C, Peng M, Yu L, Benowitz NL. Comparison of nicotine and carcinogen exposure with water pipe and cigarette smoking. *Cancer Epidemiol Biomarkers Prev*. 2013;22:765–72. doi: <https://doi.org/10.1158/1055-9965.EPI-12-1422>.

23 Zaatari GS, Bazzi A. Impact of the WHO FCTC on non-cigarette tobacco products. *Tob Control*. 2019;28:s104–s12. doi: <https://doi.org/10.1136/tobaccocontrol-2018-054346>.

Secretariat entitled *Control and prevention of waterpipe tobacco products*.²⁴ This report includes key facts about waterpipe tobacco products; their contents and emissions; associated health conditions; prevalence of use; economic and environmental aspects of waterpipe tobacco; Parties' experiences with the products; and challenges, needs and opportunities related to waterpipe tobacco prevention and control.²⁵ In decision FCTC/COP6(10), also entitled *Control and prevention of waterpipe tobacco products*, which followed the discussion of the report presented above, the COP acknowledged the significant and growing sphere of tobacco use that WTS represents, that waterpipe tobacco is as deadly as other tobacco products, the growth of the global tobacco industry's investments in waterpipe tobacco, the need for clear guidance to Parties concerning WTS, and the unique regulatory issues attached to WTS.²⁶ Parties affirmed the need for increased research and public education about WTS harms, including the misperception of reduced harm with WTS compared with other forms of tobacco consumption. They also noted the need to strengthen WTS regulations and standards.²⁷ The Parties requested that the Convention Secretariat, in consultation with the WHO Secretariat, explore the possibility of including waterpipe use issues in a global knowledge hub.

The Parties also requested the Convention Secretariat to invite WHO to develop a report on policy options and best practices to control the use of waterpipe tobacco products, to be submitted to the seventh session of the COP. The ensuing report by WHO (FCTC/COP/7/10) provided information on global and regional WTS patterns, the scientific basis for regulation, and policy options and suggested actions.²⁸ Noting the report, in decision FCTC/COP7(4) the COP recognized the need for full implementation of the WHO FCTC in relation to all aspects of waterpipe tobacco control. It invited



24 FCTC/COP/6/11: Control and prevention of water-pipe tobacco products. Report by the Convention Secretariat. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 18 July 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_11-en.pdf).

25 *Ibid.*

26 FCTC/COP6(10): Control and prevention of waterpipe tobacco products. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 18 October 2014 ([https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6\(10\)-en.pdf](https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6(10)-en.pdf)).

27 FCTC/COP/6/11: Control and prevention of water-pipe tobacco products. Report by the Convention Secretariat. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 18 July 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_11-en.pdf).

28 FCTC/COP/7/10: Control and prevention of water-pipe tobacco products. Report by WHO Conference of the Parties to the WHO Framework Convention on Tobacco Control; 18 July 2016 (<https://fctc.who.int/publications/m/item/fctc-cop-7-10-control-and-prevention-of-waterpipe-tobacco-products>).

Parties to consider such implementation, including Article 5.3 and its guidelines for implementation; application of the ban on smoking in public places under Article 8; a ban on flavours in waterpipe tobacco products (as recommended in the Partial guidelines for implementation of Articles 9 and 10); and regular increases in taxes on waterpipe tobacco (in line with Article 6 of the Convention).²⁹

The report titled *Impact assessment of the WHO FCTC* (FCTC/COP/7/6), which arose from a process carried out under the auspices and guidance of the COP, noted the increasing need to regulate the growing prevalence of waterpipe tobacco use; address lax controls and social acceptance of WTS, which has increased initiation risks; and eliminate recently recognized gaps in regulation.³⁰ The 2018 paper developed as part of the impact assessment exercise, entitled “Impact of the WHO FCTC on non-cigarette tobacco products”, reviewed the extent to which Parties to the WHO FCTC had successfully implemented regulatory measures to control the use of non-cigarette tobacco products, including waterpipe tobacco and WTS.³¹

The Global Strategy to Accelerate Tobacco Control: Advancing Sustainable Development through the Implementation of the WHO FCTC 2019–2025 (the “Global Strategy”) was adopted at the eighth session of the COP.³² The Global Strategy represents the continued effort to strengthen the operations and implementation of the WHO FCTC and its contributions to the 2030 Agenda for Sustainable Development. In particular, Strategic Goal 3 of the Global Strategy seeks to build on achievements and overcome barriers to the full, effective and sustainable implementation of the WHO FCTC and wider tobacco control efforts.³³ As part of this strategic goal, Parties agreed to call for the creation of an implementation review mechanism, which could involve peer-reviewing select Parties’ implementation of the Convention in order to identify and share good practices, and to help Parties to understand where they might improve their tobacco control policy formulations, implementation and enforcement.^{34, 35}

These decisions of the successive sessions of the COP helped to raise the profile of interventions to strengthen the regulation of WTS. Against this backdrop, and building on previous achievements in waterpipe tobacco control, this guide and the accompanying sample legislation template aim to assist Parties in assessing and strengthening their legal measures to control waterpipe tobacco products.

29 FCTC/COP7(4): Control and prevention of water-pipe tobacco products. Conference of the Parties to the WHO Framework Convention on Tobacco Control. 12 November 2016 ([https://fctc.who.int/publications/m/item/fctc-cop7\(4\)-control-and-prevention-of-waterpipe-tobacco-products](https://fctc.who.int/publications/m/item/fctc-cop7(4)-control-and-prevention-of-waterpipe-tobacco-products)).

30 FCTC/COP/7/6: Impact assessment of the WHO FCTC. Report by the Expert Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 27 July 2016 (<https://fctc.who.int/publications/m/item/fctc-cop-7-6-impact-assessment-of-the-who-fctc>).

31 Zaatari GS, Bazzi A. Impact of the WHO FCTC on non-cigarette tobacco products. *Tob Control*. 2019;28:s104–s12. doi: <https://doi.org/10.1136/tobaccocontrol-2018-054346>.

32 FCTC/COP/8/11: Measures to strengthen the implementation of the Convention through coordination and cooperation: Report by the Working Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 9 May 2018 (<https://fctc.who.int/publications/m/item/fctc-cop-8-11-measures-to-strengthen-the-implementation-of-the-convention-through-coordination-and-cooperation>).

33 Global strategy to accelerate tobacco control: advancing sustainable development through the implementation of the WHO FCTC. Licence: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2019 (<https://fctc.who.int/publications/i/item/WHO-CSF-2019.1>).

34 *Ibid*.

35 FCTC/COP/8/11: Measures to strengthen the implementation of the Convention through coordination and cooperation: Report by the Working Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 9 May 2018 (<https://fctc.who.int/publications/m/item/fctc-cop-8-11-measures-to-strengthen-the-implementation-of-the-convention-through-coordination-and-cooperation>).

1.4 Drivers of WTS and related challenges

Capitalizing on the relevant outputs of the tobacco control research community, the Convention Secretariat, in collaboration with the Knowledge Hub for Waterpipe Tobacco Smoking, identified drivers and obstacles leading to WTS regulatory challenges.^{36,37,38,39} These challenges include the:

- ◆ widespread misperception that WTS is a safe or safer alternative to cigarette smoking;
- ◆ sociocultural acceptance of WTS and the thriving waterpipe café, bar, lounge and restaurant scene that normalizes and reinforces WTS;
- ◆ overwhelming appeal of flavoured waterpipe tobacco, which encourages WTS initiation among young people;
- ◆ difficulties in regulating heterogeneous waterpipe tobacco products that are produced by cottage industries in many countries;
- ◆ influence that the waterpipe's design (e.g. waterpipe bowl size, stem length and hose length) may have on the toxicity of waterpipe tobacco emissions;
- ◆ role of waterpipe charcoal in adding to toxic emissions during WTS; and
- ◆ aggressive advertising and promotion of WTS in the media, including social media.



Capitalizing on the relevant outputs of the tobacco control research community, the Convention Secretariat, in collaboration with the Knowledge Hub for Waterpipe Tobacco Smoking, identified drivers and obstacles leading to WTS regulatory challenges.

These challenges can largely be overcome by comprehensively applying all WHO FCTC measures to waterpipes, waterpipe tobacco and charcoal, and WTS – together with greater enforcement, political will and adequate resources.

36 Zaatari GS, Bazzi A. Impact of the WHO FCTC on non-cigarette tobacco products. *Tob Control*. 2019;28:s104–s12. doi: <https://doi.org/10.1136/tobaccocontrol-2018-054346>.

37 Afifi R, Khalil J, Fouad F, Hammal F, Jarallah Y, Abu Farhat H et al. Social norms and attitudes linked to waterpipe use in the Eastern Mediterranean Region. *Soc Sci Med*. 2013;98:125–34. doi: <https://doi.org/10.1016/j.socscimed.2013.09.007>.

38 Maziak W. (2008). The water-pipe: time for action. *Addiction*, 103(11), 1763–1767. <https://doi.org/10.1111/j.1360-0443.2008.02327.x>

39 Saloojee Y, Dagli E. Tobacco industry tactics for resisting public policy on health. *Bull World Health Organ*. 2000;78:902–10 (<https://www.ncbi.nlm.nih.gov/pubmed/10994263>).

2. Assessing the comprehensiveness of legal measures for regulating waterpipes, waterpipe tobacco and WTS

2.1 Introduction

This chapter highlights the key components of Articles 1, 5.3, 6 and 8–22 of the WHO FCTC and the accompanying guidelines for implementation, where available; the potential application of those articles to regulating waterpipe tobacco; legal measures countries have enacted to implement a given article (including URL links to the wording of those measures, where applicable); and key observations for drafting strong and comprehensive WTS legal measures specifically, and for tobacco products in general. This information can provide a comprehensive framework for drafting WHO FCTC-compliant legal texts. It is intended both for governments drafting a new tobacco control law and for those seeking to fill gaps in an existing law through amendments or (where legally possible) subsidiary legislation.

2.2 Definitions (Article 1 of the WHO FCTC)

Clear and comprehensive definitions of key terms establish the foundation for a robust law. The WHO FCTC and its guidelines for implementation (adopted for several of its articles) provide such definitions for many of the key terms that should be included in a country's WHO FCTC implementation measures.⁴⁰ The WHO FCTC definitions were extensively discussed and adopted by the Parties; hence, they provide a sound foundation for implementation of the Convention. However, Parties can modify the definitions to make them appropriate for their country-specific contexts. This chapter and the sample legislation template provide recommendations for defining additional key terms.

2.2.1 Application to waterpipe tobacco

Waterpipe tobacco falls within the broad definition of “tobacco products” in Article 1(f) of the WHO FCTC: “products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing”. Therefore, use of this definition in implementing measures ensures that waterpipe tobacco is covered in any provisions that refer to a “tobacco product”. The waterpipe itself and waterpipe accessories (e.g. the charcoal used in WTS) also need to be regulated and may therefore need to be defined separately.

2.2.2 Country practices

This section provides examples of definitions of WTS-relevant terms contained in the legal measures from the Gulf Cooperation Council Standardization Organization (GSO), the European Union (EU), Israel, the Russian Federation and Türkiye.

GSO

The GSO's standard on the labelling of tobacco product packages (GSO 246/2011) provides a comprehensive definition for “tobacco product” that specifically includes

40 WHO Framework Convention on Tobacco Control. Glossary of terms used in the WHO FCTC and its instruments. Second version. 2015 (<https://fctc.who.int/publications/m/item/glossary-of-terms—who-fctc-and-its-instruments>).



“moassel tobacco” and “water pipe tobacco” (Article 3.3). It also includes a separate definition of “moassel tobacco” (Article 3.4).⁴¹

European Union

Directive 2014/40/EU, also known as the EU Tobacco Products Directive, provides comprehensive definitions for “tobacco” (Article 2(1)), “tobacco products” (Article 2(4)), “tobacco products for smoking” (Article 2(9)), “waterpipe tobacco” (Article 2(13)) and “herbal product for smoking” (Article 2(15)).⁴²

Israel

The Prohibition of Advertising and Marketing of Tobacco and Smoking Products Law, 1983 (as amended), provides comprehensive definitions for “tobacco products” and “smoking product”, including “narghila tobacco”.⁴³ The law’s definition of “smoking” is broad, in that it covers any product consumed in a way that creates an aerosol or vapour. This definition captures heated tobacco products, electronic nicotine delivery systems and

⁴¹ GSO 246/2011: Labelling of tobacco product packages. Standardization Organisation of the Cooperation Council for the Arab States of the Gulf (GSO); 9 August 2011 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Oman/Oman-GSO-2462011.pdf>).

⁴² Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC. European Parliament, Council of Europe; 3 April 2014 (<https://assets.tobaccocontrolaws.org/uploads/legislation/European%20Union/European-Union-TPD-2014-native.pdf>).

⁴³ “Narghila”, which is the term most commonly used in Israel, is another name for waterpipe, shisha or hookah

other products that create an aerosol or vapour, whether through combustion, heating or other processes (Article 1(B)).⁴⁴

The Russian Federation

The Technical Regulations for Tobacco Products, Federal Law No. 268-FZ 2008, contains comprehensive definitions for a wide range of smoked tobacco products, including “type of tobacco product” (Article 2(4)), which includes “tobacco for a hookah” as a type of smoking product (Article 2(12)).⁴⁵

Türkiye

The Law on Prevention and Control of Hazards of Tobacco Products, Law 4207, 1996 (as amended), uses the WHO FCTC definition of “tobacco products”, which includes hookah, and expands the definition to cover alternative forms, such as e-hookah and herbal non-tobacco versions of hookah (Article 2.6).⁴⁶

2.2.3 Additional considerations when drafting legislation

In addition to the WHO FCTC definition of “tobacco products”, legal measures could include a definition for “waterpipe” and “waterpipe accessory”.

Other relevant definitions are provided in the template in Chapter 3.

2.3 Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry (Article 5.3 of the WHO FCTC)

Recognizing the need to be alert to the tobacco industry’s attempts to undermine and subvert tobacco control efforts,⁴⁷ Article 5.3 of the WHO FCTC requires Parties to implement effective measures to protect public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. To assist Parties in meeting their legal obligations under Article 5.3, the guidelines for its implementation adopted by the COP in 2008 provide comprehensive recommendations for achieving effective protection against tobacco industry interference.⁴⁸ These recommendations include:

- ◆ raising awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies;
- ◆ establishing measures to limit interactions with the tobacco industry and to ensure the transparency of any interactions that occur (interactions should be

44 Prohibition of Advertising and Restriction of Marketing of Tobacco and Smoking Products Law, 5743-1983. The Knesset (Parliament of Israel), 1983. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Israel/Israel-APS-Law.pdf>).

45 Federal Law No. 268-FZ 2008: Technical Regulations for Tobacco Products. Russian State Duma, 3 December 2008. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Russia/Russia-Fed.-Law-No.-268.pdf>).

46 Law Number 4207: The Law on Prevention and Control of Hazards of Tobacco Products. Edition 5, Volume 36. Grand National Assembly of Türkiye (Türkiye Büyük Millet Meclisi), 26 November 1996. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Turkey/Turkey-Law-No.-4207.pdf>).

47 Preamble, WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2005 (<https://fctc.who.int/publications/i/item/9241591013>).

48 Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2013 (<https://fctc.who.int/publications/m/item/guidelines-for-implementation-of-article-5.3>).

limited to only those necessary for effective regulation of tobacco products and the tobacco industry);

- ◆ rejecting partnerships and non-binding or non-enforceable agreements with the tobacco industry (e.g. rejecting assistance from the tobacco industry with drafting or implementing tobacco control policies or legal measures, and rejecting policies or measures drafted by the industry);

The Guidelines for implementation of Article 5.3 apply “to government officials, representatives and employees of any national, state, provincial, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party, and to any person acting on their behalf”.

- ◆ avoiding conflicts of interest for government officials and employees (e.g. mandatory disclosure and management of conflicts of interest; adopting a code of conduct for dealings with the industry; “cooling off” periods after leaving government service and before engaging in occupational activity with the tobacco industry; and banning contributions from the tobacco industry to political parties, campaigns or candidates, where constitutionally and legally permissible);
- ◆ requiring information provided by the tobacco industry to be transparent and accurate;
- ◆ denormalizing and, as far as possible, regulating activities described as “socially responsible” by the tobacco industry; for example, activities described as “corporate social responsibility” (also covered by the ban under Article 13 of the WHO FCTC on tobacco sponsorship);
- ◆ not giving preferential treatment to the tobacco industry (e.g. incentives, privileges and benefits to establish or run a tobacco business, including state investments in or preferential tax incentives to the industry); and
- ◆ treating state-owned tobacco industry in the same way as any other tobacco industry; this requires responsibility for policy development and implementation to be separate from the responsibility for overseeing and managing the industry.

The guidelines apply “to government officials, representatives and employees of any national, state, provincial, municipal, local or other public or semi/quasi-public institution or body within the jurisdiction of a Party, and to any person acting on their behalf”. Some recommendations apply regardless of whether the institution or body has responsibility for tobacco control; for example, rejecting any kind of contribution from the industry (Recommendation 6.4) or any partnership described as socially responsible (Recommendation 6.2).

2.3.1 Application to the waterpipe tobacco industry

The entire Guidelines for implementation of Article 5.3 apply to the tobacco industry, which is defined in Article 1(e) of the WHO FCTC as “tobacco manufacturers, wholesale distributors and importers of tobacco products”. This includes the waterpipe tobacco industry. Document FCTC/COP/6/11, the report by the Convention Secretariat on the control and prevention of waterpipe tobacco products, noted the projected growth in the

waterpipe tobacco products market and the rise of multinational companies interested in these products; it concluded that Parties should reinforce their implementation of Article 5.3 of the WHO FCTC.⁴⁹ Since waterpipe tobacco is central to WTS, and waterpipe hospitality businesses (e.g. waterpipe cafés, bars, lounges and restaurants) are gathering spots for WTS in social settings, covering these hospitality businesses under the measures implementing Article 5.3 should be considered. Waterpipe hospitality businesses have been adept at interfering with tobacco control in some countries where these businesses act as front groups or work to further the interest of the tobacco industry.⁵⁰

2.3.2 Country practices

Parties have implemented Article 5.3 and the recommendations in the guidelines for its implementation in different ways; for example, enacting Article 5.3-specific measures in tobacco control legislation or subsidiary legislation, developing official policies to prevent tobacco industry interference, and developing guidelines and changes in practice in the way governments deal with the tobacco industry. In order to implement Article 5.3, Parties have also invoked generally applicable existing laws and policies, including those that prohibit conflicts of interest on the part of persons or entities working in or with the government, those that provide public access to government records and those that regulate lobbying.⁵¹ Although it makes sense to use all these approaches, the result should be an enforceable suite of measures that align with Article 5.3 of the Convention and with the recommendations of its implementation guidelines.

Examples of measures for implementing Article 5.3 in the Philippines, Uganda and the United Kingdom of Great Britain and Northern Ireland (United Kingdom) are given below. These examples apply to the tobacco industry in general; although they do not mention the waterpipe tobacco industry or related businesses specifically, the approaches could be made applicable to that industry and its related businesses.

Philippines

The Philippines was an early adopter of Article 5.3 measures when it implemented, in 2010, the Republic of the Philippines Department of Health, Department Memorandum No. 2010-0126,⁵² and the Joint Memorandum Circular 2010-01,⁵³ both of which concern protecting the bureaucracy from tobacco industry interference. Other departments have also adopted the Joint Memorandum Circular. These measures are comprehensive in their content; however, they apply only to the country's civil service, rather than to all government branches as recommended in the guidelines.

49 FCTC/COP/6/11: Control and prevention of water-pipe tobacco products. Report by the Convention Secretariat. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 18 July 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_11-en.pdf).

50 Jawad M. The challenges of waterpipe tobacco smoking regulation in the Eastern Mediterranean Region. Beirut: Knowledge Hub for Waterpipe Tobacco Smoking; 2018 (<https://portal-uat.who.int/fctcapps/sites/default/files/kh-media/Technical-Report.pdf>).

51 Fooks GJ, Smith J, Lee K, Holden C. Controlling corporate influence in health policy making? An assessment of the implementation of article 5.3 of the World Health Organization Framework Convention on Tobacco Control. *Global Health*. 2017;13:12. doi: <https://doi.org/10.1186/s12992-017-0234-8>.

52 Department Memorandum No. 2010-0126: Protection of the Department of Health, including all of its agencies, regional offices, bureaus or specialized/attached offices/units, against tobacco industry interference. Department of Health, Republic of the Philippines; 6 May 2010. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Philippines/Philippines-DOH-Dept-Memo-on-Industry-Interference-native.pdf>).

53 Joint Memorandum Circular 2010-01: Protection of the bureaucracy against tobacco industry interference. Civil Service Commission, Department of Health, Republic of the Philippines, 29 June 2010. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Philippines/Philippines-JMC-2010-01-native.pdf>).

Uganda

In Uganda, the Tobacco Control Act, 2015, applies Article 5.3 and the recommendations in the guidelines for its implementation to all of government – parliament, ministries and the judiciary – and provides definitions for several terms relevant for implementing Article 5.3, namely: “government”, “occupational activity”, “public office holder”, “relevant or related tobacco control”, “tobacco control”, “tobacco control policies” and “tobacco industry” (Section 2). Other provisions comprehensively apply the recommendations from Article 5.3 and its guidelines for implementation (Sections 19–23).⁵⁴

United Kingdom

Some United Kingdom government departments have published guidelines that explain WHO FCTC obligations and instruct staff on how and when to interact with the tobacco industry. HM Revenue and Customs (HMRC) department guidance (November 2019), titled *The tobacco industry and HMRC*, Article 5.3: *the Framework Convention on Tobacco Control (FCTC)*, is a useful example.⁵⁵ It introduces the WHO FCTC and highlights the responsibilities of HMRC staff when communicating with the tobacco industry. The HMRC guidelines categorize the interactions likely to arise and provide advice to assist with deciding whether to interact with the industry. The three categories can be broadly described as:

- ◆ permissible interactions with the tobacco industry;
- ◆ interactions that would be contrary to HMRC’s responsibilities under Article 5.3, or would create an impression of a partnership or cooperation that is unnecessary to its duties; and
- ◆ scenarios where it is not clear whether staff may or may not be able to interact, along with factors to consider and what discussions to avoid.

HMRC also posts quarterly notifications of its meetings with the tobacco industry on the HMRC website, to provide transparency. An example of an interaction report can be found on that website.⁵⁶

Another example can be found in the guidance provided jointly by the Department of Health and the Foreign & Commonwealth Office (now the Foreign, Commonwealth and Development Office): the *United Kingdom’s revised guidelines for overseas posts on support to the tobacco industry*.⁵⁷ This document outlines the actions that foreign posts are encouraged to take (e.g. offering access to expertise within the United Kingdom government in matters of public health, tobacco control and combating illicit trade) and those that foreign posts must not take (e.g. being involved in tobacco promotional activities, encouraging investment in the tobacco industry, accepting direct or indirect industry funding).

54 Acts Supplement No. 11: The Tobacco Control Act, 2015, Parliament of Uganda, 18 November 2015. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Uganda/Uganda-TCA-native.pdf>).

55 The Tobacco Industry and HMRC Article 5.3: the Framework Convention on Tobacco Control (FCTC). London: HM Revenue and Customs; 2019 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844161/Article_5_3_guidance_v3_6_FINAL_External.pdf).

56 HMRC policy meetings with tobacco stakeholders: October to December 2019. London: HM Revenue & Customs; 2019 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/858712/HMRC_Officials_meetings_with_tobacco_stakeholders_Oct_2019_to_Dec_2019.csv/).

57 United Kingdom’s revised guidelines for overseas posts on support to the tobacco industry. London: Department of Health and Social Care; 2013 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/287119/Guidance_for_Overseas_Posts_on_support_to_the_Tobacco_Industry.pdf).

2.3.3 Additional considerations when drafting legislation

If existing tobacco control laws and regulations do not yet include provisions or regulatory authority for implementing Article 5.3, consideration could be given to developing and enforcing policies enacted by the various ministries or agencies and bodies in each branch of government, including in relation to waterpipe tobacco producers and related industries.

2.4 Price and tax measures to reduce the demand for tobacco (Article 6 of the WHO FCTC)

Price and tax measures to reduce demand for tobacco typically fall under the authority and expertise of the ministry responsible for finance. This ministry usually develops and implements such policies through legal measures enacted separately from a tobacco control law.

Article 6 of the WHO FCTC on price and tax measures to reduce the demand for tobacco requires Parties to establish and implement tax policies and, where appropriate, price policies to contribute to public health objectives aimed at reducing tobacco consumption; and to prohibit or restrict sales to and importations by international travellers of tax-free and duty-free products. Guidelines for implementation of Article 6 of the Convention are available.⁵⁸

Raising taxes on tobacco products is highly effective for increasing tobacco product prices and thereby reducing tobacco consumption, which in turn results in a reduction in mortality and morbidity. At the same time, higher tax rates can generate significant government revenue in the short and medium term.⁵⁹ This intervention can be especially effective with young and low-income populations, as these groups tend to be more price sensitive. WHO recommends governments to raise tobacco excise taxes regularly to achieve a rate of at least 70% of the product's retail price. Furthermore, WHO also created a benchmark requiring the total share of indirect taxes to be equal to or greater than 75% of the retail price.⁶⁰

2.4.1 Application to waterpipe tobacco products

Reports shows that excise taxes imposed on non-cigarette tobacco products, and the rates of annual tax increases on these products, are significantly lower than those imposed on cigarettes in many countries.⁶¹ Data are limited on tax rates that have been applied to waterpipe tobacco and waterpipes, although concern has been expressed about relatively low rates.⁶² The report by the Convention Secretariat, document FCTC/COP/6/11, noted that waterpipe tobacco is relatively inexpensive and affordable, and that tax and price policies could aid with reducing its use, including by minors and young adults. The report also emphasized the value of harmonization of taxes and prices among different tobacco product categories – a point that is reiterated in the

58 Guidelines for implementation of Article 6 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2017 (<https://fctc.who.int/publications/m/item/price-and-tax-measures-to-reduce-the-demand-for-tobacco>).

59 WHO technical manual on tobacco tax policy and administration. License: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2021 (<https://www.who.int/publications/i/item/9789240019188>).

60 *Ibid*, p.53.

61 Economics of tobacco taxation tool kit. Washington, DC: World Bank Group; 2018 (<http://documents1.worldbank.org/curated/en/780151527139236028/pdf/124696-REVISED-PUBLIC-Economicsoftaxationtoolkitjunerevisions.pdf>).

62 Jawad M. The challenges of waterpipe tobacco smoking regulation in the Eastern Mediterranean Region. Beirut: Knowledge Hub for Waterpipe Tobacco Smoking; 2018 (<https://portal-uat.who.int/fctcapps/sites/default/files/kh-media/Technical-Report.pdf>).

Guidelines for implementation of Article 6.^{63,64} As explained in the *WHO technical manual on tobacco tax policy and administration*, differential taxation undermines the health impact of tobacco excise taxes; for example, because it encourages users to switch to cheaper products, is not effective in reducing tobacco use in general and results in lower government revenues.⁶⁵

The second edition of the TobReg advisory note on WTS made the following recommendations regarding taxation of waterpipe tobacco:

- ◆ “Parties should consider taxing waterpipe tobacco per individual serving or at higher bulk prices” to decrease affordability;
- ◆ “Waterpipes themselves, as well as parts and accessories, should also be taxed”; and
- ◆ “Waterpipes, waterpipe tobacco, parts and accessories should be prohibited or restricted from being sold tax- or duty-free”.⁶⁶



63 FCTC/COP/6/11: Control and prevention of water-pipe tobacco products. Report by the Convention Secretariat. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 18 July 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_11-en.pdf).

64 Guidelines for implementation of Article 6 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2017 (<https://fctc.who.int/publications/m/item/price-and-tax-measures-to-reduce-the-demand-for-tobacco>). for implementation of Article 6 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2017 (<https://fctc.who.int/publications/m/item/price-and-tax-measures-to-reduce-the-demand-for-tobacco>).

65 WHO technical manual on tobacco tax policy and administration. License: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2021 (<https://www.who.int/publications/i/item/9789240019188>).

66 Advisory note: waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators (2nd ed). Geneva: WHO Study Group on Tobacco Product Regulation (TobReg); 2015 (<https://www.who.int/publications/i/item/advisory-note-waterpipe-tobacco-smoking-health-effects-research-needs-and-recommended-actions-by-regulators-2nd-ed>).

2.4.2 Country practices

Descriptions of Article 6 measures from Egypt, Germany and Türkiye are given below.

Egypt

In Egypt, waterpipe tobacco has an ad valorem excise tax.⁶⁷ Law No. 177 of 2023⁶⁸ amended some provisions of the Value Added Tax Law promulgated by Law No. 67 of 2016.⁶⁹ According to the 2023 *WHO report on the global tobacco epidemic*, in Egypt, ad valorem excise taxes accounted for 59.77% and import duty accounted for 2.09% of the retail sales price per 20 g of waterpipe tobacco, giving a total of 61.86%.⁷⁰

Germany

In August 2021, Germany updated its Tobacco Tax Act⁷¹ by promulgating the Tobacco Tax Modernization Act.⁷² Among the changes was the introduction of an additional tax on waterpipe tobacco. The tax was set to increase as follows: €15.00/kg from 1 January 2022 to 31 December 2022; €19.00/kg from 1 January 2023 to 31 December 2024; €21.00/kg from 1 January 2025 to 31 December 2025; and €23.00/kg from 1 January 2026 onwards.

Türkiye

In Türkiye, according to the Special Consumption Tax Law No. 4760, the special consumption tax, including for waterpipe tobacco, is updated every 6 months based on inflation rates.⁷³ In the most recent update, effective 5 July 2023, the tax rate of waterpipe tobacco is 63%.⁷⁴ There is no excise tax on the waterpipe instrument, but general value added tax rates apply. According to the 2023 *WHO report on the global tobacco epidemic*, in Türkiye, specific excise taxes accounted for 3.41%, ad valorem excise taxes accounted for 63%, and value added tax accounted for 15.25% of the retail sales price per 20 g of waterpipe tobacco, giving a total of 81.66%.⁷⁵

2.4.3 Additional considerations when drafting legislation

As noted above, tax and price measures typically fall under the authority and expertise of the ministry responsible for finance, whereas many other WHO FCTC measures fall within the remit and expertise of the ministry responsible for health and other sectors of government. It is important that, where possible, these different government entities consider using a clear and common definition of tobacco product categories (e.g. waterpipe tobacco).⁷⁶

67 WHO report on the global tobacco epidemic, 2021. License: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2021 (<https://www.who.int/publications/i/item/9789240032095>).

68 [Official Gazette: Law No. 177 of 2023 amending some provisions of the Value Added Tax Law promulgated by law No. 67 of 2016, 4 November 2023]. Cairo: Law and Society Research Unit, American University in Cairo; 2023 (in Arabic) (<https://manshurat.org/content/tdyl-bd-hkm-qnwn-ldryb-lqym-lmdf-blqnwn-177-lsn-2023>).

69 Official Gazette: Value Added Tax Law No. 67 of 2016, 21 March 2016]. Cairo: Law and Society Research Unit, American University in Cairo; 2016 (in Arabic) (<https://manshurat.org/node/14613>).

70 WHO report on the global tobacco epidemic, 2023. Licence: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2023 (<https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2023>).

71 [Tobacco Tax Act (BGBl. I p. 1870), which was last amended by Article 2 of the Act of August 10, 2021 (BGBl. I p. 3411)] [website]. Bonn: Bundestag; 2021 (in German) (https://www.gesetze-im-internet.de/tabstg_2009/BJNR187010009.html).

72 [Tobacco Tax Modernization Act (BGBl. I p. 3411), 10 August 2021]. Bonn: Bundestag; 2021 (in German) (https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*/5b@attr_id=%27bgbl121s3411.pdf%27%5d#_bgbl_2F%2F%5B%40attr_id%3D%27bgbl121s3411.pdf%27%5D_1705506140405).

73 [Official Gazette: Presidential decision regarding special consumption tax rates applied to certain goods in table (B) of list (III) annexed to the Special Consumption Tax Law No. 4760, redetermination of minimum fixed and non-current tax amounts and the provision of paragraph (3) of Article 12 of the said law on these goods decision on non-implementation for the January-June Period of 2024 (Decision Number 8001), 28th December 2023]. Ankara: General Directorate of Law and Legislation; 2023 (in Turkish) (<https://www.mevzuat.gov.tr/mevzuatmetin/1.5.4760.pdf>).

74 [Table (A) of list number (II) List updated in accordance with Articles (12/3) of the Special Consumption Tax Law No. 4760 (Effective 5/7/2023)]. Ankara: Revenue Administration; 2023 (in Turkish) (https://www.gib.gov.tr/fileadmin/mevzuat/otv_oranlari_tum/05072023_III_sayili_liste.pdf).

75 WHO report on the global tobacco epidemic, 2023. Licence: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2023 (<https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2023>).

76 WHO technical manual on tobacco tax policy and administration. License: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2021 (<https://www.who.int/publications/i/item/9789240019188>).



2.5 Protection from exposure to tobacco smoke (Article 8 of the WHO FCTC)

In negotiating and adopting the Convention, Parties to the WHO FCTC recognized, in both the preamble and Article 8, the unequivocal scientific evidence establishing that tobacco consumption and exposure to tobacco smoke cause death, disease and disability. As a result, Article 8 of the WHO FCTC requires implementation of effective measures providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places. In adopting the Guidelines for implementation of Article 8, the COP acknowledged the scientific findings showing that there is no safe level of exposure to tobacco smoke and that the only effective protective measure is the total elimination of smoking and tobacco smoke in a particular space or environment, to create a totally smoke-free environment. Other approaches, such as designated smoking areas or rooms, even with separate ventilation, cannot provide effective protection. The guidelines interpret the phrase “other public places” in Article 8 as referring to outdoor or quasi-outdoor public places, and provide that Parties should consider the evidence of possible health hazards in those settings and should adopt the most effective protection measures wherever the evidence shows that there is a hazard.⁷⁷

The recommendations in the Guidelines for implementation of Article 8 provide that duties of compliance should apply to both smokers and persons responsible for the public or workplace premises or means of public transport, with penalties for non-compliance applied to the businesses, and possibly to smokers. The owner, manager or other person in charge of the premises should be required to:

- ◆ post signs at appropriate locations indicating that smoking is not permitted;
- ◆ ensure ashtrays are not present in the indoor premises or in outdoor areas where smoking is prohibited; and

⁷⁷ Guidelines for implementation of Article 8 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2013 (<https://fctc.who.int/publications/m/item/protection-from-exposure-to-tobacco-smoke>).

- ◆ supervise observance of the smoking ban, including taking specified actions such as asking a person who is smoking to stop, discontinuing service, asking the person to leave the premises, and contacting law enforcement or other appropriate authorities, if necessary.⁷⁸

Strong smoke-free measures are a critical intervention for protecting members of the public and workers from the hazards of exposure to toxic tobacco smoke. In addition, smoking bans are effective in reducing tobacco consumption, including by young people, and in denormalizing smoking.^{79,80,81}

2.5.1 Application to WTS

The Guidelines for implementation of Article 8 apply to WTS under Article 1 of the WHO FCTC definition of “tobacco products” and the guidelines’ definition of “smoke”. In many countries, group WTS sessions in waterpipe bars, cafés and restaurants are socially and culturally acceptable. The general acceptance of this practice has led to exemptions or loopholes in some countries’ laws. In such situations, customers and workers are exposed to high levels of hazardous substances over extended periods. Because waterpipe tobacco smoke contains many of the highly toxic and carcinogenic chemicals and heavy metals also found in cigarette smoke, with additional toxic contributions from the charcoal,⁸² there is no health or legal justification for exempting WTS from a smoking ban introduced in accordance with Article 8 of the Convention.

With respect to outdoor and quasi-outdoor settings, several studies have examined the levels of cigarette pollution in outdoor settings and the potential for hazardous conditions. For example, one study that included sidewalk cafés, and bar and restaurant patios showed that a person sitting or standing a few feet downwind of a smouldering cigarette is likely to be exposed to substantial levels of cigarette smoke toxins during smoking activity. The more smokers that are nearby, the more likely it is that the risk of exposure will be very high.⁸³

In many countries, group WTS sessions in waterpipe bars, cafés and restaurants are socially and culturally acceptable. The general acceptance of this practice has led to exemptions or loopholes in some countries’ laws.

A Canadian study of 12 indoor and five outdoor waterpipe cafés found that staff and customers were exposed to air quality levels that were hazardous to human health.

⁷⁸ *Ibid.*

⁷⁹ The health consequences of smoking – 50 years of progress: a report of the Surgeon General. Atlanta: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2014 (<https://www.ncbi.nlm.nih.gov/books/NBK179276/>).

⁸⁰ *Ibid.*

⁸¹ Kelly BC, Vuolo M, Frizzell LC, Hernandez EM. Denormalization, smoke-free air policy, and tobacco use among young adults. *Soc Sci Med.* 2018;211:70–7. doi: <https://doi.org/10.1016/j.socscimed.2018.05.051>.

⁸² Advisory note: waterpipe tobacco smoking: health effects, research needs and recommended actions by regulators (2nd ed). Geneva: WHO Study Group on Tobacco Product Regulation (TobReg); 2015 (<https://www.who.int/publications/i/item/advisory-note-waterpipe-tobacco-smoking-health-effects-research-needs-and-recommended-actions-by-regulators-2nd-ed>).

⁸³ Klepeis NE, Ott WR, Switzer P. Real-time measurement of outdoor tobacco smoke particles. *J Air Waste Manag Assoc.* 2007;57:522–34. doi: <https://doi.org/10.3155/1047-3289.57.5.522>.

Although the outdoor levels of particulates were lower than the indoor levels, PM_{2.5}⁸⁴ levels were still poor. The results supported the need to eliminate waterpipe smoking in both indoor and outdoor hospitality venues.⁸⁵

2.5.2 Country practices

This section gives examples of comprehensive provisions for implementing Article 8 and its guidelines for implementation with respect to WTS from Costa Rica, the Republic of Moldova and Türkiye. Several governments imposed temporary COVID-19-based bans or restrictions on WTS in public places, in recognition of the transmission risk posed by the communal use of waterpipes.^{86,87}

Costa Rica

Costa Rica's Decree No. 37185-S-MEIC-MTSS-MP-H-SP, Regulation of the General Law for the Control of Tobacco and its Harmful Effects on Health, 2012, bans smoking, including waterpipe use specifically, in all workplaces, in listed public and private places that include transport vehicles, and within 5 m of those places. The person responsible for the premises is required to ensure compliance. Relevant provisions include definitions of "work place", "space free of tobacco smoke", "space for public use", "smoking", "tobacco smoke", "water pipes or hookahs", "tobacco products" and "tobacco for a water pipe" (Article 4); smoke-free areas (Article 5); rights of people and duties of persons responsible for the premises (Article 7); obligations of persons responsible for public and private facilities that are 100% smoke-free (Article 8); and signage requirements (Article 9).⁸⁸

Republic of Moldova

The tobacco control law of the Republic of Moldova has comprehensive smoke-free measures that specifically include waterpipe smoking and herbal product use; these measures apply to all indoor public places, workplaces and public transport, and in specified quasi-outdoor or outdoor spaces. Law No. 278-XVI on Tobacco and Tobacco Products (as amended), 2007, also has noteworthy definitions, including "aerosol released by tobacco product or related product", "emissions", "smoking", "tobacco smoke", "workplace", "public transportation means", "related products", "herbal products for smoking", "tobacco products", "tobacco products for smoking", "enclosed spaces", "semi-open spaces", "semi-enclosed spaces", "public spaces" and "waterpipe tobacco" (Article 2). The law provides for protection from exposure to tobacco smoke and aerosols released by tobacco products or related products (Article 26), and imposes duties on persons in charge of the premises (Article 27).⁸⁹

84 PM_{2.5} refers to particulate matter composed of particles that are 2.5 microns or less in diameter.

85 Zhang B, Haji F, Kaufman P, Muir S, Ferrence R. 'Enter at your own risk': a multimethod study of air quality and biological measures in Canadian waterpipe cafes. *Tob Control*. 2015;24:175–81. doi: <https://doi.org/10.1136/tobaccocontrol-2013-051180>.

86 COVID-19 and beyond: banning tobacco and e-cigarettes in public places is a public health must [website]. World Health Organization Eastern Mediterranean Region; 2024 (<http://www.emro.who.int/tfi/know-the-truth/post-covid-19-banning-tobacco-and-e-cigarettes-in-public-places-is-a-public-health-must.html>).

87 Shekhar S, Hannah-Shmouni F. Hookah smoking and COVID-19: call for action. *CMAJ*. 2020;192:E462. doi: <https://doi.org/10.1503/cmaj.75332>.

88 Alcance digital [Digital bulletin] N° 84 La Gaceta Diario Oficial Costa Rica: Regulation of the general law for the control of tobacco and its harmful effects on health, Executive Branch, Government of Costa Rica, 2012. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Costa%20Rica/Costa-Rica-Decree-No.-37185.pdf>).

89 Official Gazette of the Republic of Moldova: Law No. 278 Concerning Tobacco Control. No. 47-48, No. 139. The Parliament of the Republic of Moldova. 14 December 2007. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Moldova/Moldova-TC-Law-as-amended.pdf>).

Türkiye

Prime Minister's Circular No. 2009/13 prohibits tobacco use in cafés, hookah places, restaurants and other specified indoor hospitality venues.⁹⁰ Further regulations issued by the Tobacco and Alcohol Market Regulation Board restrict where WTS areas belonging to businesses can be located with respect to educational institutions; cultural and social service premises; and health, cultural or sports service providers (Article 4).⁹¹

2.5.3 Additional considerations when drafting legislation

Parties could consider covering non-tobacco herbal products under the smoking ban. The Knowledge Hub for Waterpipe Tobacco Smoking recommends that herbal waterpipe products should be fully covered within any waterpipe tobacco legislative framework.⁹² Article 2.1 of the WHO FCTC calls on governments to go beyond the obligations specified in the Convention and can thus be used as authority for covering non-tobacco herbal products on various grounds. In addition to health protection concerns, it would be difficult for venue operators and inspectors to know whether the source of the emissions is waterpipe tobacco or a non-tobacco herbal mixture; this uncertainty would significantly hinder compliance and enforcement if non-tobacco herbal products were not covered in the legislative framework. Additionally, allowing waterpipe users to smoke any substance in these venues reinforces the normalization of WTS and helps to perpetuate the misperception that waterpipe smoking is safer than other forms of smoking.

2.6 Regulation of the contents of tobacco products (Article 9 of the WHO FCTC)

Article 9 of the WHO FCTC requires Parties to test, measure and regulate the contents and emissions of tobacco products. The Partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC, adopted by the COP and developed in an incremental manner, define the term “emissions” as substances that are released when the tobacco product is used as intended. The partial guidelines defer recommendations for regulating product addictiveness and toxicity, pending the availability of further evidence and country experience. In the meantime, the partial guidelines recommend:

- ◆ giving to the authority responsible for tobacco control the responsibility for the approval, adoption and implementation of measures for the testing and measuring of the contents and emissions of tobacco products, and for the regulation of these contents and emissions; and
- ◆ prohibiting or restricting ingredients that make tobacco products more attractive; specifically, those ingredients that:
 - are used to increase palatability (e.g. flavourings);
 - have colouring properties;

90 Official Gazette: Implementation of Law No. 4207 (Circular 2009/13), Prime Minister's Office, Turkey, 16 July 2009. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Turkey/Turkey-Circular-200913.pdf>).

91 Official Newspaper Edition 28564: Regulation on the matters that must be complied with in the issuance of presentation conformity certificates to a location/locations that belong to businesses where hookah tobacco materials are smoked and the operation of these places (communiqué), Tobacco and Alcohol Market Regulation Board, Turkey, 19 February 2013. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Turkey/Turkey-Regs-on-Hookah-Businesses.pdf>).

92 Jawad M. The challenges of waterpipe tobacco smoking regulation in the Eastern Mediterranean Region. Beirut: Knowledge Hub for Waterpipe Tobacco Smoking; 2018 (<https://portal-uat.who.int/fctcapps/sites/default/files/kh-media/Technical-Report.pdf>).



- create the impression of a health benefit; or
- are associated with energy and vitality.⁹³

2.6.1 Application to waterpipe tobacco products

A ban on flavourings and other ingredients that make WTS more attractive is particularly pertinent because flavourings have been identified as a key motivator for WTS. As recognized in the partial guidelines, flavourings contribute to promoting and sustaining tobacco use.⁹⁴ Tobacco companies are aware that sweeter, milder flavours increase appeal to young people by masking the strong tobacco taste and unpleasant feeling in the mouth.^{95,96} Sweetened and flavoured maassel is sold in a variety of flavourings, and the molasses and fruit mixtures create an appealing, mild, aromatic smoke. In some countries, WTS has significantly overtaken cigarette smoking among young people.⁹⁷ A prohibition on

93 Partial guidelines for the implementation of Articles 9 and 10 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2017 (<https://fctc.who.int/publications/m/item/regulation-of-the-contents-of-tobacco-products-and-regulation-of-tobacco-product-disclosures>).

94 *Ibid.*

95 Kostygina G, Ling PM. Tobacco industry use of flavourings to promote smokeless tobacco products. *Tob Control*. 2016;25:ii40–ii9. doi: <https://doi.org/10.1136/tobaccocontrol-2016-053212>.

96 Huang LL, Baker HM, Meernik C, Ranney LM, Richardson A, Goldstein AO. Impact of non-menthol flavours in tobacco products on perceptions and use among youth, young adults and adults: a systematic review. *Tob Control*. 2017;26:709–19. doi: <https://doi.org/10.1136/tobaccocontrol-2016-053196>.

97 Maziak W. The waterpipe: time for action. *Addiction*. 2008;103:1763–7. doi: <https://doi.org/10.1111/j.1360-0443.2008.02327.x>.

flavourings and other additives that make waterpipe tobacco more palatable or attractive could be key to reducing WTS prevalence among young people.^{98,99} The report entitled *An overview of global regulatory practices in controlling waterpipe tobacco use*, prepared in 2018 by the WHO FCTC Knowledge Hub for Waterpipe Tobacco Smoking in accordance with decision FCTC/COP7(4), notes that regulation of waterpipe tobacco should include a ban on flavours.¹⁰⁰ Because the waterpipe itself and the charcoal could also play a role in WTS toxicity and attractiveness, good practice would include providing powers to the relevant authority to regulate these as well, and should be considered.^{101,102}

2.6.2 Country practices

Many countries' main tobacco control laws provide the health ministry or other appropriate authorities with broad powers to regulate tobacco product contents and emissions through subsidiary legislation.¹⁰³ A growing number of countries' tobacco control laws and regulations prohibit ingredients that make tobacco products, including waterpipe tobacco, more palatable. However, many of the countries with the highest rates of WTS by young people are not among those countries prohibiting ingredients, indicating the likelihood that a law amendment will be necessary in countries with high rates of WTS.

Many countries' main tobacco control laws provide the health ministry or other appropriate authorities with broad powers to regulate tobacco product contents and emissions through subsidiary legislation.

In line with the Partial guidelines for implementation of Articles 9 and 10, an effective approach would include prohibiting flavourings and other ingredients that make WTS more palatable. At the same time, it would be helpful to provide regulatory authority to enact subsidiary legislation to address product attractiveness, toxicity and addictiveness.

Examples of legal measures from Brazil and Panama that are based on the recommendations of the partial guidelines are provided below.

Brazil

Brazil's legal measures regulate a comprehensive list of specified contents and emissions of tobacco products, including ingredients that make tobacco products more palatable,

98 An overview of global regulatory practices in controlling waterpipe tobacco use. Geneva: World Health Organization; 2018 (<https://fctc.who.int/publications/m/item/an-overview-of-global-regulatory-practices-in-controlling-waterpipe-tobacco-use>).

99 Maziak W, Taleb ZB, Bahelah R, Islam F, Jaber R, Auf R, Salloum RG. The global epidemiology of waterpipe smoking. *Tob Control*. 2015;24 Suppl 1:i3–i12. doi: <https://doi.org/10.1136/tobaccocontrol-2014-051903>.

100 An overview of global regulatory practices in controlling waterpipe tobacco use. Geneva: WHO FCTC Secretariat's Knowledge Hub on Water-pipe Tobacco Smoking; 2018 (<https://fctc.who.int/publications/m/item/an-overview-of-global-regulatory-practices-in-controlling-waterpipe-tobacco-use>).

101 Hauser CD, Mailig R, Stadler H, Reed J, Chen S, Uffman E, Bernd K. Waterpipe tobacco smoke toxicity: the impact of waterpipe size. *Tob Control*. 2020;29:s90–s4. doi: <https://doi.org/10.1136/tobaccocontrol-2019-054960>.

102 Maziak W, Sharma E. Building the evidence base for waterpipe regulation and policy. *Tob Control*. 2020;29:s59–s61. doi: <https://doi.org/10.1136/tobaccocontrol-2019-055391>.

103 The Tobacco Control Laws legislation database, compiled by the Campaign for Tobacco-Free Kids provides legal analysis of tobacco control and related laws implemented in each WHO region. To date, 117 countries' laws have been analysed with respect their implementation measures for FCTC Articles 8, 9, 10, 11, 13 and 16. (www.tobaccocontrolaws.org)

appealing or attractive. The Brazilian National Health Surveillance Agency (ANVISA) Resolution of the Collegiate Board (RDC) No. 14 (2012)¹⁰⁴ contains strong provisions regulating contents and emissions, including definitions of “additives” and “flavoring agents” (Article 3); prohibited additives, including sweeteners, honey, molasses or any other substance that can impart a sweet flavour (other than sugars) (Article 6); and permitted additives (Article 7).¹⁰⁵

Panama

Resolution No. 0554 (2018) requires that importers of waterpipes and waterpipe tobacco obtain prior approval from the Directorate General of Public Health before placing these products on the market, to ensure compliance with the legal regulations in force (Article IV).¹⁰⁶

2.6.3 Additional considerations when drafting legislation

Because non-tobacco herbal products produced for use with waterpipes contain and emit significant toxicants, Parties could consider providing the minister or other appropriate authority with powers to regulate these products as well. As noted above, the Knowledge Hub for Waterpipe Tobacco Smoking suggests including herbal waterpipe products within any waterpipe tobacco legislative framework.¹⁰⁷

For those countries with enabling legislation that provides broad authority to regulate contents and emissions, measures implementing Article 9 of the WHO FCTC could be enacted through subsidiary legislation. Alternatively, it might be possible that another law, such as a public health, food safety and standards, or consumer protection law, has regulatory authority provisions that could be used. Otherwise, an amendment to the law may be necessary; any such legal amendment could consider empowering the Ministry of Health or other appropriate authority with broad regulatory powers to prescribe further requirements relating to the contents and emissions of all tobacco products, including waterpipe tobacco products, without exception.

2.7 Regulation of tobacco product disclosures (Article 10 of the WHO FCTC)

Article 10 of the WHO FCTC requires Parties to implement effective measures requiring tobacco product manufacturers and importers to disclose information to the government about their products’ contents and emissions, and to provide for public disclosure of information about the products’ toxic constituents and emissions. The recommendations of the Partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC include giving to the authority responsible for tobacco control the responsibility for adopting and

¹⁰⁴ ANVISA RDC No. 14 has been the subject of several legal challenges, some of which are still pending. As a result, the resolution has not been implemented in full.

¹⁰⁵ Diário Oficial da União no. 53: Resolution - RDC no. 14 of March 15th, 2012: Establishes maximum levels of tar, nicotine and carbon monoxide in cigarettes and restrictions on the use of additives in all tobacco products, and gives other provisions, Agência Nacional de Vigilância Sanitária [National Health Surveillance Agency], Brazil. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Brazil/Brazil-RDC-No.-142012.pdf>).

¹⁰⁶ Official Digital Gazette: Resolution No. 0554 that establishes that water pipes, narguiles, hookahs, shishas, cachimbas, or by whatever other name they may be known in the future, are tobacco products, and issues other provisions, Republic of Panama Ministry of Health, 8 March 2018. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Panama/Panama-Res.-No.-0554-of-2018.pdf>).

¹⁰⁷ Jawad M. The challenges of waterpipe tobacco smoking regulation in the Eastern Mediterranean Region. Beirut: Knowledge Hub for Waterpipe Tobacco Smoking; 2018 (<https://portal-uat.who.int/fctcapps/sites/default/files/kh-media/Technical-Report.pdf>).



implementing measures to accomplish the requirements of Article 10. In addition, the following should be required:

- ◆ Manufacturers and importers should be required to provide prescribed information in a standard format at specified periods on the ingredients used in the manufacture of their products and should be required to report information on contents and emissions by product type and for each brand within a brand family, rather than in combined lists.
- ◆ The authority responsible for tobacco control should: specify the analytical methods for product testing that manufacturers and importers must use; require from the testing laboratory a copy of the laboratory report that shows the product analysed and the results; and consider requiring proof of the laboratory's accreditation;¹⁰⁸ and
- ◆ Manufacturers and importers should provide:
 - information on ingredients and their quantities per unit of each tobacco product, including ingredients present in any product components;
 - specified information on the characteristics of the tobacco leaves used;
 - notification of any changes to a product's ingredients (contents) at the time the change is made;
 - a statement of the purpose for including an ingredient and other relevant information, including information on the supplier of each ingredient;
 - information on contents and emissions, as prescribed;
 - information on product characteristics such as design features;

¹⁰⁸ Further development of the partial guidelines for implementation of Articles 9 and 10 of the WHO FCTC, annexes to WHO report (FCTC/COP/7/9). Geneva: World Health Organization; 2016 (<https://www.who.int/publications/m/item/further-development-of-the-partial-guidelines-for-implementation-of-articles-9-and-10-of-the-who-fctc>).

- notification of any change to the design features of a particular brand and updated information when a change is made;
 - general company information; and
 - sales volume information in units for each brand within a brand family on a national and, if appropriate, a subnational basis.
- ◆ Parties should consider making information about the toxic constituents and emissions of tobacco products and other information disclosed to governmental authorities publicly accessible (e.g. via the Internet, or by request to a governmental authority) in a meaningful way.

2.7.1 Application to waterpipe tobacco products

Article 10 and the recommendations of the partial guidelines for its implementation on disclosures of tobacco and non-tobacco products used in waterpipes should be applied to waterpipe tobacco manufacturers and importers.

2.7.2 Country practices

Some countries' legal measures require tobacco manufacturers and importers to list every ingredient and all concerned emissions for each type of tobacco product, whereas other countries require tobacco companies to list only specific ingredients and emissions. Some countries also require other information; for example, toxicological data, including the health and addictive effects of each ingredient, and research related to the development of new consumer tobacco products.¹⁰⁹

The rest of this section provides examples of provisions related to Article 10 of the WHO FCTC and the recommendations of the partial guidelines, as applied to tobacco products generally, from Brazil, Canada and the EU.

Some countries' legal measures require tobacco manufacturers and importers to list every ingredient and all concerned emissions for each type of tobacco product, whereas other countries require tobacco companies to list only specific ingredients and emissions.

Brazil

ANVISA RDC No. 90 of 27 December 2007 requires tobacco manufacturers and importers to register all tobacco products sold in, imported to or exported from Brazil, and to renew that registration annually. Through this process, the government comprehensively obtains disclosures pursuant to Article 10 of the WHO FCTC and the partial guidelines.

Tobacco manufacturers and importers are required to list, by brand, the types of tobacco and additives used; provide information about the filter, wrappings and packaging, and the

¹⁰⁹ Best practices in the implementation of WHO FCTC Article 10 (regulation of tobacco product disclosures). Geneva: WHO Framework Convention on Tobacco Control Secretariat; 2015 ([https://fctc.who.int/publications/m/item/best-practices-in-the-implementation-of-who-fctc-article-10-\(regulation-of-tobacco-product-disclosures\)](https://fctc.who.int/publications/m/item/best-practices-in-the-implementation-of-who-fctc-article-10-(regulation-of-tobacco-product-disclosures))).

parameters and compounds present in the primary and secondary smoke streams and the total tobacco; provide the report of the laboratory analysis; and report any alteration in the brand composition. The renewal application requires similar, updated information. The ANVISA RDC also requires information about packaging and submission of images of the packaging (Articles 2(I), 3, 4, 7, Annex II).¹¹⁰

Canada

The Tobacco and Vaping Products Act (enacted in 2018 to amend the Tobacco Act) requires manufacturers to submit prescribed information on their tobacco products, their emissions and any related research and development information to the Ministry of Health in the prescribed form, manner and period (Article 6(1) and (2)).¹¹¹ The Minister of Health also has authority to require additional information, which manufacturers must supply within the specified time (Article 6.2), and must make information from the reports publicly available, as prescribed (Article 6.2).

European Union

Article 5 of the EU Tobacco Products Directive, 2014, which must be transposed by the Member States of the EU, contains detailed requirements for tobacco companies making disclosures to governments on contents and emissions of their products,¹¹² including:

- ◆ identification of the laboratory methods used (if not prescribed by the government) and testing by an independent laboratory, with verification of results;
- ◆ submission of information on new or modified products before introducing them into the market;
- ◆ submission of a list of all ingredients and their quantities used in the manufacture of the tobacco products, with a statement of the reasons for including the ingredients and a list of emissions and their levels;
- ◆ submission of toxicological data regarding the ingredients in burnt or unburnt form, as appropriate, and their effects on users' health, including addictive and other effects;
- ◆ submission of a technical document setting out a general description of additives used and their properties, for both cigarettes and roll-your-own tobacco;
- ◆ a requirement to conduct studies to assess the effects of ingredients on health, including addictiveness and toxicity, as may be prescribed;
- ◆ reporting using the prescribed format and method of submission;
- ◆ submission of internal and external studies conducted or available on market research, and preferences of various consumer groups (including young people and current smokers or tobacco users) relating to ingredients and emissions, as well as summaries of any market surveys carried out when launching new products; and
- ◆ reporting by manufacturers and importers on their sales volumes per brand and type, reported in sticks or kilograms, and on a yearly basis.

110 Resolution - RDC no. 90 of December 27, 2007: Governs the registration of identification data for tobacco derivative smoking products, Agência Nacional de Vigilância Sanitária [National Health Surveillance Agency], Brazil, 2007. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Brazil/Brazil-RDC-No.-90.pdf>).

111 Tobacco and Vaping Products Act, S.C. 1997, c. 13, Senate and House of Commons of Canada, 14 February 2019. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Canada/Canada-TVPA-native.pdf>).

112 Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, 2014. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/European%20Union/European-Union-TPD-2014-native.pdf>).

2.7.3 Additional considerations when drafting legislation

In addition to disclosure requirements that incorporate all the recommendations of the partial guidelines, it could be useful for regulators to require information from manufacturers and importers of waterpipes regarding the design features (and any other information that may assist in the development of effective regulatory measures); and contents and emissions information from the manufacturers and importers of waterpipe charcoal.



2.8 Packaging and labelling of tobacco products (Article 11 of the WHO FCTC)

Article 11 of the WHO FCTC requires Parties to implement effective requirements and restrictions for packaging and labelling of tobacco products. The Guidelines for implementation of Article 11 provide further details to support Parties' implementation.¹¹³ These measures fall into four main categories – a ban on misleading packaging and labelling, health warnings, information on constituents and emissions, and plain packaging – as discussed below.

Ban on misleading packaging and labelling

Article 11 of the WHO FCTC requires effective measures to ensure that packaging and labelling do not promote the product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions. This includes directly or indirectly creating a false impression that a particular tobacco product is less harmful than other tobacco products.

In addition to the misleading terms specifically mentioned in Article 11, the guidelines clarify that any terms that are likely to create a comparison between tobacco products' harmfulness should be prohibited. This prohibition includes terms such as "light", "mild", "natural", "extra", "ultra" and similar terms in any language; it also covers any trademark, figurative or other sign. Examples of "other signs" used by tobacco product manufacturers

¹¹³ Guidelines for implementation of Article 11 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2013 (<https://fctc.who.int/docs/librariesprovider12/default-document-library/who-fctc-article-11.pdf>).

to mislead consumers are colours, numbers, and package or product shape (e.g. slim packs).^{114,115}

Health warnings

Under Article 11 of the WHO FCTC, all packaging used in the retail sale of the product (e.g. unit packs, cartons, cases) must display prescribed clear and prominent rotating health warnings that are in the principal language or languages of the country. Pursuant to the guidelines for implementation, rotation requirements should include both of the following:

- ◆ the concurrent display of warnings from a set of multiple warnings for a specified period; and
- ◆ replacement of that set of warnings with a new set, with a phase-in period between sets during which both sets may be used concurrently.

Health warnings should cover 50% or more, but not less than 30%, of the principal display areas (PDAs) of the package. The guidelines emphasize that Parties should aim to cover as much of each PDA as possible, because the larger the warning, the more effective it is.¹¹⁶ Also, the guidelines specify that combined warnings consisting of both text and full-colour pictures should be required because pictorial warnings are far more effective than text-only messages.¹¹⁷ Parties should require that health warnings be permanently displayed and not obstructed by other markings, such as tax stamps or commercial onsets.¹¹⁸

To ensure timely introduction of the warnings, legal measures should set a single deadline after which manufacturers, importers and sellers can no longer supply products that do not comply with the new requirements. This deadline is meant to provide only enough time for manufacturers and importers to organize the printing of new packages. Otherwise, it is likely that manufacturers will only start rolling out packaging with the new warnings by the deadline set in the law, with the old stock remaining on the market longer.

Information on constituents and emissions

Pursuant to Article 11 of the WHO FCTC, all packaging used in the retail sale of the product must display prescribed information about relevant constituents and emissions.

The guidelines provide additional details, stating that the prescribed information on constituents and emissions should be in the form of descriptive statements (e.g. a statement that the product contains nicotine, a highly addictive substance) rather than quantitative statements giving yield figures (e.g. a statement that the product contains 10 mg tar, 5 mg nicotine and 5 mg CO). Machine-testing for emission yields does not provide valid estimates of human exposure, and the tobacco industry has used yield figures and deceptive descriptors associated with them to mislead consumers by creating the mistaken belief that the product is less harmful.

114 Pollay RW, Dewhirst T. The dark side of marketing seemingly "light" cigarettes: successful images and failed fact. *Tob Control*. 2002;11 Suppl 1:118–31. doi: https://doi.org/10.1136/tc.11.suppl_1.i18.

115 In addition, Parties should be aware of the evidence showing that packaging or labelling which states or suggests that a tobacco product is flavoured may be misleading because flavoured products are perceived by many consumers as less harmful.

116 FCTC Article 11: tobacco warning labels: evidence and recommendations from the ITC project. Waterloo, Ontario: International Tobacco Control Policy Evaluation Project; 2009 (<https://itcproject.org/findings/reports/fctc-article-11-tobacco-warning-labels-may-2009/>).

117 Fong GT, Hammond D, Hitchman SC. The impact of pictures on the effectiveness of tobacco warnings. *Bull World Health Organ*. 2009;87:640–3. doi: <https://doi.org/10.2471/blt.09.069575>.

118 "Onset" means any communication affixed to the outside of an individual package and/or carton purchased at retail by consumers, such as a miniature brochure beneath the outer cellophane wrapping or glued to the outside of the cigarette package.

Plain packaging (also known as “standardized packaging”)

The Guidelines for implementation of Article 11 provide that Parties should consider adopting plain packaging requirements, such as measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than the brand name and product name displayed in a standard colour and style of font. These requirements will increase the noticeability and effectiveness of the health warnings, reduce the attractiveness of the packaging and disrupt industry tactics to use packaging to mislead consumers.

Other key issues

There should be no exemption for small-volume companies or brands or for different types of tobacco products (e.g. for smokeless or waterpipe tobacco). Health warnings and information on constituents and emissions should be specific to the type of tobacco product and should reflect the product’s specific adverse health effects (e.g. those of WTS). It is important to have a comprehensive understanding of the different types of tobacco product packaging on the market in a country, and to specify how the warnings and statements on constituents and emissions must be displayed on each package type and shape.

Parties are called to consider requiring different health warnings and messages for different tobacco products. Thus, health warnings on waterpipe tobacco should address the specific harms caused by WTS.

2.8.1 Application to waterpipe tobacco products

The requirements of Article 11 of the WHO FCTC and the recommendations in its guidelines regarding misleading packaging and labelling, plain packaging, large rotating pictorial health warnings, and information on constituents and emissions (other than constituents and emissions related to combustion) all apply to waterpipe tobacco products and cottage-industry waterpipe manufacturers, as well as to large manufacturers. As waterpipes and charcoal are integral to WTS and can affect the toxicity, the recommendations from the guidelines for implementation would be applicable to those elements as well. If these products, including separately sold waterpipe components (e.g. hoses), are not currently required to be sold in packages, legal measures could also be considered to close this gap.

The Guidelines for implementation of Article 11 call on Parties to consider requiring different health warnings and messages for different tobacco products. Thus, health warnings on waterpipe tobacco should address the specific harms caused by WTS. Because of the widespread misperception that WTS is less harmful than cigarette smoking, good practice would include using one or more of the prescribed warnings to specifically counter this misperception, and such good practice should therefore be considered. This could be especially important for warnings on waterpipes because there is a common mistaken belief that the water in the waterpipe bowl acts as a filter to eliminate or reduce toxins and nicotine.¹¹⁹

119 Maziak W. The waterpipe: time for action. *Addiction*. 2008;103:1763–7. doi: <https://doi.org/10.1111/j.1360-0443.2008.02327.x>.

2.8.2 Country practices

According to the 2023 *WHO report on the global tobacco epidemic*, 103 countries (more than half of all countries) globally require large pictorial health warnings that cover at least 50% of the pack.¹²⁰ Some of these countries' laws require warnings specific to waterpipe tobacco. There is no comparable global status report focusing on health warnings on waterpipe tobacco packaging.

At least 22 countries now require plain packaging. Among these countries, Belgium specifically applies plain packaging to waterpipe tobacco products (in addition to cigarettes and roll-your-own tobacco); in addition, Canada, Ireland, Israel, Saudi Arabia, Türkiye and Uruguay apply plain packaging to all tobacco products.¹²¹

Examples of implementation of Article 11 of the Convention from Lebanon, Panama, Saudi Arabia and Türkiye are given below.

Lebanon

Decree No. 8991, Health Warnings that Shall be Written on Tobacco Products Packs (2012), requires the display of one of five rotating waterpipe tobacco-specific health warnings on the lower part of the front side of the package, and a warning that links smoking to death on the lower part of the back of the package (Articles 2, 4).¹²² However, the warnings are only required to be written in text and must occupy only 40% of the total surface of the pack.

Panama

Panama's legal measures provide for combined pictorial and text warnings covering 50% of each PDA of the packaging of all tobacco products, descriptive constituents and emissions information, and a prohibition on misleading packaging. Resolution No. 0554 (2018) states that smokers do not always see the waterpipe tobacco package, especially if they smoke in establishments such as cafés, bars, restaurants or similar settings. Consequently, the Resolution requires a text warning (in Spanish) – "SMOKING THIS TYPE OF PRODUCT CAN CAUSE DEATH" – on a self-adhesive, vinyl, heat-resistant sticker covering the entire circumference of the vessel that holds the water or other liquid (Article III).¹²³

Saudi Arabia

Anti-Smoking Law Royal Decree No. 56 (Article 5),¹²⁴ its implementing Executive Regulations (Regulation 5-1) (as amended),¹²⁵ SFDA.FD 60:2018 (Section 4.1),¹²⁶ and

120 WHO report on the global tobacco epidemic, 2023. Licence: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2023 (<https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2023>).

121 Standardized or plain tobacco packaging: international developments. Washington, DC: Campaign for Tobacco-Free Kids; 2022 (<https://www.tobaccofreekids.org/plainpackaging/tools-resources/policy/international-developments>).

122 Official Gazette Issue 42: Decree No. 8991 Health warnings that shall be written on tobacco products packs, President of the Republic of Lebanon and Council of Ministers, 4 October 2012. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Lebanon/Lebanon-Decree-No.-8991.pdf>).

123 Official Digital Gazette: Resolution No. 0554 that establishes that water pipes, narguiles, hookahs, shishas, cachimbos, or by whatever other name they may be known in the future, are tobacco products, and issues other provisions, Republic of Panama Ministry of Health, 8 March 2018. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Panama/Panama-Res.-No.-0554-of-2018.pdf>).

124 Anti-Smoking Law Royal Decree No. 56, King Salman of Saudi Arabia, 19 June 2015. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Saudi%20Arabia/Saudi-Arabia-Anti-Smoking-Law.pdf>).

125 Approval on the amendment of the Executive Regulation of Tobacco Control Law (Decision of the Minister of Health no. 1853515), Ministry of Health, Saudi Arabia, 9 September 2018. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Saudi%20Arabia/Saudi-Arabia-Amended-Exec.-Regs.pdf>).

126 Plain packaging of tobacco products (SFDA.FD 60:2018), Saudi Food and Drug Authority, December 2018. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Saudi%20Arabia/Saudi-Arabia-Plain-Pkg.-Standard.pdf>).

Announcement 42504, 25/5/1440,¹²⁷ require a set of three rotating combined pictorial and text warnings covering 65% of the front and back of the smoked tobacco product unit and outside packaging, specifically including waterpipe tobacco. The warnings are issued by the Saudi Food & Drug Authority and the National Committee for Tobacco Control, and must be rotated over a 12-month period. In addition, the following scientific factual message (in Arabic) is required to cover 50% of one side panel: “Smoke contains more than 70 carcinogens”. SFDA.FD 60:2018 prohibits product packaging from containing any information about the amounts of nicotine, tar or CO, or any “suggestions about [the product’s] qualities, health effects, dangers, or emissions” or “suggestions that the product is less dangerous compared to other products [or] that the product aims at reducing the harmful effects of smoking”.

SFDA.FD 60:2018 also requires plain packaging for cigarettes, cigars, hand-rolling tobacco and tobacco molasses as of 1 January 2020. Plain packaging is required at the manufacturer level from 23 August 2019, but products imported before that date were permitted to be distributed until 1 January 2020.

Türkiye

Türkiye’s legal measures incorporate all the recommendations of the Guidelines for implementation of Article 11, including a requirement for plain packaging, with detailed specifications in regulations. The Law on Prevention and Control of Hazards of Tobacco Products (Law No. 4207, 1996, as amended) requires a prescribed warning that comprises text with a corresponding image and quit-line information covering at least 85% of the front and back of all unit and group packaging of smoked tobacco products.¹²⁸ (Subsequent regulations implementing the law specified that the warnings on the back of *cigarette* unit packaging must cover 100% of that surface.¹²⁹) A set of 14 warnings must be displayed in equal numbers over a 12-month period (Article 4(3)). In addition, each package must display a general warning message on 50% of one lateral side and an information message on 50% of the other lateral side. Misleading packaging is prohibited (Article 4(4)). The Regulation on the Procedures and Principles Related to the Production Methods, Labeling, and Surveillance of Tobacco Products, 2019, requires that one of the lateral-side information messages describe the product’s constituents and emissions (Article 13).¹³⁰ Emissions yield figures are not allowed (Article 11(8)). The Regulation further requires plain and standard packaging.

Türkiye has also extended the warning labelling requirements in Law No. 4207 to the bottles or bowls of waterpipes by requiring the placement of warnings covering 85% of the surface (Article 4(3)), with additional details contained in the Communiqué on the Procedures and Principles Regarding the Health Warnings to Be Put on Hookah Bottles.¹³¹

127 Complying with combined health warnings approved for plain packaging of tobacco products (Announcement no. 42504), Saudi Food and Drug Authority, 31 January 2019. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Saudi%20Arabia/Saudi-Arabia-SFDA-Ann.-No.-42504.pdf>).

128 The law on prevention and control of hazards of tobacco products (Law number 4207), Grand National Assembly of Türkiye, 26 November 1996. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Turkey/Turkey-Law-No.-4207.pdf>).

129 Official Gazette Edition 31527: Regulation amending the regulation on the procedures and principles related to the production methods, labeling, and surveillance of tobacco products, Ministry of Agriculture and Forestry, Türkiye, 30 June 2021. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Turkey/Turkey-2021-Reg-Amding-2019-Reg.pdf>).

130 Official Gazette Edition 30701: Regulation on the procedures and principles related to the production methods, labeling, and surveillance of tobacco products, Ministry of Agriculture and Forestry, Türkiye, 1 March 2019. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Turkey/Turkey-2019-Regs.pdf>).

131 [Official Gazette Edition 31044: Communiqué on the procedures and principles regarding the health warnings to be put on hookah bottles, Ministry of Agriculture and Forestry of Türkiye, 19 February 2020]. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (in Turkish) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Turkey/Turkey-Communique-on-Hookah-HWs-native.pdf>).

2.8.3 Additional considerations when drafting legislation

In addition to warnings on any waterpipe tobacco packaging, consideration could be given to requiring warnings on waterpipe bowls themselves, such as is required in Türkiye. Parties could also consider other means for warning consumers, such as health warning signs in retail locations where waterpipes and charcoal are sold, or other context-appropriate approaches. When plain packaging is required for tobacco products in the country, this requirement could be applied to waterpipe tobacco products. Consideration could also be given to regulating the appearance and other features of the waterpipe (e.g. requiring basic unornamented bodies, to reduce the attractiveness of WTS).¹³²

2.9 Education, communication, training and public awareness (Article 12 of the WHO FCTC) and demand reduction measures concerning tobacco dependence and cessation (Article 14 of the WHO FCTC)

Full implementation of the WHO FCTC creates a favourable policy environment for behaviour change. Articles 12 and 14 of the WHO FCTC are designed to provide the population with information and tools to facilitate rejecting tobacco use initiation and to assist with quitting. Parties have access to guidelines for implementation of both Articles.

Article 12 requires Parties to implement effective measures to promote comprehensive public education, training and awareness programmes, including:

- ◆ broad programmes about the health risks and addictive nature of tobacco use and exposure to tobacco smoke, the benefits of cessation and tobacco-free lifestyles, information about the tobacco industry and its interference tactics, and information on the adverse economic and environmental consequences of tobacco production and consumption; and
- ◆ training and awareness programmes aimed at health workers, community workers, media professionals, educators, decision-makers, public and private agencies, and civil society organizations not affiliated with the tobacco industry; and encouragement of their involvement in developing and implementing intersectoral tobacco control programmes and strategies.

The Guidelines for implementation of Article 12 provide further guidance to Parties in establishing the infrastructure required to support public education, training and awareness programmes.

Article 14 requires Parties to design and implement integrated guidelines to promote cessation programmes and adequate treatment for tobacco dependence in various locations, with the participation of health workers, community workers and social workers, as appropriate. In addition to education, these programmes should include diagnosis, counselling, prevention and treatment of tobacco and nicotine dependence. The Guidelines for implementation of Article 14 identify specific actions that Parties should take for effective implementation, including:

- ◆ developing an infrastructure to support tobacco use cessation and tobacco dependence treatment by conducting a national situation analysis and developing

¹³² Nakkash RT, Khalil J, Afifi RA. The rise in narghile (shisha, hookah) waterpipe tobacco smoking: a qualitative study of perceptions of smokers and non smokers. BMC Public Health. 2011;11:315. doi: <https://doi.org/10.1186/1471-2458-11-315>.

a national tobacco cessation strategy, as well as developing tobacco dependence treatment guidelines based on the best available scientific evidence and practices;

- ◆ establishing population-level approaches, such as mass communication programmes and quit-lines, in addition to more intensive individual treatment services, accessible and affordable medicines and other novel approaches to cessation and treatment; and
- ◆ monitoring and evaluating all related strategies and programmes.



2.9.1 Application to waterpipe tobacco products

Given the historical sociocultural role that WTS has played in some countries, decision FCTC/COP7(4), entitled *Control and prevention of waterpipe tobacco products*, suggested promoting research on culturally relevant, waterpipe-specific interventions to prevent the uptake of WTS.¹³³ Specific content aimed at dispelling the myth that using a waterpipe makes smoking less harmful could be particularly pertinent in raising awareness of the health harms caused by WTS. At the same time, awareness should be raised about the danger of using non-tobacco herbal products, owing to their hazardous emissions.

2.9.2 Country practices

Articles 12 and 14 of the WHO FCTC can be implemented by way of government policy (e.g. as part of a national tobacco control strategy, plan or programme developed in accordance with Article 5 of the Convention), through legal measures or via a combination of both. This section provides examples of provisions that include legal mandates for implementing Articles 12 and 14 from Azerbaijan, Colombia and Mexico.

¹³³ FCTC/COP7(4): Control and prevention of water-pipe tobacco products. Conference of the Parties to the WHO Framework Convention on Tobacco Control. 12 November 2016 ([https://fctc.who.int/publications/m/item/fctc-cop7\(4\)-control-and-prevention-of-waterpipe-tobacco-products](https://fctc.who.int/publications/m/item/fctc-cop7(4)-control-and-prevention-of-waterpipe-tobacco-products)).

Azerbaijan

Law No. 887-VQ on Restriction of Tobacco Use requires that the public be educated about tobacco harms, including but not limited to the advantages of tobacco use cessation and the negative medical, demographic and socioeconomic consequences of tobacco use and exposure to tobacco smoke (Article 11). The law also requires the development of educational programmes about the negative effects of tobacco use for broadcast on television and radio stations operating in the Republic of Azerbaijan territory (Article 12). Relevant executive authorities, scientific institutions and nongovernmental organizations are to provide support in developing these programmes. Medical aid to stop tobacco use – including prevention, diagnosis and treatment of tobacco dependence and tobacco use – is provided free of charge (Article 15).¹³⁴

Colombia

Law No. 1335 (2009) provides extensive requirements for public education and training (Articles 5–12).¹³⁵ Some highlights include:

- ◆ promoting the participation of indigenous and Afro-Colombian communities;
- ◆ requiring the National Television Commission and radio stations to allot free and rotating spaces to public entities and nongovernmental organizations during hours of high viewership or listenership, to issue preventive messages against using tobacco;
- ◆ placing duties on governors, mayors and departmental, district and municipal health departments to undertake specified actions and activities; and
- ◆ integrating tobacco use risk assessments into the health system, informing users about available services and providing them with such services.

Mexico

The General Law on Tobacco Control (Articles 9, 10) requires the Ministry of Health to coordinate tobacco control activities; promote and organize services for early detection and cessation of tobacco use; promote healthy lifestyles at home, in the workplace and in the community; develop deterrents to tobacco use, especially by children, adolescents and vulnerable groups; and establish guidelines for the execution and evaluation of the tobacco control programme.¹³⁶

As part of its comprehensive national cessation strategy, the government developed a competency standard for primary health care teams that provide brief cessation advice. The standard includes:

- ◆ an interview questionnaire to identify tobacco (and alcohol) users;
- ◆ counselling on the consequences of use of these products; and
- ◆ guidance on cessation resources and the advantages of quitting.

¹³⁴ The Law of the Republic of Azerbaijan on Restriction of Tobacco Use (Law No. 887-VQ), 1 December 2017. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Azerbaijan/Azerbaijan-TC-Law-2017.pdf>).

¹³⁵ Law No. 1335: "Provisions by Which Damages Caused to Minors and the Nonsmoking Population are Prevented Public Policies are Stipulated to Prevent Tobacco Consumption and the Cessation of the Smoker's Dependence of Tobacco and Its Derivatives in the Colombian People". The Congress of Colombia, 21 July 2009. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Colombia/Colombia-Law-No.-1335.pdf>).

¹³⁶ General Law on Tobacco Control. General Congress of the United Mexican States, 26 February 2008. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Mexico/Mexico-GLTC.pdf>).

The government also developed guidelines for the delivery of cessation services that ensure quality care.¹³⁷

2.9.3 Additional considerations when drafting legislation

Implementation of Articles 12 and 14 of the WHO FCTC may usually be undertaken as a matter of government policy, without the need for specific legislation. However, legal measures may provide a better path forward if the requirement of these programmes would trigger the appropriation of an adequate budget or would more effectively propel the government to action.

2.10 Tobacco advertising, promotion and sponsorship (Article 13 of the WHO FCTC)

Article 13 of the WHO FCTC requires Parties to implement a comprehensive ban on all tobacco advertising, promotion and sponsorship (TAPS), in accordance with their constitutional principles. Based on the favourable outcomes for governments in most of the constitutional challenges to TAPS bans brought by the tobacco industry or its allies, it is unlikely that constitutional constraints will prevent the majority of Parties from enacting comprehensive TAPS bans.¹³⁸

The Guidelines for implementation of Article 13 make it clear that a “comprehensive ban” applies to all forms of TAPS without exception, recognizing that mere restrictions or a ban on only some forms of TAPS have a limited effect, because tobacco companies will simply shift their vast resources to promotional forms that are still allowed.¹³⁹ As a result, a complete ban on all direct and indirect domestic and cross-border TAPS is necessary for regulation to be effective. However, the guidelines recognize that a comprehensive ban should not prevent certain limited communications, such as legitimate journalistic, artistic or academic expression, or legitimate political or social commentary.

A “comprehensive ban” applies to all forms of TAPS without exception. A complete ban on all direct and indirect domestic and cross-border TAPS is necessary for regulation to be effective.

The appendix to the guidelines provides an indicative, non-exhaustive list of a broad range of forms of TAPS that fall within the scope of a comprehensive ban. The guidelines make it clear that, to be effective, a comprehensive TAPS ban should hold all persons or entities involved in the marketing chain responsible for compliance, including:

- ◆ initiators of the TAPS (usually the manufacturer, importer or wholesaler);

¹³⁷ Good country practices in the implementation of WHO FCTC Article 14 and its guidelines. Geneva: Secretariat of the WHO Framework Convention on Tobacco Control and the Protocol to Eliminate Illicit Trade in Tobacco Products; 2019 (<https://fctc.who.int/publications/m/item/good-country-practices-in-the-implementation-of-who-fctc-article-14-and-its-guidelines>).

¹³⁸ Zhou SY, Liberman JD, Ricafort E. The impact of the WHO Framework Convention on Tobacco Control in defending legal challenges to tobacco control measures. *Tob Control*. 2019;28:s113–s8. doi: <https://doi.org/10.1136/tobaccocontrol-2018-054329>.

¹³⁹ Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2013 (<https://fctc.who.int/publications/m/item/tobacco-advertising-promotion-and-sponsorship>).

- ◆ content producers, publishers and persons who disseminate the content (in the case of digital or analogue media, removing or disabling access should be required upon becoming aware of the content); and
- ◆ media and event organizers, sportspersons and celebrities.

At its tenth session, the Conference of the Parties to the WHO FCTC adopted the Specific guidelines to address cross-border tobacco advertising, promotion and sponsorship and the depiction of tobacco in entertainment media for implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO FCTC (“the Specific Guidelines”). The Specific Guidelines include the following recommendations:

- ◆ The application of comprehensive bans on TAPS to apply to all types of media, including digital media communication platforms, in accordance with national law;
- ◆ Cooperation among Parties to the WHO FCTC systematically monitor, identify, remove and/or prevent outgoing and incoming cross-border TAPS and TAPS across digital media communication platforms; and
- ◆ The development or further implementation of legislation, regulations or administrative measures to reduce tobacco depictions in entertainment media.

The Specific Guidelines also include an indicative (non-exhaustive) list illustrating forms of cross-border TAPS in digital media communication platforms and the depiction of tobacco in entertainment media, which may vary between Parties and may be categorized differently in different jurisdictions.

2.10.1 Application to waterpipe tobacco products

A complete TAPS ban could apply to all tobacco products, including waterpipe tobacco products, waterpipes themselves and waterpipe accessories. As the guidelines for implementation recognize, it is well known that exposure to TAPS increases tobacco use, and that comprehensive bans on TAPS reduce tobacco use.¹⁴⁰ About one third of young people’s experimentation with tobacco occurs because of exposure to TAPS.¹⁴¹ High rates of WTS, especially by young people, have been seen in Eastern Mediterranean and European countries, and waterpipe use among young people is expected to become increasingly popular more broadly.¹⁴² WHO attributes the increasing popularity of WTS, in part, to promotion through the media, including the internet and social media platforms.¹⁴³

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140 Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2013 (<https://fctc.who.int/publications/m/item/tobacco-advertising-promotion-and-sponsorship>).

141 Ban tobacco advertising to protect young people: World No Tobacco Day 2013. Geneva: World Health Organization; 2013 (<https://www.who.int/news/item/29-05-2013-ban-tobacco-advertising-to-protect-young-people>).

142 Fact sheet: waterpipe tobacco smoking and health. Geneva: World Health Organization; 2015 (<https://www.who.int/publications/i/item/fact-sheet-waterpipe-tobacco-smoking-and-health>).

143 *Ibid.*

2.10.2 Country practices

Many countries have implemented comprehensive TAPS bans that apply to all tobacco products, with some specifically including waterpipe tobacco within these bans. This section provides examples of TAPS bans from Djibouti, Panama and the Russian Federation.

Djibouti

Law no. 175/AN/07/5ème Concerning Organization for the Protection of Health against Tobacco Consumption comprehensively bans TAPS of all tobacco products and accessories, including waterpipes and waterpipe tobacco (Articles 25–30).¹⁴⁴ The law obliges the government to cooperate in refining technologies and other means to eliminate cross-border advertising. It also allows tobacco control associations in existence for at least 5 years to undertake a civil action over violations of the law (Article 47).

Panama

Law No. 13 of 24 January 2008 Which Adopts Measures to Control Tobacco and its Harmful Effects on Health (Article 14)¹⁴⁵ and Executive Decree No. 611 (2010) (Article 1)¹⁴⁶ ban all TAPS. Resolution No. 0554 (2018) establishes that the display of waterpipes or waterpipe tobacco is a form of TAPS and is therefore banned (Preamble, para. 11).¹⁴⁷

Russian Federation

Federal Law N 15-FZ (2013) comprehensively bans all TAPS, including of waterpipe tobacco, because waterpipe tobacco falls within the law's definition of "tobacco products" (Article 16). The only exception provided allows for delivery by mail for towns with no stores (Article 19(2)).¹⁴⁸

2.10.3 Additional considerations when drafting legislation

An indicative list of TAPS, based on the list in the appendix to the Guidelines for implementation of Article 13, could be included in legal measures. Those drafting legal measures should consider ensuring that the list cannot be interpreted as representing an exhaustive list that would exclude any other forms, methods or means of TAPS not listed. Such measures could further be clear that tobacco product displays, including those for waterpipe tobacco, constitute tobacco advertising and promotion, and are banned at places of sale. Tobacco product displays promote tobacco use and often are targeted

144 Journal Officiel de la République de Djibouti: Law n°175/AN/07/5ème concerning organization for the protection of health against tobacco consumption, Office of the President of the Republic of Djibouti, 22 April 2007. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Djibouti/Djibouti-Law-No.-175AN07.pdf>).

145 Official Digital Gazette No. 25966: Law No. 13 Which Adopts Measures to Control Tobacco and its Harmful Effects on Health, The National Assembly of Panama, 24 January 2008. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Panama/Panama-Law-No.-13-of-2008.pdf>).

146 Official Digital Gazette No. 26550: Executive Decree No. 611, Republic of Panama Ministry of Health, 3 June 2010. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Panama/Panama-Decree-No.-611.pdf>).

147 Official Digital Gazette: Resolution No. 0554 that establishes that water pipes, narguiles, hookahs, shishas, cachimbos, or by whatever other name they may be known in the future, are tobacco products, and issues other provisions, Republic of Panama Ministry of Health, 8 March 2018. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Panama/Panama-Res.-No.-0554-of-2018.pdf>).

148 Federal Law N 15-FZ of February 23, 2013 "on protecting the health of citizens from the effects of second hand tobacco smoke and the consequences of tobacco consumption", Russian State Duma. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrollaws.org/uploads/legislation/Russia/Russia-Law-No.-15-FZ-2013.pdf>).

at young people, trigger impulse purchases and normalize tobacco use.^{149,150} Bans on product displays could also apply to waterpipes and waterpipe accessories.

If an existing TAPS ban provides for exemptions or has gaps in coverage, it may be possible to close such gaps through subsidiary legislation if there is regulatory authority to do so in the tobacco control law or other law (e.g. an advertising law). Otherwise, a legal amendment may be necessary.

2.11 Illicit trade in tobacco products (Article 15 of the WHO FCTC)

Legal measures for the prevention and control of illicit trade commonly fall under the authority of and expertise of ministries of customs, finance, revenue, police, and justice, in coordination with health. Such measures may be developed and implemented by ministries separately from a tobacco control law.

Article 15 of the WHO FCTC sets out general requirements for effective measures aimed at eliminating illicit trade in tobacco products. These measures include: package markings indicating where the products can be sold legally; monitoring, collecting data about and sharing information on illicit trade among relevant control authorities; controlling the storage and distribution of products held or moving under suspension of taxes or duties; applying penalties and remedies that include confiscation of products and illicit trade proceeds; and disposal of products and manufacturing equipment (using environmentally friendly methods, if feasible). Parties are also encouraged to develop a tracking and tracing regime, and to adopt additional measures (e.g. licensing) to regulate the production and distribution of tobacco products.

Legal measures for the prevention and control of illicit trade typically fall under the authority and expertise of the ministries of trade, industry or economy; they are developed and implemented by those ministries separately from a tobacco control law.

Building on and complementing Article 15 of the WHO FCTC, the *Protocol to Eliminate Illicit Trade in Tobacco Products* (the Protocol) makes tracking and tracing and licensing mandatory, and elaborates further on Article 15 obligations.¹⁵¹ Key to successful elimination of illicit trade is heeding the recommendations of the Guidelines for implementation of Article 5.3 of the WHO FCTC; in particular, engaging with the tobacco industry only when strictly necessary for effective regulation, ensuring transparency in necessary interactions, and rejecting partnerships and contributions of any kind. To this

149 Brown A, Boudreau C, Moodie C, Fong GT, Li GY, McNeill A et al. Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey. *Tob Control*. 2012;21:555–9. doi: <https://doi.org/10.1136/tobaccocontrol-2011-050153>.

150 Technical report on flavored cigarettes at the point-of-sale in Latin America: availability and marketing around primary and secondary schools in five countries. Baltimore, Md: Institute for Global Tobacco Control, Johns Hopkins Bloomberg School of Public Health; 2017 (<https://www.globaltobaccocontrol.org/en/resources/technical-report-flavored-cigarettes-point-sale-latin-america>).

151 Protocol to Eliminate Illicit Trade in Tobacco Products. Geneva: World Health Organization Framework Convention on Tobacco Control; 2013 (<https://fctc.who.int/publications/i/item/9789241505246>).

end, the Protocol provides that governments must not delegate any tracking and tracing obligations to the tobacco industry.¹⁵²

2.11.1 Country examples

This section provides examples of measures aimed at eliminating illicit trade in tobacco products from Kenya and the United Arab Emirates.

Kenya

Through the Excise Duty (Excisable Goods Management System) Regulations, 2017,¹⁵³ Kenya implemented the Excisable Goods Management System, under which all excisable goods, except motor vehicles, must be affixed with an excise stamp to deter counterfeiting, facilitate tracking and tracing along the supply chain, enable accounting for the production of excisable goods, and facilitate authentication of excise stamps and excisable goods. Goods falling under the system are listed in the First Schedule of the Excise Duty Act, 2015, and include tobacco products, electronic nicotine delivery systems and tobacco substitutes.¹⁵⁴

United Arab Emirates

Pursuant to Cabinet Decision No. 42 of 2018¹⁵⁵ and Federal Tax Authority (FTA) Decision No. 3 of 2022 (as amended),¹⁵⁶ the United Arab Emirates implemented a digital tax stamp scheme for designated excise goods, such as cigarettes, heated tobacco products and waterpipe tobacco. Under the scheme, packaging of designated products must bear a unique marking that enables the product to be traced from the point of manufacture through to the final Emirate of distribution and point of retail sale. The scheme enhances the FTA's ability to collect taxes on tobacco products; it also provides enforcement authorities with the ability to monitor the supply chain to help identify illicit trade.^{157,158}

2.11.2 Additional considerations when drafting legislation

The definition of "tobacco products" contained in Article 1(13) of the Protocol is identical to the definition contained in Article 1(f) of the WHO FCTC: "products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing". The wording is broad and encompasses waterpipe tobacco products. Therefore, as noted previously, use of this definition in implementing measures ensures that waterpipe tobacco is covered in any provisions that refer to a "tobacco product".

152 Protocol to Eliminate Illicit Trade in Tobacco Products. In: Tobacco Tactics [website]. Bath, UK: University of Bath; 2022 (<https://tobaccotactics.org/wiki/illicit-trade-protocol-ftp/>).

153 The Excise Duty (Excisable Goods Management System) Regulations, 2017 (Legal Notice No. 53). Nairobi: Kenya Revenue Authority; 2017 (<https://kra.go.ke/images/publications/LEGAL-NOTICE-53-OF-2017.pdf>).

154 Excise Duty Act 2015 (Revised Edition, 2021). Nairobi: Kenya Revenue Authority; 2021 (<https://kra.go.ke/images/publications/Excise-Duty-Act-2015-Revised-2021.pdf>).

155 Cabinet decision no. 42 of 2018 on marking tobacco and tobacco products, Cabinet of the United Arab Emirates, 24 July 2018. Abu Dhabi: Federal Tax Authority; 2018 (<https://tax.gov.ae/DataFolder/Files/Legislation/05-Cabinet-Decision-No42of2018-on-Marking-Tobacco-and-Tobacco-products.pdf>).

156 Implementing the marking of tobacco and tobacco products scheme (Federal Tax Authority Decision No. 3 of 2021, as amended by Federal Tax Authority Decision No. 3 of 2022). Abu Dhabi: Federal Tax Authority; 2022 (<https://tax.gov.ae/DataFolder/Files/Legislation/Federal%20Tax%20Authority%20Decision%20No.%203%20of%202021%20and%20its%20amendments%20-%20for%20publishing%2004-07-2022.pdf>).

157 Digital tax stamps [website]. Abu Dhabi: Federal Tax Authority; 2024 (<https://tax.gov.ae/en/taxes/excise.tax/excise.tax.topics/digital.tax.stamps/digital.tax.stamps.aspx>).

158 Federal Tax Authority adopts new design for 'digital tax stamps' adhering to best and latest standards (press release), 16 September 2021. Abu Dhabi: Federal Tax Authority; 2021 (<https://tax.gov.ae/en/media.centre/news/federal.tax.authority.adopts.new.design.for.digital.tax.stamps.adhering.to.best.and.latest.standards.aspx>).



2.12 Sales to and by minors (Article 16 of the WHO FCTC)

Article 16 of the WHO FCTC requires Parties to adopt and implement effective measures to prohibit the sales of tobacco products to persons under the age of 18 years or the age set by domestic or national law. Additional measures may include:

- ◆ requiring sellers to prevent consumers from directly accessing tobacco products;
- ◆ banning the sale of products in any manner by which they are directly accessible to consumers;
- ◆ prohibiting the manufacture and sale of sweets, snacks, toys or other objects that appeal to minors in the form of tobacco products (also covered under the Guidelines for implementation of Article 13 of the WHO FCTC);
- ◆ ensuring that tobacco vending machines are not accessible to minors and do not promote the sale of tobacco products to minors (or banning vending machine sales altogether, pursuant to the recommendations of the Guidelines for implementation of Article 13);
- ◆ prohibiting the free distribution of tobacco products (also covered under the Guidelines for implementation of Article 13);
- ◆ prohibiting the sale of single cigarettes or cigarettes in small packets, so they are not more affordable for young people; and
- ◆ requiring signage inside retail establishments stating that sales to persons below the legal age for sale are prohibited and requiring verification of age when in doubt.

Guidelines for implementation of Article 16 of the WHO FCTC have not been developed.

2.12.1 Application to waterpipe tobacco products

The full suite of measures provided in Article 16 of the WHO FCTC are applicable to waterpipe tobacco. Good practice would include applying these provisions to waterpipe tobacco and waterpipes (including to components sold separately and accessories) and should be considered when drafting regulations.

2.12.2 Country practices

Laws in many countries go beyond the measures set out in Article 16 of the WHO FCTC, including bans on the sale of all tobacco products within a specified distance of schools and other youth-centred premises; bans on sales of any tobacco product that is unpackaged or that does not meet requirements for a specified weight or number of product units; bans on tobacco product sales through vending machines; and raising the minimum age for sale of any tobacco product or accessory to 21 years.

This section provides examples of sales restrictions from Ethiopia and Uganda.

Ethiopia

The Food and Medicine Administration Proclamation No. 1112/2019 bans the sale of any shisha¹⁵⁹ product (Article 49(5)). However, the law provides a good example of strong language addressing sales of tobacco products to minors.¹⁶⁰ Articles 49(1)–(4) of the law prohibit the sale of tobacco products (1) to anyone aged under 21 years; (2) within 100 m of health institutions, schools or youth centres, or where tobacco use is prohibited; (3) by any means in which the purchaser and seller are not in the same physical location; and (4) in packages containing less than 20 sticks or less than the prescribed weight.

Uganda

The Tobacco Control Act, 2015, bans the sale of waterpipe tobacco products (Section 16(2)(b)). However, the law provides a good example of strong language implementing Article 16 of the WHO FCTC. The law establishes the minimum sales age for the purchase of other tobacco products as 21 years (Sections 2, 17(1)), and bans internet sales and vending machine sales of all tobacco products (Sections 14(1), 16(4)(a), Third Schedule). Further, the law provides that “a person shall not import, manufacture, distribute, sell or offer for sale a sweet, snack, toy, or any other object in the form of tobacco or a tobacco product including an object which resembles, mimics or imitates a tobacco product which may appeal to a minor” (Section 17(2)).¹⁶¹

2.12.3 Additional considerations when drafting legislation

Based on the experience of many Parties that have already incorporated measures required under Article 16 of the Convention, legal measures could also:

- ◆ establish or increase the minimum age for sale of any tobacco product to 21 years or higher in order to prevent nicotine-caused harm to the developing brains

¹⁵⁹ “Shisha” means tobacco for smoking in a hookah, especially when mixed with flavourings.

¹⁶⁰ Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 28 February 2019, A proclamation to provide for food and medicine administration (Proclamation No. 1112/2019). In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Ethiopia/Ethiopia-2019-Proclamation-native.pdf>).

¹⁶¹ Acts Supplement No. 11: The Tobacco Control Act, 2015, Parliament of Uganda, 18 November 2015. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids; 2015 (<https://assets.tobaccocontrolaws.org/uploads/legislation/Uganda/Uganda-TCA-native.pdf>).

of young people¹⁶² – because of the particularly harmful effects of nicotine on young people, raising the minimum age for sale could be justified even if the minimum age is lower than 21 years for other rights or privileges (e.g. the ability to work, leave school or vote);

- ◆ prohibit, rather than restrict, the sale of tobacco products and accessories from vending machines, both as a means to ensure that young people cannot access them and to further the WHO FCTC Article 13 ban on retail product displays;
- ◆ require that waterpipe tobacco products can be sold only in intact packages that meet the minimum weight or number of units specified, so that the products are not more affordable for young people; and
- ◆ prohibit the sale of waterpipe tobacco, waterpipes and waterpipe accessories within a specified distance of educational institutions and playgrounds, to prevent exposure to and access by minors.

If existing enabling legislation does not cover these requirements or provide the Ministry of Health with regulatory authority to prescribe additional requirements, legal amendments may be needed, unless there is regulatory authority under another law, such as a youth protection law.

2.13 Liability (Article 19 of the WHO FCTC)

Article 19 of the WHO FCTC is to be read in conjunction with Article 4 of the WHO FCTC, the guiding principles of the Convention, which states that issues related to liability are an important part of comprehensive tobacco control. At its fifth session, in decision FCTC/COP5(9), the COP established an expert group on liability.¹⁶³ That group produced two reports – FCTC/COP/6/8¹⁶⁴ and FCTC/COP/7/13¹⁶⁵ – with options for developing legislation on liability and scenarios to strengthen civil liability mechanisms, the latter being instrumental in the development of the FCTC Article 19 Civil liability toolkit.¹⁶⁶ The toolkit includes recommendations for pursuing potential legal actions, including those for government civil health care cost recovery, class action civil claims for compensation for tobacco-caused harms, criminal legal violations, injunctive and corrective relief, and public interest enforcement. The toolkit notes examples of countries' legal measures that provide avenues for holding tobacco companies accountable for the harms caused by their products and for their destructive actions. In addition to the toolkit, the Convention Secretariat established the WHO FCTC Knowledge Hub on Legal Challenges¹⁶⁷ at the McCabe Centre for Law and Cancer in Melbourne, Australia.

162 E-cigarette use among youth and young adults: a report of the Surgeon General—executive summary. Atlanta: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016 (<https://www.cdc.gov/tobacco/sgr/e-cigarettes/index.htm>).

163 FCTC/COP5(9): Implementation of Article 19 of the WHO FCTC: "Liability". Conference of the Parties to the WHO Framework Convention on Tobacco Control. 17 November 2012 ([https://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5\(9\)-en.pdf](https://apps.who.int/gb/fctc/PDF/cop5/FCTC_COP5(9)-en.pdf)).

164 FCTC/COP/6/8: Implementation of Article 19 of the Convention: "Liability". Report of the Expert Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control. 5 June 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_8-en.pdf).

165 FCTC/COP/7/13: Implementation of Article 19 of the WHO FCTC: "Liability". Report by the Expert group. Conference of the Parties to the WHO Framework Convention on Tobacco Control. 14 June 2016 (<https://fctc.who.int/publications/m/item/fctc-cop-7-13-implementation-of-article-19-of-the-who-fctc-liability>).

166 FCTC Article 19 Civil liability toolkit [website]. Geneva: WHO Framework Convention on Tobacco Control; 2020 (<https://untobaccocontrol.org/impldb/tobacco-control-toolkit/#/>).

167 WHO FCTC Knowledge Hub on Legal Challenges [website]. Geneva: WHO Framework Convention on Tobacco Control; 2023 (<https://extranet.who.int/fctcapps/fctcapps/fctc/kh/legalchallenges>).

2.13.1 Country practices

In 2023, about two thirds of the Parties reported having criminal liability provisions in their tobacco control enforcement provisions, and more than one third reported having civil liability measures specific to tobacco control. Many others reported having generally applicable civil liability measures that could apply to tobacco control or that provide for compensation. Private rights of action by individuals are reported in a small minority of countries.¹⁶⁸

As noted by the expert group on liability in document FCTC/COP/6/8, several governments have undertaken legal actions for health care cost-recovery, with varying outcomes.¹⁶⁹ Brazil – a WHO FCTC Party – and the United States of America – a WHO FCTC signatory – used generally applicable legal measures in pursuing lawsuits against the industry. Each of the 10 Canadian provinces, on the other hand, introduced and adopted specific legislation to enable the provincial governments to bring health care cost-recovery actions.¹⁷⁰ Further information about countries' experiences with tobacco liability can be found in Annex 1 of the report of the expert group to COP6¹⁷¹ and the WHO FCTC Article 19 Civil liability toolkit.¹⁷²

2.13.2 Additional considerations when drafting legislation

Several governments and their citizens have sued the tobacco industry – including for cost-recovery, injunctive relief and corrective action, and damages – under existing applicable legal provisions or under provisions enacted specifically to facilitate litigation against the tobacco industry. Whether there is a need to enact new legal measures to initiate and facilitate such actions will depend on what generally applicable measures already exist in each country. These measures might include laws on evidence, procedure, and liability and damages.

Several governments and their citizens have sued the tobacco industry – including for cost-recovery, injunctive relief and corrective action, and damages – under existing applicable legal provisions or under provisions enacted specifically to facilitate litigation against the tobacco industry.

For governments interested in undertaking civil legal action against the tobacco industry, the interactive web-based WHO FCTC Article 19 Civil liability toolkit provides a useful starting point. The toolkit helps users to understand the different options for pursuing redress and to assess potential obstacles that might suggest there is a need to enact

168 2023 Global progress report on implementation of the WHO Framework Convention on Tobacco Control. Licence: CC BY-NC-SA 3.0 IGO. Geneva: World Health Organization; 2024 (<https://fctc.who.int/publications/m/item/2023-global-progress-report>).

169 FCTC/COP/6/8: Implementation of Article 19 of the Convention: "Liability". Report of the Expert group. Conference of the Parties to the WHO Framework Convention on Tobacco Control. 5 June 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_8-en.pdf).

170 Moulton D. All provinces can now sue big tobacco. CMAJ. 2014;186:E662. doi: <https://doi.org/10.1503/cmaj.109-4929>.

171 FCTC/COP/6/8: Implementation of Article 19 of the Convention: "Liability". Report of the Expert Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control. 5 June 2014 (https://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_8-en.pdf).

172 FCTC Article 19 Civil liability toolkit [website]. Geneva: WHO Framework Convention on Tobacco Control; 2020 (<https://un-tobaccocontrol.org/impldb/tobacco-control-toolkit/#/>).

new legal measures. The toolkit also provides examples of good country practices and innovative legal reforms that would help users to hold the tobacco industry accountable.

2.14 Other articles of the WHO FCTC (Articles 17, 18, 20–22)

Articles 17, 18 and 20–22 of the WHO FCTC require Parties to:

- ◆ promote, as appropriate, economically viable alternatives for tobacco workers, growers and possibly individual sellers (Article 17);
- ◆ pay due regard to the protection of the environment and health with respect to tobacco cultivation and manufacture (Article 18);
- ◆ establish national, regional and global health surveillance programmes; and initiate, cooperate with and promote tobacco control-related research and the exchange of tobacco control-related information, including information regarding practices of the tobacco industry (Article 20);
- ◆ provide regular updates on measures taken to implement the Convention, constraints and barriers encountered in implementation, and surveillance and research (Article 21); and
- ◆ cooperate in promoting the transfer of technical, scientific and legal expertise and technology to establish and strengthen national tobacco control strategies, plans and programmes (Article 22).

These articles can typically be implemented without the need for legislative measures, with the understanding that some Parties still choose to make reference to any of these articles in their laws and regulations.

2.14.1 Application to waterpipe tobacco products

All these articles apply equally to waterpipe tobacco and WTS. Requirements for information, surveillance, and research-sharing and cooperation are especially important for regulating WTS, given the lack of internationally agreed approaches to testing of waterpipe tobacco and waterpipes. Additional challenges include capacity issues, limited examples of health warnings specific to WTS, and limited experience with WTS-specific media campaigns.¹⁷³

2.15 Countries with legal measures that ban the sale of waterpipe tobacco

Although this guide describes how to strictly regulate waterpipe tobacco, several governments have taken the approach of completely banning the manufacture, import or sale of waterpipe tobacco.

The following are examples of countries that ban the sale of waterpipe tobacco:

- ◆ Cambodia (bans importation and sale);¹⁷⁴

¹⁷³ An overview of global regulatory practices in controlling waterpipe tobacco use. Geneva: World Health Organization; 2018 (<https://fctc.who.int/publications/m/item/an-overview-of-global-regulatory-practices-in-controlling-waterpipe-tobacco-use>).

¹⁷⁴ Measures to prevent and terminate consumptions, sales, and imports of shisha and e-cigarette in the Kingdom of Cambodia (Circular No. 001/14 Sor.Nor.No.NACD), 2014. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Cambodia/Cambodia-E-cig-Shisha-Circular.pdf>)

- ◆ Congo (bans manufacture and sale);¹⁷⁵
- ◆ Ethiopia (bans manufacture, importation and sale);¹⁷⁶
- ◆ Kenya (bans manufacture, importation and sale);¹⁷⁷
- ◆ Mali (bans manufacture, importation and sale);¹⁷⁸
- ◆ Mauritius (bans manufacture, importation and sale);¹⁷⁹
- ◆ Niger (bans importation and sale);¹⁸⁰
- ◆ Rwanda (bans importation and sale);¹⁸¹
- ◆ Senegal (bans importation and sale);¹⁸²
- ◆ Singapore (bans importation and sale);¹⁸³
- ◆ Thailand (bans importation and sale of waterpipes and electronic waterpipes, material for use with waterpipes, and material for use in commercial preparation of waterpipes for smoking); and¹⁸⁴
- ◆ Uganda (bans manufacture, importation and sale).¹⁸⁵

175 Official Gazette No. 23: Order No. 2853 banning the manufacture, import, distribution, possession, sale, or giveaway of flavor capsule cigarettes, cigarettes with characterizing flavors, and shisha, Article 5, Republic of the Congo, 31 May 2022. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Congo/Congo-Order-No.-2853.pdf>).

176 Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 28 February 2019, A proclamation to provide for food and medicine administration (Proclamation No. 1112/2019), 2019. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Ethiopia/Ethiopia-2019-Proclamation-native.pdf>).

177 Kenya Gazette Supplement No. 188: Public Health (Control of Shisha Smoking) Rules, 2017, Sections 3, 4. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Kenya/Kenya-Shisha-Smoking-Rules-2017-native.pdf>).

178 [Interministerial order no. 2022-3597 of 15 February 2023 banning the importation, distribution, sale, and use of shisha (hookah) and similar devices, Republic of Mali], 2023. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (in French) (<https://assets.tobaccocontrolaws.org/uploads/legislation/Mali/Mali-Order-No.-2022-3597-native.pdf>).

179 Public Health (Restrictions on Tobacco Products) Regulations 2008, Section 6(d), Mauritius, 2008. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Mauritius/Mauritius-PH-Regs-2008-native.pdf>).

180 Decree no. 081/MC/PSP/DGC/DCI/LCVC of 09 Oct 2017 prohibiting the import, distribution and sale of shisha or hookah, Republic of Niger, 2017. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Niger/Niger-Order-No.-081.pdf>).

181 Public notice: Banning of water-pipe tobacco smoking known as shisha tobacco in Rwanda, Ministry of Health, Republic of Rwanda, 14 December 2017. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Rwanda/Rwanda-Public-Notice-re-Shisha.pdf>).

182 Joint Administrative Order No. 1048 concerning the prohibition of the importation, distribution, sale and use of hookahs or any other similar apparatus, Ministry of Health and Social Action, Republic of Senegal, 2020. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Senegal/Senegal-Joint-Admin.-Order-re-Shisha.pdf>).

183 Tobacco (Control of Advertisements and Sale) Act, Section 15(1)(d); Tobacco (Control of Advertisements and Sale) (Prohibited Tobacco Products) Regulations 2014, Schedule, Singapore, 2014. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Singapore/Singapore-Prohibited-Products-Exemption-Regs-native.pdf>).

184 Notification of the Ministry Commerce: Prohibition of importing hookah, electronic hookah, or electronic cigarettes into Thailand, 24 December 2014. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Thailand/Thailand-Min.-of-Commerce-Ban-on-Hookah-E-Cigs.pdf>), and Consumer Protection Board Order No. 9/2015: Prohibition of sales and service of "hookahs, electronic hookahs, and electronic cigarettes, smoking materials for hookahs, and liquids for filling electronic hookahs and electronic cigarettes", Thailand, 18 February 2015. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Thailand/Thailand-Consumer-Protection-Board-Order-No.-92015.pdf>).

185 Acts Supplement No. 11: The Tobacco Control Act, 2015, Parliament of Uganda, 18 November 2015. In: Tobacco Control Laws [website]. Washington, DC: Campaign for Tobacco-Free Kids (<https://assets.tobaccocontrolaws.org/uploads/legislation/Uganda/Uganda-TCA-native.pdf>).

3. Sample legislation template for the comprehensive regulation of waterpipes, waterpipe tobacco and WTS

3.1 Introduction

This sample legislation template for the comprehensive regulation of waterpipe tobacco offers provisions that may be used for laws and regulations to implement WHO FCTC requirements and incorporates recommendations from the various guidelines for implementation of the Convention. The template deals solely with waterpipe tobacco and WTS-related items, in isolation from other tobacco products; the aim is to highlight how the full suite of tobacco control measures should be applied to WTS and to address regulatory issues specific to WTS. In practice, governments must deal with waterpipe tobacco products and WTS-related items as part of a comprehensive national tobacco control strategy that covers the full range of tobacco and nicotine products, and the devices used to consume them. A sufficiently comprehensive strategy would involve regulation of all of the following: smoked tobacco products; smokeless tobacco products; heated tobacco products and devices; electronic nicotine delivery systems (e-cigarettes); oral nicotine products (e.g. nicotine pouches and dissolvable nicotine lozenges or strips); and possibly alternative non-tobacco plant-based products that are harmful in that they may serve as gateway products to the initiation of tobacco or nicotine use, as in the case of herbal waterpipe products and other forms of herbal smoked products.

This sample legislation template provides text that may be used for law or regulations implementing the articles of the WHO FCTC that Parties are bound to implement through legal measures, and that would commonly fall within the remit and expertise of the ministry or authority responsible for health. The template does not include measures to address other articles of the WHO FCTC that typically fall within the remit and expertise of ministries or authorities other than health (e.g. tobacco taxation or illicit trade in tobacco products).

Finally, in accordance with Article 2 of the WHO FCTC, nothing in the Convention or its protocols prevents Parties from imposing stricter requirements that are consistent with their provisions and are in accordance with international law.

3.2 How to use the template

Most of the Parties to the WHO FCTC have enacted legislative, executive, administrative and other measures to implement the Convention. As recognized in the *Impact assessment of the WHO FCTC*, carried out at the request and under the guidance of the COP, significant gains have been made in tobacco control, although they vary across countries and WHO FCTC policy domains.¹⁸⁶ To date, Parties have generally placed greater emphasis on regulating cigarettes than on regulating non-cigarette tobacco products, such as waterpipe tobacco.¹⁸⁷ Parties that have not comprehensively implemented the Convention with respect to waterpipe tobacco can use the template provided to assess the comprehensiveness and strength of their measures and identify any gaps in coverage;

¹⁸⁶ FCTC/COP/7/6: Impact Assessment of the WHO FCTC. Report by the Expert Group. Conference of the Parties to the WHO Framework Convention on Tobacco Control; 27 July 2016 (<https://fctc.who.int/publications/m/item/fctc-cop-7-6-impact-assessment-of-the-who-fctc>).

¹⁸⁷ *Ibid.*



they can then use any template provisions they believe would be appropriate to strengthen their measures, adapting them as necessary.

Where any gaps or weaknesses are found in domestic legal measures, it may be possible to fill the gaps and strengthen legislative measures through subsidiary measures, amendments to existing laws, enactment of new legislation, or a combination of these options. To enact subsidiary measures for any particular provision, the minister or other appropriate authority would need to have sufficiently broad powers under the existing enabling legislation, such as a tobacco control law; a public health, consumer, environmental or youth protection law; an advertising law; or another relevant law that has a connection to WHO FCTC policies. Any subsidiary measures would have to fall within the scope of the regulatory powers granted by the enabling law and could not conflict with the law.

As an example, if a Party were looking to assess its legal measures for packaging and labelling of waterpipe tobacco, the Party could compare its current legislation with the relevant template article or articles, identify the areas where its current legislation is not as strong as the template measures (and thus the requirements under Article 11 of the WHO FCTC and the details contained in the guidelines for implementation), and determine the best means to address those gaps (e.g. an amendment to the law or subsidiary measures). In drafting language to strengthen its legislation, the Party can then adapt the template language to fit its country context (e.g. specifying the principal language or languages for messages required to appear on product packaging and labelling, and requiring that waterpipe tobacco products appear in plain, or standardized, packaging).

3.3 Template

Italicized blue text in the template is a **note** that is used to signal that legislative provisions must originate from the legal drafters in the country based on their legal customs or to provide explanatory context.

Part I

ACT TITLE

Introduction

Part I – Preliminary

[Note: Preliminary matters may include a short title, preamble, commencement date, objects/purpose statements and similar matters, as appropriate and customary in the jurisdiction.]

Objects of the Act

Article 1. The objects of this Act are to –

[Note: The Act's objectives can play an important role in justifying the policies and provisions of the Act. In the event of a legal challenge, courts often seek to determine whether and how the Act's provisions are likely to accomplish the Act's objectives. In drafting objectives, consideration might be given to articulating aims that include: those expressed in Article 3 (Objective) and Article 5.2(b) (General obligations) of the WHO FCTC; those fulfilling the government's WHO FCTC obligations and relevant to other treaties to which the country is a party; those preventing tobacco use initiation, with special regard to young people and other vulnerable population groups; and those encouraging quitting and preventing relapse. Waterpipe-specific harms and concerns can also be mentioned (e.g. rapid rise in, and normalization of, waterpipe tobacco smoking, especially among young people).]

Part II – Use of terms

Article 2. In this Act, unless the context otherwise requires –

“Additive” means a substance, other than tobacco, added to a tobacco product during processing, manufacturing or packaging.

“Advertising and promotion” means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use, whether directly or indirectly.

“Characterizing flavour” means a clearly noticeable taste or smell, other than one of tobacco, including a taste or smell of molasses, honey, fruit, spice, menthol, mint, chocolate, vanilla, coffee, alcohol or other flavour.

“Constituents” means endogenous substances found in tobacco leaf or processed tobacco.

“Contents” means “constituents” with respect to processed tobacco and “ingredients” with respect to tobacco products.

“Cross-border” with respect to advertising, promotion and sponsorship means that which originates within the national territory of _____ *[Note: name of country]* and enters or could be received in another national territory, as well as that which originates outside the territory of _____ *[Note: name of country]* and is received or accessible within the territory.

“Design feature” means a characteristic of the design of a tobacco product that has an immediate causal link with the testing and measuring of contents and emissions.

Part II

“Emissions” means substances released when a tobacco product is used as intended.

“Flavouring” refers to a substance or mixture, including a substance or mixture manufactured for use in food or represented directly or indirectly as a food ingredient, that is added during the production of a waterpipe tobacco product or that is produced to be added to the product by the user or other person.

“Health warning” means information in the prescribed form and manner, conveying the health and other consequences of tobacco use, and any other prescribed messages.

“Indoor” means any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used and regardless of whether the structure is permanent or temporary.

“Ingredients” means the tobacco, components (e.g. paper and filters) and the materials used to produce them, additives, processing aids, residual substances found in the tobacco after processing and storage, and other substances or materials found in the finished product, including substances that migrate from the packaging material into the product.

“Minister” means the minister responsible for health *[Note: or other appropriate ministry responsible for carrying out the Act]* and “Ministry” shall have the corresponding meaning.

“Outdoor” means any space that is not an “indoor” space, as that term is defined in this Act.

“Packaging” refers to any packaging used for retail sale of a tobacco product.

“Person responsible for the premises” means the owner, manager or other person in charge of a public place, workplace or public transport.

“Person with responsibility for tobacco control” refers to –

- a. a governmental institution or body with executive, legislative or judicial authority;
- b. a quasi-governmental institution or body; or
- c. a natural or juridical person working in or on behalf of the institutions or bodies in (a) or (b),
- d. who has or is likely to have responsibilities that involve developing or implementing tobacco control policies, whether at the national or a subnational level.

“Prescribed” means prescribed in subsidiary legislation.

[Note: This definition will not be necessary if it is already clear from an existing Act on interpretation of laws.]

“Public place” means a place accessible to the general public or a segment of the public or a place for collective use, regardless of ownership or right to access.

“Public transport” means any vehicle used for carriage of members of the public, usually for reward or commercial gain, including a taxi.

“Sell” means to supply or offer to supply a product or a service at wholesale or directly to the consumer at retail in _____ *[Note: name of country]* for a fee or other consideration, and “seller” shall have a corresponding meaning.

“Smoke”, as a noun, means the aerosol or vapour for inhalation emitted when a tobacco or herbal non-tobacco product is lit or is heated without combustion.

“Smoke” or “smoking”, as a verb, means being in possession or control of a tobacco product or other product for inhalation that is producing smoke, regardless of whether the smoke is being actively inhaled or exhaled.

“Smoked tobacco products” means tobacco products produced for consumption by means of smoking, including waterpipe tobacco.

“Sponsorship” means any form of contribution (direct or indirect) to any event, activity, organization or individual with the aim, effect or likely effect of directly or indirectly promoting a tobacco product.

“Standardized (or “plain”) packaging” means –

- a. packaging required to have a uniform appearance; a plain colour and texture; and standardized shape, size, means of opening, and packaging material;
- b. packaging prohibited from having any branding, logos or other promotional elements on, inside or attached to the packaging or to the product, other than the brand name and product name appearing in a standard size, colour and typeface, together with other mandatory information;
- c. requirements as to the standard appearance of a waterpipe tobacco product or waterpipe, and the quantity or weight of product contained in an individual package or container; and
- d. any other requirements about any feature, appearance or element of the packaging of a waterpipe tobacco product, waterpipe or accessory, or of the products themselves.

“Tobacco control” means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing the consumption of tobacco products, nicotine addiction and exposure to tobacco smoke.

“Tobacco industry” means manufacturers, wholesale distributors and importers of tobacco products. For the purposes of Part X, the term also includes any natural or juridical person working in or on behalf of the tobacco industry. Where the context allows, “tobacco industry” also refers to a natural person working in or on behalf of an entity in the industry.

“Tobacco products” means products made entirely or partly from any part of the tobacco plant as raw material which are produced to be used for smoking, including waterpipe tobacco, or for sucking, chewing, inhaling, snuffing or other means of human consumption.

“Waterpipe” means a device that is manufactured to consume a waterpipe tobacco product by producing smoke that passes through water or other liquid before reaching the mouth of the user, and includes waterpipe components, whether or not sold separately.

“Waterpipe industry” means manufacturers, importers and wholesale distributors of waterpipes.

“Waterpipe accessory” means an item, other than a waterpipe or tobacco, produced for use with, or labelled or otherwise represented as being for use with, waterpipe tobacco smoking; waterpipe charcoal is an example.

“Waterpipe hospitality businesses” refers to commercial establishments, including bars, cafés, restaurants, lounges and similar venues, that offer waterpipe tobacco smoking preparation services, or that otherwise make waterpipe tobacco, waterpipes or accessories available for use on the premises.

“Waterpipe tobacco products” means tobacco products produced for use with a waterpipe.

“Workplace” means any place used by one or more persons during their employment, contract, voluntary or other work, including any area used in or incidental to the course of work, as well as work vehicles.

Part III

Part III – Administration

[Note: Depending on country-specific factors, provisions for this part might include:

- *the establishment of a tobacco control coordination mechanism, as required by Article 5.2(a) of the WHO FCTC, and its membership and functions;*
- *identification and appointment of the ministries or authorities with inspection powers and duties, what those powers and duties are, how inspection authorities will coordinate with one another, etc; and*
- *licensing tobacco products, importers, wholesalers, retailers and other businesses (see the FCTC Protocol to Eliminate Illicit Trade in Tobacco Products for a list of businesses that should be subject to licensing), unless adequate licensing provisions already exist under another law that would be adequate to achieve control purposes.]*

Part IV

Part IV – Smoke-free environments**Protection against exposure to tobacco smoke****Article 3.**

1. A person shall not smoke or use a waterpipe –
 - a. in any part of any indoor workplace;
 - b. in any part of any indoor public place, including a waterpipe hospitality business; or
 - c. anywhere on a means of public transport.
2. A person shall not smoke or use a waterpipe in any outdoor area that is –
 - a. within ___ metres of a doorway or intake vent of any indoor public place or workplace;
 - b. a bar, restaurant, café or other area for the service or consumption of food or drink, including a waterpipe hospitality business;

[Note: This provision would apply to outdoor areas of waterpipe cafés, bars and restaurants in most circumstances, especially where there is limited outdoor space to allow for physical distancing among tables and where several people are smoking. Wind direction, a variable factor, would affect the level of exposure.¹⁸⁸

If sub-article (b) will not be adopted, consideration should be given, at a minimum, to imposing sufficient distance requirements to protect other patrons, bystanders and persons who pass by; prohibiting the provisions of services in the area to protect workers; and requiring the display of health warnings on tables or in the area.]

- c. a stadium, arena, or performance or entertainment space of any kind;
- d. a waiting area or queue, including a public transport stop, or within ___ metres of a waiting area or queue;
- e. a public park;
- f. designated by the owner as an area where smoking is not allowed; or
- g. prescribed by the Minister as an area where smoking is not allowed.

¹⁸⁸ Klepeis NE, Ott WR, Switzer P. Real-time measurement of outdoor tobacco smoke particles. J Air Waste Manag Assoc. 2007;57:522–34. doi: <https://doi.org/10.3155/1047-3289.57.5.522>.

3. A person shall not smoke or use a waterpipe anywhere on the entire premises of –
 - a. a childcare facility or an educational or vocational facility at any level of instruction;
 - b. a health care facility;
 - c. a playground or amusement park;
 - d. a public park; or
 - e. any other prescribed premises.

Duties of persons responsible for the premises

Article 4. Persons responsible for the premises, including a means of public transport, in Article 3 shall ensure that –

1. signs are displayed in a manner as may be prescribed in all indoor areas and in outdoor areas where smoking is prohibited, notifying persons of the prohibition on smoking, including using a waterpipe;

[Note: Ideally, the Minister would prescribe details for sign content, placement, etc. and provide a template for the signs. However, if there is concern that there may be delay in promulgating regulations, the law could specify the basic requirements for signs and authorize the Minister to supplement those requirements through regulations.]

2. reasonable steps are taken to stop a person from smoking where prohibited under Article 3, including the following –
 - a. directing the person to stop smoking and, if the person refuses, discontinuing service to that person;
 - b. directing the person to leave the premises or, in the case of a public transport vehicle, to leave the vehicle when it is safe to do so; and
 - c. contacting law enforcement or other appropriate authority if the person refuses; and
3. any complaints by workers or members of the public are investigated and necessary action is taken.

Part V – Prohibition on advertising, promotion and sponsorship

Article 5.

1. All forms, methods and means of domestic and cross-border advertising, promotion, and sponsorship of waterpipe tobacco products, waterpipes and waterpipe accessories are prohibited. For the avoidance of doubt, this prohibition includes digital media communication platforms.
2. A person shall not –
 - a. initiate any advertising and promotion or sponsorship;
 - b. produce or publish any advertising and promotion or sponsorship content;
 - c. disseminate or broadcast any advertising and promotion or sponsorship content, subject to sub-article (3); or
 - d. participate in or facilitate any sponsorship as a media or event organizer, venue owner, sportsperson, celebrity, artist or other performer, as a provider or recipient of any sponsorship contribution, or as an intermediary that facilitates the sponsorship.

3. The Minister *[Note: or other appropriate authority]* may prescribe actions that persons involved in disseminating content by providing access to or hosting content through the internet or other electronic means must take to fulfil their responsibilities under this article.
4. Without limiting the broad application of this article, the Schedule provides a non-exhaustive list of forms, methods and means of advertising and promotion, and sponsorship under the Act.

Article 6.

1. A person shall not cause or permit the display of a waterpipe tobacco product, waterpipe, waterpipe accessory or their packaging at a place of sale or on the premises of any commercial establishment.
 - a. In this sub-article, a display occurs when any waterpipe tobacco product, waterpipe, waterpipe accessory or their packaging is visible to any member of the public.
 - b. A prohibited display under this sub-article does not occur during the course of a transaction for the sale of a specific waterpipe tobacco product, waterpipe or accessory.
[Note: If waterpipe tobacco smoking is not banned in certain outdoor areas of waterpipe bars, cafés and restaurants, sub-article (b) may need to also provide that the use of any of the abovementioned products would not constitute a display.]
 - c. A person in the tobacco trade shall not be considered a member of the public under this sub-article.
2. The owner or person in control of an establishment where waterpipe tobacco products, waterpipes or waterpipe accessories are offered for sale may –
 - a. display a sign in black writing on a white background that states that these products are available for sale, provided that the size, nature and location of the sign are as prescribed; and
 - b. make available upon request a list of waterpipe tobacco products, waterpipes and waterpipe accessories for sale, provided the list only contains the brand name, package quantity or weight of waterpipe tobacco, and price of each product printed in black ink on white paper, with no images or other text or features, provided that the size and nature of the list are as prescribed.

Incidental promotional effect

Article 7.

1. Notwithstanding Article 6, the following, shall not be considered advertising and promotion or sponsorship subject to the prohibition in Article 6 –
 - a. depiction of a waterpipe tobacco product, waterpipe or waterpipe accessory where the depiction is justified by reasons of legitimate journalistic, artistic or academic expression, provided no payment or other consideration was offered or made in exchange for the depiction by a manufacturer, importer, wholesale distributor or retailer of the product, or any person acting on their behalf;

- b. genuine political, social, editorial or scientific commentary, provided no payment or other consideration was offered or made in exchange for the commentary or publication of the commentary by a manufacturer, importer, wholesale distributor, retailer or any person acting on their behalf;
- c. communications necessary for business administration or for required corporate reporting, but only to the extent that access is limited to persons who need to receive it for business administration or corporate reporting;
- d. product information made accessible to businesses within the waterpipe tobacco product, waterpipe or waterpipe accessory trade who need the information for trading decisions, but only to the extent that access is limited to those persons; and
- e. manufacturers' newsletters destined for and distributed only to the manufacturers' employees, contractors, suppliers and other related business partners, and only to the extent that their distribution is limited to such persons.

[Note: Sub-article (1) is based on the Guidelines for implementation of Article 13 of the WHO FCTC (under the headings of Legitimate expression, Depictions of tobacco in entertainment media, and Communication within the tobacco trade). It would be advisable to make any qualifiers to (a)–(c) as appropriate to the domestic context.]

- 2. Any communication or action pursuant to sub-article (1) shall not be false, misleading or deceptive and shall be subject to any other requirements the Minister may prescribe.

[Note: Additional requirements might include a mandate for warnings attached to the communications in sub-articles (1)(a)–(e); certification by a corporate officer that no payment or other consideration was offered or made in exchange for any of the activities under sub-articles (1)(b)–(e); and reporting to the government on communications and actions undertaken under this part that could help the government monitor compliance.]

Article 8. The Minister *[Note: or other appropriate authority]* may prescribe any additional requirements for the effective implementation of this part.

Part VI – Packaging and labelling

General requirement

Article 9. A person shall not sell a waterpipe tobacco product, waterpipe or waterpipe accessory unless it is contained in an intact package that meets all packaging requirements.

Minimum package weight

Article 10. An individual package of waterpipe tobacco made available for retail sale shall contain a minimum of ___ grams of the product *[Note: The minimum grams specification should be a weight that would prevent the product from being easily affordable]*.

Health warnings requirements

Article 11.

- 1. A person shall not manufacture, import or sell a waterpipe tobacco product, a waterpipe or waterpipe charcoal unless its retail packaging displays the prescribed warnings in the manner prescribed.
- 2. Only prescribed warnings shall be displayed anywhere on or in the package.

Health warnings for waterpipe tobacco and waterpipes

3. Health warnings in the form of pictures and corresponding text in the _____ language *[Note: specify the country's principal language or languages]* shall be displayed, at a minimum, on each principal display area of the retail packaging of waterpipe tobacco products and waterpipes.
4. The combined warnings in sub-article (3) shall cover the surface area of each principal display area of the packaging prescribed by the Minister *[Note: or other appropriate authority]*, which shall be no less than ____ %.
[Note: As described in Chapter 2 of this guide, Türkiye and Saudi Arabia provide good examples of measures providing for large pictorial warnings on waterpipe tobacco, with requirements for 85% and 65% of each principal display area, respectively, on waterpipe tobacco packaging.]
5. The Minister *[Note: or other appropriate authority]* may prescribe requirements for the display of health warnings and the form the warnings must take on any other areas of the packaging, and may prescribe requirements for warnings by means of package inserts.
6. The Minister may prescribe requirements for the display of health warnings on the waterpipe itself.

Rotation of health warnings

Article 12.

1. The Minister shall prescribe a set of multiple health warnings to be displayed on packaging of waterpipe tobacco and waterpipes for a prescribed period, referred to as the "rotation period".
[Note: The purpose of rotating sets of warnings is to keep the warnings from becoming stale and diminishing their effectiveness. Each set might provide anywhere from six to 12 or more warnings, so that the warnings can highlight the dangers of addiction, risks of different diseases affecting various body organs, benefits of cessation of tobacco use, and adverse social and economic effects. The guidelines recommend a rotation period length between 12 and 36 months.]
2. Within a rotation period, each health warning from the prescribed set of combined warnings shall appear concurrently on an equal number of packages for each brand within a brand family, and each package size and type, as prescribed.
[Note: If standardized packaging is required, the reference to package size and type should be deleted.]

Health warnings for waterpipe charcoal and other waterpipe accessories

Article 13. The Minister shall prescribe requirements for the display of health warnings on the packaging of waterpipe charcoal or other waterpipe heating source, and may prescribe requirements for the display of health warnings on the packaging of other waterpipe accessories.

Protection of the warnings

Article 14.

1. All prescribed health warnings shall be permanently displayed on packaging, and their full visibility and integrity must not be, and must not be susceptible to being, damaged, concealed, obstructed, obscured, disrupted, covered or changed by any package design feature or mechanism.

2. Tax stamps and any other required markings shall be placed on the packaging in a way that ensures the full visibility of both the warnings and the markings.
3. The Minister *[Note: or other appropriate authority]* may prescribe minimum dimensions of the packaging to effectuate the requirements of sub-articles (1) and (2).

Contents and emissions information

Article 15.

1. The packaging of waterpipe tobacco products, waterpipes and waterpipe charcoal shall display prescribed descriptive-only information on contents (ingredients) and emissions in the form and manner prescribed by the Minister *[Note: or other appropriate authority]*.
2. No emissions yield figures shall be displayed anywhere on or in the packaging.
3. Only the prescribed information on contents (ingredients) and emissions shall be displayed.
4. The Minister *[Note: or other appropriate authority]* may prescribe requirements for rotation and concurrent display of contents (ingredients) and emissions information.

Single supply deadline

Article 16. After ____ days from the date a set of prescribed health warnings and contents (ingredients) and emissions information is published in the gazette *[Note: or published by the appropriate means in the country]*, manufacturers, importers and sellers shall not supply a waterpipe tobacco product, waterpipe or waterpipe charcoal unless its packaging complies with the new requirements for warnings and contents (ingredients) and emissions information under this part.

[Note: This article is meant to give sufficient time (e.g. 3 to 6 months) for the manufacturer to print the new warnings on the packaging and to prevent the manufacturer from only beginning to supply some packages with the new warnings, leaving packages with older non-compliant warnings on the market.]

Electronic files

Article 17. The Minister *[Note: or other appropriate authority]* may provide electronic files containing the health warnings, contents (ingredients) and emissions information, and any other prescribed information required to be displayed. Where the Minister has provided electronic files, images and information from those files must be displayed with the same quality and clarity, using electronic imaging derived from the original images provided by the Minister.

[Notes:

1. *Development of the warnings, contents and emissions information, and other required information should begin at an early stage so that the subsidiary measures and electronic images can be published or made available at the time of enactment of the law, or shortly after enactment, to prevent implementation delays.*
2. *Article 15 of the WHO FCTC requires that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: "Sales only allowed in (insert name of the country, subnational, regional or federal unit)" or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market.*

This requirement may be placed in provisions implementing illicit trade measures, which may be developed under the authority of the Ministry of Finance/Trade. The Ministry of Health could also address the legal place of sale requirement in this Act or its implementing regulations.]

Prohibition on misleading packaging labelling and misleading product features

Article 18.

1. The packaging of waterpipe tobacco products, waterpipes (including components sold separately), waterpipe charcoal and other waterpipe tobacco accessories shall not promote the product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions.
2. The prohibition in sub-article (1) includes using any term, descriptor, trademark, figurative (whether or not part of the brand name), colour, number, shape, or other sign or feature, in whole or in part, that directly or indirectly creates, or is likely to create, the false impression that a waterpipe tobacco product or waterpipe tobacco smoking is less harmful than other tobacco products or other means of consuming tobacco, including by using terms such as “light”, “ultra-light”, “fine”, “mild”, “smooth”, “natural”, “herbal”, “chemical free” “extra”, “ultra”, “flavoured”, “menthol”, and other terms in any language that are likely to mislead consumers.
3. The packaging of a waterpipe tobacco product, waterpipe, waterpipe charcoal or other waterpipe accessory shall not directly or indirectly create the impression that it has properties or features that are capable of reducing or preventing harm to the user or others exposed to the waterpipe smoke.

Authority of the Minister

Article 19. The Minister may prescribe regulations regarding –

1. the content, size, font, colours, print quality, layout, design, placement, display, rotation periods and any other details for health warnings and contents (ingredients) and emissions information;
2. the display of any other information on or inside the packaging;
3. preventing false or misleading packaging of waterpipe tobacco, waterpipes, waterpipe charcoal or other accessories, and any misleading features of the products themselves;
4. limiting or prohibiting promotional features of packaging of waterpipe tobacco, waterpipes and waterpipe accessories and of the products themselves, including requirements for standardized (plain) packaging and standardized product features; and
5. requirements for the display of health warnings and contents and emissions information, and for preventing misleading packaging and product features of non-tobacco herbal waterpipe products.

Part VII – Sales of waterpipe tobacco products, waterpipes and waterpipe accessories

Article 20.

1. A person shall not sell a waterpipe tobacco product, waterpipe or waterpipe accessory to a person under 21 years of age.

[Note: Because most people who use tobacco initiate tobacco use when they are young, consideration could be given to setting a minimum age for sale that is 21 years of age or older, to deter young adults from starting.]

- a. Prior to sale, a seller shall verify the age of the purchaser by checking a reliable form of identification, as may be prescribed.

- b. A seller of waterpipe tobacco products, waterpipes or waterpipe accessories shall place a clear and prominent sign inside the place of sale notifying consumers of the legal prohibition on sales of these products to persons under the age of 21 years.
2. A seller shall ensure that a waterpipe tobacco product, waterpipe or waterpipe accessory is not directly accessible to a retail consumer prior to a sales transaction.
3. A person responsible for the premises of a place of sale or of any public place shall not place or allow the placement of a vending machine or other automated equipment for the sale of waterpipe tobacco products, waterpipes or waterpipe accessories anywhere on the premises.
4. A person shall not sell or arrange for the retail sale, payment or delivery of a waterpipe tobacco product, waterpipe or waterpipe accessory to a consumer through any means by which the purchaser and seller are not in the same physical location. This includes but is not limited to sales by mail, through the internet or through other remote means.

[Note: Internet sales are considered by the Guidelines for implementation of Article 13 of the WHO FCTC to be a form of advertising and promotion, so the Schedule providing examples of advertising, promotion and sponsorship includes internet sale. As a result, any penalty applicable for a violation of this provision would need to be consistent with any penalty provided in Part V on tobacco advertising, promotion and sponsorship, to prevent conflicting penalties.]

5. For purposes of sub-article (4), a person in the tobacco trade shall not be considered a consumer.
6. A person shall not deliver a waterpipe tobacco product, waterpipe or waterpipe accessory to a consumer where the sales transaction was not conducted in person.
7. A person shall not sell or permit the sale of a waterpipe tobacco product, waterpipe or waterpipe accessory anywhere on the premises of an educational facility, a facility or premises that caters to minors, such as playgrounds or amusement parks, or other prescribed facilities or premises, or within ___ metres of the property boundary of those premises, or any other premises prescribed by the Minister *[Note: or other appropriate authority]*.
8. The Minister *[Note: or other appropriate authority]* may prescribe additional requirements related to the sale or availability of waterpipe tobacco products, waterpipes and waterpipe accessories in furtherance of the objectives of the Act.
9. The Minister *[Note: or other appropriate authority]* may prescribe requirements related to the sale of non-tobacco herbal waterpipe products under this part.

Part VIII – Education, public awareness and cessation services

Article 21. The Minister *[Note: and any other appropriate ministries or authorities]* shall develop and institutionalize multisectoral programmes, strategies and training, in collaboration with educators, health workers, community workers, social workers and their institutions, civil society organizations and other persons as appropriate, to –

1. promote and strengthen education and public awareness of the health, economic, social and environmental harms caused by waterpipe tobacco smoking and nicotine addiction;

Part IX

2. develop and disseminate evidence-based guidelines and take effective measures to promote cessation and adequate treatment for nicotine dependence to facilitate cessation;
3. provide for training and integration of cessation services in various health programmes;
4. carry out any other appropriate interventions to promote education, awareness and cessation; and
5. monitor and evaluate implementation and effectiveness of interventions undertaken to implement the requirements of this article, and make the results publicly available.

Part IX – Contents and emissions regulation and disclosure requirements

Contents and emissions regulation

Article 22.

1. Persons shall not manufacture, import, sell or make available in their course of business a waterpipe tobacco product that –
 - a. has a characterizing flavour or that contains any concentration of a flavouring or mixture that exceeds an amount as may be prescribed by the Minister;
 - b. contains an additive or mixture with properties associated or likely to be associated with energy or vitality, a health benefit or reduced health risk, such as amino acids, caffeine, taurine and other stimulants, vitamins and minerals;
 - c. is represented directly or indirectly or suggested as containing any such additives or having any of the properties specified in sub-article (a) or (b);
 - d. contains an additive or mixture with colouring properties for emissions;
 - e. has any feature allowing post-sale activation by the user or other person of a smell or taste of the product, or of colouring properties for the smoke; or
 - f. is represented directly or indirectly, including through words, images, pictures, symbols, smells, colours or other signs or signals on or inside the packaging or on the product, as having any of the additives, properties or features described in sub-articles (a)–(e).
2. Persons shall not manufacture, import, sell, or make available in the course of their business an ingredient or mixture specified in sub-article (1) that is –
 - a. produced for use with, or produced to be added by the user or other person to, a waterpipe tobacco product, a waterpipe or a waterpipe accessory; or
 - b. directly or indirectly represented as being for the purpose specified in sub-article (a).
3. The Minister *[Note: or other appropriate authority]* may prescribe requirements for the comprehensive regulation of waterpipe tobacco with respect to –
 - a. contents (ingredients) and emissions;
 - b. design features;
 - c. attractiveness;
 - d. testing and methods to be used in testing for conformity with requirements;
 - e. ignition propensity;

- f. sensory attributes; and
 - g. any other requirements to address product toxicity, addictiveness or attractiveness.
4. The Minister *[Note: or other appropriate authority]* may prescribe requirements for the comprehensive regulation of waterpipes, including –
 - a. design features and appearance;
 - b. features allowing the addition or modification of a smell or taste of the tobacco or smoke, or any other sensory attributes during the waterpipe smoking; and
 - c. any feature related to the waterpipe's contribution to toxicity, addictiveness or attractiveness of waterpipe tobacco smoking.
 5. The Minister *[Note: or other appropriate authority]* may prescribe requirements for the comprehensive regulation of waterpipe charcoal or other heat sources for use in waterpipe smoking, and any other accessories.

Article 23.

1. Manufacturers and importers of waterpipe tobacco products, waterpipes, waterpipe charcoal or other prescribed accessories shall submit prescribed information, periodically and upon request, to the Minister *[Note: or other appropriate authority]* on the contents and emissions (as applicable), design features, testing methods, testing conformity results, ignition propensity, and any other information as may be prescribed by the Minister *[Note: or other authority]*.
2. Manufacturers and importers shall submit the information in sub-article (1) in accordance with the method, manner, form, timing and frequency prescribed.
3. The Minister shall make information from the reports readily accessible to the public in a timely manner, subject to exclusion of particular information that is legally mandated, if any, or that might be misleading or promotional in nature.

Article 24. The Minister may prescribe requirements with respect to the regulation and disclosure of contents and emissions with regard to non-tobacco herbal waterpipe smoking products.

Part X – Protection of tobacco control policies

[Note: The following measures to implement Article 5.3 of the WHO FCTC apply to the tobacco industry and is not limited to the waterpipe tobacco industry, and should be considered and developed in the context of other relevant tobacco control laws in the country's legal framework.]

Article 25. Government shall protect tobacco control policies from the commercial and other vested interests of the waterpipe tobacco product or waterpipe industries, and waterpipe hospitality businesses, and from any natural or juridical persons acting on their behalf.

Duties of persons involved in the formulation and implementation of tobacco control measures

Article 26.

1. Persons involved in the formulation and implementation of tobacco control measures
 - a. shall interact with any of the persons mentioned in Article 25 only when strictly necessary for effective regulation of the industries or their products, and only to the extent necessary;

- b. shall ensure that any interactions and contacts under sub-article (a) are transparent, including by –
 - i. providing advance public notice of any meeting or other interaction or contact, unless advance notice would jeopardize regulation of the industry or products;
 - ii. creating a record of any meeting, interaction or contact and making information from the record publicly available in a timely manner, subject to exclusion of particular information that would jeopardize effective regulation or that is legally mandated, if any; and
 - iii. any other transparency measures as may be prescribed.
- c. shall not accept or solicit any legal measure or policy drafted by or in collaboration with any of the persons mentioned in Article 25, or any drafting assistance from such persons; and
- d. shall not accept or solicit any involvement, financial or otherwise, by persons mentioned in Article 25 in any manner in any initiative, campaign, programme or activity directly or indirectly related to tobacco control or public health.

Duties of all governmental and quasi-governmental institutions or bodies

- 2. A governmental or quasi-governmental institution or body, whether or not it has responsibility for tobacco control, and any natural or juridical person working on its behalf –
 - a. shall not engage in a partnership of any kind with any of the persons mentioned in Article 25 and shall correct any impression of a partnership that may have been created;
 - b. shall not provide any incentives or privileges to any person to establish or run a business mentioned in Article 25, or for tobacco growing, including subsidies, investment incentives, direct investments or loans, tax exemptions or favourable treatment, and research and development grants or loans;

[Note: If there are already privileges or incentives granted by a pre-existing law, that law would need to be amended or superseded by new legal provisions, as below. Any new laws generally granting subsidies, tax benefits, government procurement benefits, foreign direct investments or the like would likely need to exclude application of those benefits to the tobacco industry.]

 - c. shall not make any investment in the businesses mentioned in Article 25 and shall divest from any investment currently held; and
 - d. shall not accept or solicit a contribution of any kind from any of the persons mentioned in Article 25.

Prevention and management of conflicts of interest

- 3. The _____ *[Note: specify any body having authority over all of government, or authorities if there is no single body with such authority]* shall take all necessary actions to prevent and manage industry or business-related conflicts of interest by natural or juridical persons with responsibility for tobacco control, including conflicts related to previous, concurrent and post-government service with respect to –
 - a. occupational activity;
 - b. financial or business interests; and
 - c. any other interests or activities that give rise or may give rise to a conflict of interest or an appearance of a conflict of interest.

4. Actions referred to in sub-article (3) shall include formulating and implementing practices, such as screening and disclosure requirements, contractual obligations and policies and procedures, guidelines and other measures to prevent and manage conflicts of interest.

[Note: Measures to prevent and manage conflicts of interests might include requiring a waiting period before a person may undertake government service with responsibility for tobacco control after having worked for any of the industries mentioned in Article 25; imposing appropriate limitations on participation in decisions or actions while engaged in occupational activity with responsibility for tobacco control; or imposing other limitations.]

Reporting requirements

5. Waterpipe tobacco product and waterpipe industries, and waterpipe hospitality businesses shall submit periodic reports to the Minister *[Note: or other appropriate authority]* containing information on their activities, practices, products and other information as prescribed.

[Note: The recommendations in the Guidelines for implementation of Article 5.3 of the WHO FCTC include requiring submission of information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities not prohibited or not yet prohibited under Article 13 of the WHO FCTC.]

6. The Minister shall make information from the reports readily accessible to the public in a timely manner, subject to exclusion of particular information that is legally mandated, if any, or that might be misleading or promotional in nature.

State ownership of the tobacco industry [where applicable]

[Note: In countries where there is state ownership of the tobacco industry, provisions should be made in the applicable law for the state to: (1) relinquish its ownership interest or, at a minimum, separate tobacco control policy functions from the functions of overseeing or managing the tobacco industry; and (2) ensure that representatives from the state-owned industry are not members of the state's delegations to any meetings of the Conference of the Parties, its subsidiary bodies, or other bodies established by decisions of the Conference of the Parties.]

Part XI – Penalties for non-compliance

[Note: The following measures to implement Article 5.3 of the WHO FCTC apply to the tobacco industry and is not limited to the waterpipe tobacco industry, and should be considered and developed in the context of other relevant tobacco control laws in the country's legal framework.]

Article 27. Availability of penalties

[Note: Penalties should reflect the country's legal requirements, customs and practices, following a clear establishment of offences. Penalties should be effective, proportionate and dissuasive. Effective sanctions can include warnings for first-time minor violations, licensure sanction for serious or repeated violations, fines, confiscation and destruction of non-compliant products using environmentally friendly means, and, where justified, civil and criminal liability of corporate entities and their officers. Penalties should be graded in accordance with the duty of the person involved in a violation and that person's ability to control the circumstances that gave rise to the violation. For example, a manufacturer that violates packaging requirements should be held to a higher degree of responsibility and penalized more severely than a retailer who sells the product in non-compliant packaging. Similarly, the initiator of tobacco advertising, promotion and

Part XII

sponsorship should be held to a higher degree of responsibility and receive a more severe penalty than others in the marketing chain. Penalties should increase for repeat or ongoing offences. Publication of violations could also be undertaken.]

Part XII – Miscellaneous

Evaluation

Article 28. The Minister *[Note: or other authority or authorities]* shall periodically monitor and evaluate the effectiveness of the Act, including the effectiveness of the inspection and enforcement activities. Information on monitoring and evaluation shall be made readily accessible to the public.

Civil society participation

Article 29.

1. In implementing this Act, the Minister *[Note: or other authority or authorities]* shall promote the participation of civil society not affiliated with waterpipe tobacco product and waterpipe industries, and waterpipe hospitality businesses.
2. Any person may file a complaint about any violation of the Act or its implementing regulations, and the responsible government authority or authorities shall establish institutional channels for the presentation of and action upon such complaints.

[Note: A tobacco control law could also address the establishment of a tobacco control or public health fund.]

Authority to make regulations

Article 30. Without prejudice to the regulatory authority granted in other parts of this Act, the Minister *[Note: or other appropriate authority]* may make regulations –

1. that are necessary or appropriate to further the objectives of the Act or to fulfil the government's obligations under the WHO FCTC and related international and regional commitments aimed at improving health, environmental, social or development outcomes for which tobacco- or nicotine-caused harms are contributing factors; and
2. for any consequential, incidental, supplementary or transitional provisions relating to the provisions of this Act.

Part XIII – Concluding clauses

[Note: These may include repeals, amendments to other Acts, transitional provisions and other customary clauses.]

SCHEDULE

Indicative (and non-exhaustive) list of the forms, media and means of advertising, promotion and sponsorship under Part V of the Act

1. Communication through audio, visual or audiovisual means, such as print (e.g. newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters and signs), television and radio (including terrestrial and satellite), streaming content, films, DVDs, videos, CDs, games (e.g. computer games, video games and online games), other digital communication platforms (e.g. the internet, mobile phones and mobile phone applications), and theatre and other live performances
2. Communication through digital sharing platforms, including paid product promotions, sponsored event promotions, competitions, boosting of promotional content by content hosts, influencer paid promotions, and industry corporate (branded) promotion

Part XIII

3. Direct person-to-person communications
4. Brand-marking at entertainment venues and retail outlets and on vehicles and equipment or fixtures, such as by use of words, designs, images, sounds, colours, brand names, trademarks or logos, and any other indicia associated or likely to be associated with tobacco products, manufacturers, importers or wholesalers
5. Display of waterpipe tobacco, waterpipes or accessories at retail points of sale
6. Sales of waterpipe tobacco, waterpipes or accessories through vending machines
7. Sales of waterpipe tobacco, waterpipes or accessories through the internet, telecommunications or any evolving technology-based modes of sale
8. Use of a waterpipe tobacco product or waterpipe brand name, emblem, trademark, logo, trade insignia or any other distinctive feature, in whole or in part, including colour combinations, on or in connection with a non-tobacco or non-waterpipe product or service in such a way that the waterpipe tobacco product or waterpipe and the non-tobacco product or non-waterpipe product or service are likely to be associated
9. Use of a brand name, emblem, trademark, logo, trade insignia or any other distinctive feature, in whole or in part, including colour combinations, of a non-tobacco product or service in connection with a waterpipe tobacco product or waterpipe manufacturer, importer or wholesaler in such a way that the waterpipe tobacco product or waterpipe company and the non-tobacco product or service are likely to be associated
10. Product placement, such as the inclusion of or reference to a waterpipe product or waterpipe service or trademark in the context of communication in return for payment or other consideration
11. Provision or offer of gifts or discounted products, such as key rings, T-shirts, baseball caps, cigarette lighters, CDs, other trinkets, or tobacco products, in connection with the purchase of a waterpipe tobacco product, waterpipe or accessory
12. Supply or offer of free samples of a waterpipe tobacco product or accessory, including in conjunction with marketing surveys and taste testing
13. Incentive promotions or loyalty schemes, such as redeemable coupons provided with the purchase of a waterpipe tobacco product, waterpipe or accessory
14. Competitions associated with waterpipe tobacco products, waterpipes or accessories or their brand names, whether requiring purchase of the product or not
15. Direct targeting of individuals with promotional material, including informational material, such as direct mail, telemarketing, consumer surveys or research
16. Promotion of discounted products
17. Sale or supply of toys or sweets or other non-tobacco or non-nicotine products that resemble tobacco products
18. Payments or other contributions of any kind to retailers aimed at encouraging or inducing them, or having the effect or likely effect of encouraging or inducing them, to sell waterpipe tobacco products, waterpipes or accessories, including retailer incentive programmes, such as those that provide rewards to retailers for achieving certain sales volumes
19. Promotional packaging and product design features

20. Payment or other consideration in exchange for the exclusive sale or display of a particular waterpipe tobacco, waterpipe or accessory, or a particular manufacturer's product, in a retail outlet or at a venue or an event
21. Sale, supply, placement or display of waterpipe tobacco products, waterpipes or accessories at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events
22. Provision of financial or other support to events, activities, individuals or groups, such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare and other public interest organizations, government institutions or organizations, politicians, political candidates and political parties, whether or not in exchange for attribution, acknowledgement or publicity, including corporate social responsibility activities of any kind
23. Provision of financial or other support to venue operators, such as but not limited to pubs, clubs or other recreational venues, in exchange for building, renovating or decorating premises to promote a waterpipe tobacco product, waterpipe or accessory, or the use or provision of awnings, sunshades or other items that promote such products
24. Tobacco advertising, promotion and sponsorship of smokeless tobacco products on digital media-sharing platforms, including but not limited to, direct product promotion through paid advertisements, influencer promotions, commercial promotions of posts by consumers of their own tobacco usage, event promotion, corporate and campaign promotions, tobacco use depictions embedded in commercial content where those depictions are not legitimate expression, product integration, sponsored news or infotainment content, or advertising promotion, and sponsorship of a device or devices that enable the consumption of tobacco products.
25. Any waterpipe tobacco product, waterpipe or accessory advertising, promotion or sponsorship in any form and by any method or means

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