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

WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL
SECRETARIAT

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Acknowledgements

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Executive summary

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

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

The overall status of the implementation of the Protocol was assessed based on key indicators under each substantive article. Articles on which Parties reported the most progress include Article 16 (Prosecutions and sanctions), Article 10 (Security and preventative measures), Article 15 (Liability of legal persons), Articles 14 (Unlawful conduct including criminal offences) and Article 17 (Seizure payments). In relation to the implementation of the time-bound requirements under Article 8 (Tracking and tracing), 35 Parties (57%) informed the Convention Secretariat about the establishment of a tracking and tracing system. Lower implementation was observed for measures related to articles under Part V of the Protocol (International cooperation), for example, Article 30 (Extradition), Article 31 (Measures to ensure extradition), Article 29 (Mutual legal assistance) and Article 23 (Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters).

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

Article 5 (Protection of personal data)
Most of the Parties reported on their existing legislation to protect personal data in relation to the implementation of the Protocol. A few Parties reported having issued data protection regulations since the submission of their previous report. Other Parties reported efforts to develop similar data protection regulations. However, nine Parties reported that no specific regulation on protection of personal data exists in their jurisdictions.

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

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

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

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

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

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

Article 11 (Sale by Internet, telecommunication or any other evolving technology) – Thirty-six Parties (58%) reported applying measures to all sales of tobacco products covered by this article, while 29 of them (47%) imposed a complete ban on online sales and sales using telecommunications and similar technologies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Photo courtesy of Tax and Customs Authority, Portugal

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

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

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

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

The Secretariat of the WHO Framework
Convention on Tobacco Control

Hosted by: World Health Organization

Avenue Appia 20,
1211 Geneva 27,
Switzerland

Tel. +41 22 791 50 43
Fax +41 22 791 58 30
Mail: fctcsecretariat@who.int
Web: fctc.who.int