

2020 - Questionnaire on the implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products by its Parties

A. ORIGIN OF THE REPORT

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Period of reporting:

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PART I: B. INTRODUCTION

ARTICLE 2 - RELATION BETWEEN THIS PROTOCOL AND OTHER AGREEMENTS AND LEGAL INSTRUMENTS

Please list any bilateral or multilateral agreements you entered into on issues relevant or additional to the Protocol, as mentioned in Article 2 of the WHO FCTC.

Please consider this submission as Joint Response by Member States and the European Union.

Some instruments in areas covered by the Protocol are included below.

Multilateral:

1. WTO Trade Facilitation Agreement (Article 12 – customs cooperation)
2. United Nations Convention against Transnational Organized Crime
3. United Nations Convention Against Corruption
4. International Convention on Mutual Administrative Assistance for the prevention, investigation and repression of customs offences (WCO – Nairobi Convention - some Member States are Contracting Parties)

Bilateral:

1. The EU has provisions on mutual administrative assistance in customs matters with over 80 countries. A full list is available at https://ec.europa.eu/anti-fraud/about-us/legal-framework/customs_matters_en
 2. Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention on Mutual Assistance in Criminal Matters
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PART II: C. GENERAL OBLIGATIONS

ARTICLE 5 - PROTECTION OF PERSONAL DATA

What measure have you taken, in particular in the past two years, to ensure the protection of personal data of individuals, regardless of nationality or residence, when implementing this Protocol?

The provisions of the General Data Protection Regulation (2016/679), Data Protection Law Enforcement Directive (2016/680) and Regulation 2018/1725 have been applicable in the EU since 2018. There are various mechanisms to transfer personal data from the EU to third countries, and only when the protection travels with the data. Adequacy decisions are just one of those mechanisms and the European Commission can now adopt adequacy decisions for the law enforcement sector. Specific adequacy assessment elements are set out in Article 36(2) of Directive 2016/680.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

The European Commission webpage (https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection_en) on the international dimension of data protection provides an overview of EU policy in relation to data transfer.

PART III: D. SUPPLY CHAIN CONTROL

ARTICLE 6 – LICENCE, EQUIVALENT APPROVAL OR CONTROL SYSTEM

Do you have a licensing system in place for any of the following activities:

Manufacture of tobacco products?

Yes ✓

Manufacture of manufacturing equipment?

No ✗

Import of tobacco products?

Yes ✓

Export of tobacco products?

Yes ✓

Import of manufacturing equipment?

No ✗

Export of manufacturing equipment?

No ✗

Do you require a license for any natural or legal person engaged in:

Retailing of tobacco products

No ✗

Growing of tobacco, except for traditional small-scale growers, farmers and producers

No ✗

Transporting commercial quantities of tobacco products or manufacturing equipment

Yes ✓

Wholesaling, brokering, warehousing or distribution of tobacco and tobacco products or manufacturing equipment

Yes ✓

Which competent authority/ies, if any, have been established or designated with regard to licensing?

Competent authorities are established in the Member States. These are generally the customs authorities of each Member State.

For example:

- Czechia: Customs Administration
 - Cyprus: Department of Customs and Excise, Municipal authorities
 - Austria: Federal Ministry of Finance (wholesaler), Customs office, Austrian monopoly administration (retail/tobacconists)
 - Slovakia: The Financial Administration, Regional Veterinary and Food Administration
-

Does the competent authority have the prerogative to issue, renew, suspend, revoke and/or cancel licenses for:

the manufacture of tobacco products?

Yes ✓

the import of tobacco products?

Yes ✓

the export of tobacco products?

Yes ✓

the manufacture of manufacturing equipment?

No ✘

the import of manufacturing equipment?

No ✘

the export of manufacturing equipment?

No ✘

Is the applicant for a license required to provide proof of any of the following?

When the applicant is a natural person

Its identity, including full name?

Yes ✓

Its tradename?

Yes ✓

Its business registration number (if any)?

Yes ✓

Applicable tax registration numbers (if any)?

Yes ✓

When the applicant is a legal person

Its full legal name?

Yes ✓

Its tradename?

Yes ✓

Its business registration number?

Yes ✓

Date and place of incorporation?

Yes ✓

Location of corporate headquarters and principal place of business

Yes ✓

Applicable tax registration numbers?

Yes ✓

Copies of articles of incorporation or equivalent documents?

No ✗

Its corporate affiliates

No ✗

Names of its directors and of any designated legal representatives

Yes ✓

Does the application for the licence requires the applicant to specify any of the following information?

precise business location of the manufacturing unit, warehouse location and production capacity of the business run by the applicant?

Yes ✓

product description?

Yes ✓

name of the product?

Yes ✓

registered trade mark (if any)?

No ✗

design?

Yes ✓

brand?

Yes ✓

model or make and serial number of the manufacturing equipment?

Yes ✓

description of where manufacturing equipment will be installed and used?

Yes ✓

documentation or a declaration regarding any criminal records?

Yes ✓

complete identification of the bank accounts intended to be used in the relevant transactions and other relevant payment details?

No ✗

a description of the intended use and intended market of sale of the tobacco products?

Yes ✓

How often, if at any time, are licence fees monitored and collected?

Authorised warehousekeeper status is subject to authorisation by the competent authorities of the Member States.

Member States may set fees for a licence for authorised warehousekeeper. These can be authorisation fees, or annual fees for the operation of a warehouse. Some Member States provide authorisation for an unlimited period, but an annual fee is payable. Other Member States do not charge a fee, or only a once-off fee upon authorisation.

Via the EU tobacco traceability system, tobacco manufacturers or importers pay for the system per unique identifier code.

What measures, if any, are taken to prevent, detect and investigate any irregular or fraudulent practices in the operation of the licensing system?

Authorisation is subject to conditions that authorities are entitled to set out to prevent any possible evasion or abuse. Authorised warehousekeepers in the EU are required to i.a. provide a guarantee, keep accounts of stock and movements of excise goods and consent to all monitoring and stock checks.

Member States may set out further requirements for the establishment of tax warehouses and some may ensure any breach of conditions of authorisation may result in revocation of authorisation. Customs authorities may assess whether the business activity is legitimate and may carry out supervisory visits/checks, audits etc.

Some further requirements established by Member States include: permanent presence of authorised customs officers, security measures, written declarations etc. An example of thorough stock checking in Member States, including supervised weighing of product to ensure quantities reported are accurate.

How often, if at any time, are periodic review, renewal, inspection and audit of licences being undertaken? (please provide details)

Some Member States review authorisations at least annually and/or according to need, to ensure they are appropriate.

Are all licenced natural or legal persons obliged to inform, in advance, the competent authority of any change of location of their business or any significant change in information relevant to the activities as licenced?

Yes ✓

Are all licenced natural or legal persons obliged to inform the competent authority, for appropriate action, of any acquisition or disposal of manufacturing equipment?

Yes ✓

Please provide a brief description of the progress made in implementing Article 6 (Licence, equivalent approval or control system) in the past two years or since submission of your last report.

Directive 2008/118 EC implements the obligation under Article 6 in relation to tobacco products. Commission Regulation 684/2009 details the structure and content of electronic messages through the Excise Movement Control System (EMCS), whereby cross-border movements of excise goods in duty suspension are monitored. Cross-border duty paid business-to-business movements will be monitored in EMCS as of 13 February 2023. In relation to the manufacture of machinery, the European Commission has begun initial preparations for a feasibility study on an EU wide licensing scheme.

Some Member States have adopted national measures for the control of manufacturing equipment, as well as retail of tobacco and growing of tobacco products.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

In relation to the reply to D11 e and f and D111, there is not yet an EU wide licensing system for manufacturing equipment. However, the traceability system established under the Tobacco Products Directive (2014/40/EU) has a relevant control mechanism for machinery in use in the legal supply chain, whereby a machine in a production line has a machine identifier code. Any decommissioning of registered machines is to be notified to the competent authorities.

In relation to the reply to question D12a and b, while not regulated at EU level some Member States have controls on the retailing of tobacco products and growing of tobacco.

In relation to the reply to question D12c and d, this is relevant for tobacco products only.

In relation to the reply to D16, this information is recorded and available to MS authorities under the traceability system.

In relation to the reply to D16d, some Member States have such a requirement for a registered trade mark (if any) in their national legislation.

In relation to the reply to D16j, some Member States have such a requirement for complete identification of the bank accounts intended to be used in the relevant transactions. As stated above other relevant payment details are available under the EU traceability system.

D2. ARTICLE 7 - DUE DILIGENCE

Is it a requirement to conduct due diligence before the commencement of a business relationship for all natural and legal persons:

engaged in the supply chain of tobacco?

No

engaged in the supply chain of tobacco products?

No

Is it a requirement to conduct due diligence during the course of a business relationship for all natural and legal persons?

engaged in the supply chain of tobacco?

No

engaged in the supply chain of tobacco products?

No

Is it a requirement for actors in the supply chain of tobacco and tobacco products to conduct due diligence with regards to customer identification?

No

As part of due diligence of the supply chain, for the purpose of customer identification, do you require documentation or a declaration regarding any criminal records required for customer identification?

No

As part of due diligence of the supply chain, for the purpose of customer identification, do you require identification of the bank accounts intended to be used in transactions?

No

Have any legal or natural persons been “blocked” as customers within your jurisdiction?

No

Please provide a brief description of the progress made in implementing Article 7 (Due diligence) in the past two years or since submission of your last report.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

In relation to the reply to D21 and D22, the EU does have general customer due diligence rules established with an anti-money laundering focus. This is limited to payments in cash over EUR 10 000 in a single transaction or linked transactions. Relevant legislation is Directive (EU) 2018/843 amending Directive 2015/849.

The EU and Member States are using a variety of means to strengthen due diligence processes, including legal provisions on money laundering (see above), as well as instruments under private law.

D3. ARTICLE 8 - TRACKING AND TRACING

Has a tracking and tracing system been established in your jurisdiction (also in relation to Article 15.2.b of the WHO FCTC)?

Yes ✓

Is it a requirement that unique, secure and non-removable identification markings (“unique identification markings”), such as codes or stamps, are affixed to or form part of:

All unit packets of cigarettes

Yes ✓

All unit packages of cigarettes

Yes ✓

Any outside packaging of cigarettes

Yes ✓

All unit packets of other tobacco products

Yes ✓

All unit packages of other tobacco products

Yes ✓

Any outside packaging of other tobacco products

Yes ✓

Is the following information available in your jurisdiction, either directly or accessible by means of link?

Date of manufacture

Yes ✓

Location of manufacture

Yes ✓

Manufacturing facility

Yes ✓

Machine used to manufacture tobacco products

Yes ✓

Production shift or time of manufacture

Yes ✓

Information (name, invoice, order and payment records) on the first customer who is not affiliated with the manufacture

Yes ✓

The intended market of retail sale

Yes ✓

Product description

Yes ✓

Any warehousing and shipping

Yes ✓

The identity of any subsequent purchaser

Yes ✓

Shipment details (intended shipment route, the shipment date, shipment destination, point of departure and consignee)

Yes ✓

How is this information specified under D33 recorded in your country?

Information is encoded in unique identification markings that should not exceed 50 alphanumeric characters. Each ID issuer prepares its own coding structure based on basic elements indicated in the secondary legislation establishing the EU traceability system.

Is the recorded information accessible to the global information sharing focal point through a secure electronic interface?

No ✘

In which way have you ensured that any of the obligations assigned to your government are not delegated to or performed by the tobacco industry?

The obligations under Article 8.12 which shall not be delegated to the tobacco industry include:

- establishment and control of a tracking and tracing system, putting in place the requirement for unique, secure and non-removable identification markings,
- availability of prescribed information, recorded at a specific time, properly formatted and accessible via the global-information-sharing focal point on request,
- further development and expansion of its system's scope.

In the EU system, none of these obligations have been delegated to the tobacco industry.

The EU system also has further specific measures such as:

- Clearly defined requirements on independence (i.e. legal independence, financial independence, absence of conflict of interest).
 - The generation of unique identifiers by an independent third party to be appointed by Member States.
 - Verification process of unique identifiers is protected with an anti-tampering device supplied and installed by an independent third party.
 - All unique identifiers (applied to unit packets) must be secured as part of the generation process so that they cannot be tampered with once delivered to an economic operator.
 - Data encoded in the unique identifiers, once delivered to the independent data storage services, cannot be altered or accessed by any economic operator; only Member States, the Commission, and external auditors have access to the recorded data;
 - Clearly defined rules on the validation of data and its instantaneous access by national authorities and the Commission via the central functionalities provided by the secondary data repository.
-

Which percentage of the costs associated with the government's obligations concerning the tracking and tracing regime, has the tobacco industry been required to bear?

The ID issuers of each Member State may charge fees to manufacturers or importers for generating and issuing unique identifiers (traceability codes). It is for each ID issuer to establish a fee which should be proportionate and non-discriminatory.

In terms of storage of traceability data, manufacturers or importers bear all costs related to the establishment, operation and maintenance of the data storage system. These costs must be fair, reasonable and proportionate. Manufacturers of tobacco products are also required to provide all other economic operators involved in the trade of tobacco products with equipment necessary for the traceability events.

Please provide a brief description of the progress made in implementing Article 8 (Tracking and tracing) in the past two years or since submission of your last report.

The EU traceability system has been operational since May 2019.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

In relation to the reply to D35, the information recorded is not accessible to a Global Information Sharing Focal Point as it has not yet been established. However, we do not anticipate problems with the export of traceability data from the EU system to the Global Information-Sharing Focal Point.

D4. ARTICLE 9 - RECORD-KEEPING

Do you require maintenance of complete and accurate records of all relevant transactions, for all natural and legal persons engaged in the supply chain of:

Tobacco?

No ✘

Tobacco products?

Yes ✔

Manufacturing equipment?

No ✘

What information do you require persons licenced in accordance with Article 6 of the Protocol to provide to the competent authorities?:

In relation to the reply to D41a, while not regulated at EU level, some Member States do require records of relevant transactions for those engaged in the supply chain of tobacco.

In relation to tobacco products, EU legislation (Directive 2008/118) sets out that authorised warehouse-keepers shall be required to keep, for each tax warehouse, accounts of stock and movements of excise goods and consent to all monitoring and stock checks, and any checks enabling competent authorities that goods have been received. Regulation 684/2009 sets out in detail information to be sent when moving excise goods (tobacco products) under suspension of excise duty.

In addition, Member States have adopted national measures to ensure relevant information (in line with Article 6 Protocol) is recorded and provided to authorities

In your country, are tobacco products and manufacturing equipment sold or manufactured for export, or subject to duty-suspended movement in transit or transshipment on the territory?

Yes ✓

Please upload any legislation/regulation that govern those movements.

**d431 relevant
legislation**

No comment

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What kind of measures have you adopted (legislative, executive, administrative or other measures) for record-keeping?

In addition to Directive 2008/118 and Regulation 684/2009, Directive 2014/40 requires complete and accurate records of all relevant transactions. Records are stored for at least five years.

In addition, Member States have adopted national measures in relation to record-keeping requirements.

Have you established a system for sharing with other Parties details contained in all records kept in accordance with Article 9?

No ✘

Do you cooperate with other Parties and with competent international organizations in progressively sharing and developing improved systems for record-keeping?

No ✘

Please provide a brief description of the progress made in implementing Article 9 (Record keeping) in the past two years or since submission of your last report.

EU legislation in the area requires provision of information specified in Article 9 (3) in relation to tobacco products to competent authorities.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

In relation to the reply to D41a, record keeping related to tobacco is not yet regulated at EU level. However, some Member States do have such requirements in place.

In relation to reply to D45, EU Member States have access to records stored under the EU traceability system and excise movement control system.

D5. ARTICLE 10 - SECURITY AND PREVENTATIVE MEASURES

What kind of measures are in place in your jurisdiction to prevent diversion of tobacco products into illicit trade channels?

Cross-border transfers of cash amounts over EUR10 000 are to be declared to customs authorities. Member States ensure obliged entities (relevant here - persons trading in goods to the extent that payments are made or received in cash in an amount of EUR 10 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked) carry out sufficient monitoring of transactions and business relationships to enable detection of unusual or suspicious transactions.

The EU traceability system records the currency of invoice, currency of payment and payment mode used.

Do you have sanctions in place when licensees do not adhere to the provisions of article 10?

Yes ✓

If so, please provide further information regarding the kind of sanctions.

While not linked directly to control system in place under Directive 2008/118, there are various sanctions in place relating to Article 10. For cross-border transfers of cash not declared, or breaches of provisions of the Anti-Money Laundering Directive, Member States are obliged to introduce effective, proportionate and dissuasive penalties.

Some Member States have also legislated for revocation of licence and sanctions as appropriate.

Please provide a brief description of the progress made in implementing Article 10 (Security and preventive measures) in the past two years or since submission of your last report.

In relation to cross-border transfer of cash, Regulation EU(2018/1672) was adopted and will come into force on 3 June 2021. Any person entering or leaving the EU carrying a value of EUR 10 000 or more has to declare this to customs authorities. If there are indications of criminal activity, customs authorities may act on lower amounts. For 'unaccompanied cash' the customs authorities will have the power to ask the sender, the recipient or a representative thereof to make a disclosure declaration and can carry out controls.

In relation to suspicious transactions, the 5th Anti-Money Laundering Directive was adopted in 2018 and Member States must transpose the Directive by 10 January 2020.

The EU and Member States also use private law instruments to oblige certain operators to only sell tobacco products in amounts commensurate with demand.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

D6. ARTICLE 11 - SALE BY INTERNET, TELECOMMUNICATION OR ANY OTHER EVOLVING TECHNOLOGY

Does the Protocol apply to all sales through internet, telecommunication or any other evolving technology?

Yes ✓

Have you banned sales of tobacco products through internet, telecommunication or any other evolving technology?

No ✘

Please provide a brief description of the progress made in implementing Article 11 (Sales by Internet, telecommunication or any other evolving technology) in the past two years or since submission of your last report.

EU legislation does not prohibit sales of tobacco products through the internet, telecommunication or any other evolving technology sales, but does permit Member States to prohibit cross-border distance sales. Many Member States already prohibit internet sales of tobacco. For Member States that have not prohibited cross-border distance sales, retail outlets engaging in that activity must register with competent authorities and make consumers aware of those registered outlets.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

D7. ARTICLE 12 - FREE ZONES AND INTERNATIONAL TRANSIT

Do you have authorizations to conduct controls in free zones, by use of all relevant measures as provided in the Protocol?

Yes ✔

Do you prohibit the intermingling of tobacco products with non-tobacco products in a single container or any other such similar transportation unit at the time of removal from free zones?

No ✘

Do you control transit or transshipment of tobacco products and/or manufacturing equipment?

Yes ✔

Please provide a brief description of the progress made in implementing Article 12 (Free zones and international transit) in the past two years or since submission of your last report.

The EU supports the recently adopted OECD recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

There is no measure at EU level prohibiting the intermingling of tobacco products with non-tobacco products however certain Member States have adopted legislation in that regard.

D8. ARTICLE 13 - DUTY FREE SALES

Do you allow duty-free sales in your jurisdiction?

Yes ✓

If yes, are they taking place?

Yes ✓

Do you implement effective measures to subject any duty-free sales to all relevant provisions of this Protocol?

Yes ✓

If yes, please provide details

There is no derogation from EU regulation for duty free sales.

Please provide a brief description of the progress made in implementing Article 13 (Duty free sales) in the past two years or since submission of your last report.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

PART IV: E. OFFENCES (Articles 14-19 of the Protocol)

ARTICLE 14: UNLAWFUL CONDUCT INCLUDING CRIMINAL OFFENCES

Please note that information requested in this section might be of confidential nature and might only be made accessible to Parties to the Protocol only, upon their request, unless otherwise stated by the transmitting Party.

In accordance with the Protocol, does the following constitute an unlawful conduct in your country's domestic laws?

	Tobacco	Tobacco Products	Manufacturing equipment
E11a. Illicit manufacturing, wholesaling, brokering, selling, transporting, distributing, storing, shipping, importing or exporting of:	1	1	1
E11b. Tax evasion for tobacco products for:	1	1	1
E11c. Smuggling or attempted smuggling of:	1	1	1
E11d. Falsification of markings for:	1	1	1
E11e. Counterfeiting of :	1	1	1

In accordance with the Protocol, does the following constitute an unlawful conduct in your country's domestic law?

concealment of tobacco products?

Yes ✓

intermingling of tobacco products with non-tobacco products in contravention of Article 12.2 (*Free Zones and international transit*) of the Protocol?

No ✗

illicit trade of tobacco products through the Internet or other technology-based modes of sale?

Yes ✓

acting against good faith in relation to the supply chain of tobacco products?

No ✗

obstructing any public officer or an authorized officer in the performance of duties relating to the prevention, deterrence, detection, investigation or elimination of illicit trade in tobacco, tobacco products or manufacturing equipment?

Yes ✓

fraud?

Yes ✓

money laundering?

Yes ✓

Does any of the above activities constitute criminal offences in your jurisdiction?

Yes ✓

If yes, please provide further details.

Directive (EU) 2017/1371 affecting the financial interests of the Union) requires Member States to ensure that criminal offences are punishable by effective, proportionate and dissuasive criminal sanctions.

Directive (EU) 2018/1673 combating money laundering by criminal law requires Member States to take necessary measures to ensure that offences are punishable by effective, proportionate and dissuasive criminal penalties.

In some Member States, all Protocol offences as listed in Article 14 may be punishable as criminal offences.

Please attach the relevant legislation concerning the establishment of unlawful conduct in your country.

**E14 legisla-
tion**

No comment

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Please provide a brief description of the progress made in implementing Article 14 (Unlawful conduct including criminal offences) in the past two years or since submission of your last report.

The PIF Directive which requires Member States to take all necessary measures to ensure that fraud affecting the Union's financial interests constitutes a criminal offence was transposed by Member States by July 2019. The 5th AML Directive, and Directive combating money laundering by criminal law were adopted. Member States are obliged to introduce effective, proportionate and dissuasive penalties for breaches of customs legislation. These penalties can be administrative or criminal in nature.

In implementing the Protocol, some Member States have had to update their penal code or other legislation.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

E2. ARTICLE 15: LIABILITY OF LEGAL PERSONS

Has the liability of legal persons been established for the unlawful conduct (including criminal offences) under Article 14 of the Protocol?

Yes ✓

Please provide a brief description of the progress made in implementing Article 15 (Liability of legal persons) in the past two years or since submission of your last report.

Some Member States have direct criminal liability of legal persons.

When affecting the Union's financial interests, i.e an element of evasion of customs duties, Directive (EU) 2017/1371 (the so-called 'PIF Directive'), establishes liability of legal persons. The Directive combating money laundering by criminal law establishes liability of legal persons.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

E3. ARTICLE 16: PROSECUTIONS AND SANCTIONS

Is it ensured that persons held liable for the unlawful conduct (including criminal offences) under Article 14 are subjected to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions?

Yes ✓

Please provide a brief description of the progress made in implementing Article 16 (Prosecutions and sanctions) in the past two years or since submission of your last report.

Directive (EU) 2017/1371 harmonises the definition of fraud and other criminal offences affecting the Union's financial interests and related sanctions (for natural and legal persons)

Directive 2018/1673 harmonises the definition of the criminal offence of money laundering and related sanctions.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

EU legislation referred to establishes minimum rules concerning definitions of criminal offences and sanctions, but Member States are free to adopt or maintain more stringent criminal law rules.

E4. ARTICLE 17: SEIZURE PAYMENTS

Have you adopted legislative and / or other measures to levy an amount proportionate to lost taxes and duties from the producer, manufacturer, distributor, importer or exporter of seized tobacco, tobacco products and /or manufacturing equipment?

Yes ✓

Please provide a brief description of the progress made in implementing Article 17 (Seizure payments) in the past two years or since submission of your last report.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

The EU and Member States have private law instruments with certain operators which contain provisions for seizure payments for seizures of genuine product under certain conditions.

E5. ARTICLE 18: DISPOSAL OR DESTRUCTION

Please provide information on the quantity of confiscated tobacco, tobacco products and manufacturing equipment that was destroyed (e.g, product, unit, quantity, by year and destruction method), if available.

There are no EU wide statistics on destruction or disposal and no agreed statistical methodology. However, please see reply to F11 on seizures.

Please provide a brief description of the progress made in implementing Article 18 (Disposal or destruction) in the past two years or since submission of your last report.

The Union Customs Code (Articles 197 – 200) UCC allow for destruction and disposal of goods by customs authorities.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

E6. ARTICLE 19: SPECIAL INVESTIGATIVE TECHNIQUES

Do you allow the use of controlled delivery and other special investigative techniques to effectively combat illicit trade in tobacco, tobacco products or manufacturing equipment?

Yes ✓

If yes, please provide details.

Regulation 515/97 on mutual assistance – e.g. special watch.

Regulation 389/2012 on administrative cooperation in the field of excise duties – e.g. simultaneous controls.

Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (Naples II) – e.g. controlled delivery, covert investigations, joint special investigation teams amongst MS.

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters – e.g. controlled deliveries, covert investigations etc.

Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union – e.g. controlled deliveries, joint investigation teams, covert investigations etc.

Some Member States have also taken national implementation measures.

Have you concluded any bilateral or multilateral agreement or arrangement for the use of techniques mentioned above when investigating the criminal offences established in accordance with Article 14 of the Protocol?

Yes ✓

If yes, please give further details on any agreement or international cooperation with other Parties for the use of such techniques in this area.

Among Member States of the European Union as outlined above.

Please provide a brief description of the progress made in implementing Article 19 (Special investigative techniques) in the past two years or since submission of your last report.

The use of so-called special investigative techniques is well established for customs authorities in the Member States.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

PART V: F. INTERNATIONAL COOPERATION

ARTICLE 20 – GENERAL INFORMATION SHARING

Article 20.1(a) SEIZURES OF ILLICIT...

	Quantity seized	Value of seizures Please specify currency (e.g. in USD or local currency)	Description of seized product	Date and place of manufacture	Taxes evaded (in USD or local currency; please, specify)
F11b. ...smoking tobacco products	3.17 billion sticks				

Please provide examples of some of your seizures, if available.

Member States and EU agencies such as OLAF and Europol increasingly dismantle illicit production sites and seize illicit production equipment during such operations.

Some examples of concealment methods and modus operandi include organised smuggling of cigarettes in personal luggage in passenger-air traffic for various airports of destination in EU;

- cigarettes in coverloads in legal cargo or in the construction of the vehicles or in special constructed concealments.

Some examples of seizures include:

In 2019, an organised crime group was dismantled involved in the large-scale illegal trade of tobacco. Authorities from seven countries, with the active support of Eurojust, Europol and the European Anti-Fraud office (OLAF) were involved.

One EU Member State reported the seizure of 1.6 million unmarked cigarettes and over a ton of tobacco by customs authorities.

In 2018, more than seven million cigarettes during a Joint Border Control Operation (JBCO) coordinated by the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) in cooperation with the European Anti-Fraud Office (OLAF).

For seizures of tobacco products reported to OLAF, work is currently ongoing to allow those seizure reports to be reported automatically to WCO CENCOMM.

Article 20.1(b) TOBACCO TRADE-RELATED MATTERS...

	Import (please specify unit)	Export (please specify unit)	Transit (please specify unit)	Taxes paid (in USD or local cur- rency; please, specify)	Duty free sales (in USD or local cur- rency; please, specify)	Quantity or value of do- mestic produc- tion (please specify unit)
F12a. ...tobacco (raw)	420 000 tonnes	120 000 tonnes				140,000 tonnes
F12b. ...smoking tobacco products	9,096,000 kgs	82,597,000 kgs				

Please provide a brief description of the progress made in implementing Article 20 (General information sharing) in the past two years or since submission of your last report.

Across the EU, national and European authorities have, over the past five years, seized between three and four billion cigarettes annually.

OLAF gathers information from the Member States on overall seizure figures (quarterly reporting) and data on individual seizures via its reporting database CIGINFO. These figures represent seizures by Member States as reported to OLAF for the year 2018. OLAF also supports Member States in fighting the illicit tobacco trade - see the latest OLAF report (https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2018_en.pdf)

The figures for EU import and export are for the year 2018 and can be accessed at the trade market access database (https://madb.europa.eu/madb/statistical_form.htm). The raw tobacco figure is based on CN 2401 (unmanufactured tobacco; tobacco refuse) and the tobacco products figure is based on CN 2402 (tobacco and manufactured tobacco substitutes).

For more detailed national seizure data, please see the replies to Article 15.5 Framework Convention on Tobacco Control Reporting Instrument.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

F2. ARTICLE 21 – ENFORCEMENT INFORMATION SHARING

Have you exchanged enforcement information with another Party on your own initiative or on their request?

No ✘

Please provide a brief description of the progress made in implementing Article 21 (Enforcement information sharing) in the past two years or since submission of your last report.

The EU has not exchanged any information on the basis of this article.

Nonetheless the EU and Member States frequently exchange information, for instance through OLAF or Europol using secure communication channels. By way of illustration: information shared among four Member States customs authorities resulted in the seizure of 2.7 million cigarettes and 28 tons of tobacco. Another Member State in cooperation with OLAF seized fake waterpipe tobacco.

See also an example of cross-border cooperation resulting in a seizure of some 62 million cigarettes (https://ec.europa.eu/anti-fraud/media-corner/news/18-02-2020/successful-international-operation-seized-more-62-million-smuggled_en)

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

F3. ARTICLE 22 – INFORMATION SHARING: CONFIDENTIALITY AND PROTECTION OF INFORMATION

Have you designated competent national authority or authorities to which data referred to in Articles 20, 21 and 24 of the Protocol are supplied?

Yes ✔

If yes, please provide the name and contact details of such competent national authority or authorities.

The EU has provisions on mutual administrative assistance in customs matters with over 80 countries. Recommended general contact point for Mutual Administrative Assistance agreements or provisions as well as operational matters or requests for assistance is the European Anti-Fraud Office (OLAF). Member States have designated contact points for application of Customs Mutual Administrative Assistance provisions of Agreements concluded with third countries.

Please provide a brief description of the progress made in implementing Article 22 (Information sharing: General Obligations) in the past two years or since submission of your last report.

The provisions of the General Data Protection Regulation (2016/679), Data Protection Law Enforcement Directive (2016/680) and Regulation 2018/1725 have been applicable in the EU since 2018. There are various mechanisms to transfer personal data from the EU to third countries, and only when the protection travels with the data. Adequacy decisions are just one of those mechanisms and the European Commission can now adopt adequacy decisions for the law enforcement sector. Specific adequacy assessment elements are set out in Article 36(2) of Directive 2016/680.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

F4. ARTICLE 23 - ASSISTANCE AND COOPERATION:

Have you provided financial or technical assistance (be it through unilateral, bilateral, multilateral agreements, and/or through international and regional organizations) in any of the following areas:

- F41a. Information gathering
- F41b. Law enforcement
- F41c. Tracking and tracing
- F41d. Information management
- F41e. Protection of personal data
- F41f. Interdiction
- F41g. Electronic surveillance
- F41h. Forensic analysis
- F41i. Mutual legal assistance
- F41j. Extradition

Have you received financial or technical assistance (be it through unilateral, bilateral, multilateral agreements, and/or through international and regional organizations) in any of the following areas:

- F42a. Information gathering
 - F42b. Law enforcement
 - F42c. Tracking and tracing
 - F42d. Information management
 - F42e. Protection of personal data
 - F42f. Interdiction
 - F42g. Electronic surveillance
 - F42h. Forensic analysis
 - F42i. Mutual legal assistance
 - F42j. Extradition
-

Have you developed or conducted research on identifying the exact geographical origin of seized tobacco and tobacco products?

Yes ✓

If yes, please provide details on such research, including any cooperation.

The European Commission established an independent tobacco laboratory ('TOBLAB'). TOBLAB has a growing repository of samples (currently over 1000 samples from over 70 countries) of cigarettes.

Member States may send samples of cigarettes seized to TOBLAB for analysis.

Member States also have their own laboratories.

Please provide a brief description of the progress made in implementing Article 23 (Assistance and cooperation: training technical assistance and cooperation in scientific, technical and technological matters) in the past two years or since submission of your last report.

The EU has an Anti-Fraud Programme (Hercule III), which finances projects, trainings, purchase of technical equipment etc. to combat i.a. revenue fraud against the EU financial interests. Moreover, via its Health Programme, the EU has financed a project with the Convention Secretariat to raise awareness and enhance understanding of illicit tobacco trade among academic researchers in the EU. The EU considers its strong support on work done under the Protocol as a key contribution in the area of assistance and cooperation.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

F5. ARTICLE 24 – ASSISTANCE AND COOPERATION: INVESTIGATION AND PROSECUTION

Have you entered in multilateral, regional or bilateral arrangements for the purpose of the advancement of investigation and prosecution of offences in accordance to Article 24 of the Protocol?

Yes ✓

If yes, please provide details as appropriate.

Some Member States of the European Union are Parties to the International Convention On Mutual Administrative Assistance For The Prevention, Investigation And Repression Of Customs Offences (Nairobi Convention).

Have you cooperated and exchanged relevant information?

Yes ✓

Please provide a brief description of the progress made in implementing Article 24 (Assistance and co-operation: investigation and prosecution of offences) in the past two years or since submission of your last report.

EU Member States have established cooperation networks.

Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities in relation to criminal investigations or criminal intelligence operations.

Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol) supports cooperation among law enforcement authorities in the Union responsible for preventing and combating criminal offences.

The European Union Agency for Criminal Justice Cooperation ('Eurojust' - Regulation (EU) 2018/1727) coordinates cross-border prosecutions.

The European Union Agency for Law Enforcement Training (CEPOL). CEPOL brings together a network of training institutes for law enforcement officials in EU Member States and supports them in providing frontline training on i.a. law enforcement cooperation and information exchange. CEPOL also works with EU bodies, international organisations, and third countries.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

F6. ARTICLE 26 - JURISDICTION

Have you adopted measures to establish your jurisdiction over the criminal offences in accordance with Article 14 of the Protocol?

Yes ✓

If so, please provide details, as appropriate.

Member States have national legislation in place in relation to jurisdictional matters.

For offences committed on the territory of the EU, e.g. PIF Directive/Money Laundering Directive – Member States take all necessary measures to establish jurisdiction over criminal offences when in whole or in part of its territory, offender is one of its nationals etc. Member States may extend to criminal offences committed by an offender habitually resident in its territory, for the benefit of a legal person established in its territory etc.

Please provide a brief description of the progress made in implementing Article 26 (Jurisdiction) in the past two years or since submission of your last report.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

Eurojust (European Union Agency for Criminal Justice Cooperation) assists in preventing settling and resolving conflicts of jurisdiction which may arise amongst Member States.

F7. ARTICLE 27 – LAW ENFORCEMENT COOPERATION

Have you established mechanisms for effective domestic cooperation, including between customs, police and other law enforcement agencies, for the benefit of information sharing and law enforcement?

Yes ✓

If yes, please provide examples of such domestic cooperation.

Some relevant legislation in this regard includes:

Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union;

Council Framework Decision 2002/465/JHA on joint investigation teams (see also Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT) – 2017/C 18/01)

Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities in relation to criminal investigations or criminal intelligence operations;

Regulation (EU) 2016/794 on the European Union Agency for Law Enforcement Cooperation (Europol) supports cooperation among law enforcement authorities in the Union responsible for preventing and combating criminal offences.

Some Member States also have national strategies to ensure different agencies are cooperating. Cooperation between authorities depends on national legal competences.

Have you established mechanisms for cooperation with other Parties for the benefit of information sharing and law enforcement?

Yes ✓

If yes, did you do so through a bilateral or multilateral agreement?

Yes ✓

If yes, please provide examples of such international cooperation (In relation to Article 27.1.c and 27.1.f).

United Nations Convention against Transnational Organized Crime, United Nations Convention against Corruption

Please provide a brief description of the progress made in implementing Article 27 (Law enforcement cooperation) in the past two years or since submission of your last report.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

F8. ARTICLE 28 – ASSISTANCE ADMINISTRATIVE MUTUELLE

Have you entered into a procedure of mutual administrative assistance with another Party on the basis of the Protocol?

No ✘

Please provide a brief description of the progress made in implementing Article 28 (Mutual administrative assistance) in the past two years or since submission of your last report.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

EU Member States and OLAF are in daily contact with authorities in the EU, and elsewhere, to fight the illicit tobacco trade. Due to availability of other legal bases for cooperation, recourse to Article 28 specifically has not yet been necessary but is envisaged for the future. Member States have designated contact points for application of Customs Mutual Administrative Assistance provisions of Agreements concluded with third countries.

F9. ARTICLE 29 – MUTUAL LEGAL ASSISTANCE

Have you entered into mutual legal assistance procedures with another Party on the basis of the Protocol?

No ✘

Have you designated a central authority for the purpose of mutual legal assistance?

Yes ✔

If so, please provide details.

Mutual Legal Assistance requests are to be directed to the Member States. Member States will designate central authorities to the Convention Secretariat by 31 March 2020 as requested by Note Verbale CS/NV/20/02.

Please provide a brief description of the progress made in implementing Article 29 (Mutual legal assistance) in the past two years or since submission of your last report.

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

The European Public Prosecutors Office, is an independent and decentralised prosecution office with competence to investigate, prosecute and bring to judgment crimes against the Union's financial interests. The EPPO is currently being set up, with the aim of becoming operational from the end of 2020.

Certain Member States have set up Joint Investigation Teams, not using the Protocol as a legal basis, but relating to criminal activity that is the subject of the Protocol. One such Joint Investigation Team, resulted in a seizure of equipment for manufacture of tobacco products and disruption of a criminal group.

F10. ARTICLE 30 – EXTRADITION and ARTICLE 31 – MEASURES TO ENSURE EXTRADITION

Have you utilized the Protocol for the purposes of extradition?

No ✘

Please provide a brief description of the progress made in implementing Articles 30 (Extradition) and 31 (Measures to ensure extradition) in the past two years or since submission of your last report.

Amongst Member States of the European Union, a European Arrest Warrant (Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) exists. This is a legal procedure to speed up the handing over of suspects or criminals from one EU Member state to another, so they can face trial or serve a prison sentence in the country where they committed a crime.

The EU has bilateral agreements on extradition as outlined below:

Agreement on Extradition between the United States of America and the European Union; Agreement between the European Union and the [Republic of] Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway.
European Convention on Extradition (Council of Europe)

If you have any other relevant information pertaining to but not covered in this section, please provide details in the space below.

PART VI: G. PRIORITIES AND COMMENTS

What are the priorities for implementation of the Protocol in your jurisdiction?

At EU level, the 2nd Action Plan to combat illicit tobacco trade (2018-2022) outlines a comprehensive approach from a policy and operational perspective and includes the implementation and promotion of the FCTC Protocol as a central pillar. Combating cigarette smuggling is also one of the priority operational activities undertaken under the EMPACT project for the 2018-2021 EU Policy Cycle, and one of the actions planned under the 10th Customs Action Plan of the Council Customs Cooperation Working Party for the period 2020-2021.

In relation to Article 36 of the Protocol, do you finance your national activities, in accordance with your national plans, priorities and programmes?

Yes ✓

If yes, please provide the amount devoted to the implementation of the Protocol within the past two years or since the submission of your last report

Have you identified any specific gaps between the resources available and the needs assessed for implementing the Protocol?

No ✕

What, if any, are the constraints or barriers, other than lack of resources, you have encountered in implementing the Protocol?

Insufficient geographic coverage.

If any of the actions reported in this instrument were only taken at subnational level, please give further information here.

Please provide any other relevant information not covered elsewhere that you consider important.

Please provide any suggestions for further development and revision of this reporting instrument.

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