



PROTOCOL
TO ELIMINATE
ILLCIT TRADE IN
TOBACCO PRODUCTS

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

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Assistance and Cooperation

Report by the Working Group

Purpose of the document

This document contains the report of the Working Group on Assistance and Cooperation established by the Meeting of the Parties (MOP) to the Protocol to Eliminate Illicit Trade in Tobacco Products at its first session.

Action by the Meeting of the Parties

The MOP is invited to note this report, provide further guidance, and consider adopting the annexed draft decision that outlines the way forward in implementing the articles that were covered in the mandate of the Working Group.

Link to the workplan and budget item: Activities 1.2.2, 1.2.3, 2.1.1, 2.2.1 and 3.1.1.

Additional financial implications if not included in the workplan and budget: None.

Related document(s): *Examples of current practices in the implementation of Article 12 (Free zones and international transit) of the Protocol to Eliminate Illicit Trade in Tobacco Products.*

BACKGROUND

1. At the First Session of the Meeting of the Parties (MOP1), convened in Geneva in 2018, the Meeting of the Parties (MOP) adopted decision FCTC/MOP1(10) on the Working Group on Assistance and Cooperation. The decision established a Working Group to provide options for addressing several articles of the Protocol to Eliminate Illicit Trade in Tobacco Products, including Articles 21, 23, 24, 28 and 29, and to promote the exchange of good practices in implementation of Article 12. The decision also included, in its Annex, the terms of reference of the Working Group, based on which the group was established and operated. The composition of the Working Group is available on the Convention Secretariat's website.¹
2. The Working Group met three times during its tenure. The first meeting took place face to face on 3–4 December 2019 in Quito, Ecuador. In that meeting, the Working Group considered all articles within its mandate and developed a first set of summary observations and recommendations that served as a basis for further discussions. Due to the COVID-19 pandemic, the second face-to-face meeting, which was due to be held in March 2020, was cancelled. In April 2020, the Bureau of the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) and the Bureau of the MOP jointly decided to postpone the Ninth Session of the Conference of the Parties (COP9) and the Second Session of the Meeting of the Parties (MOP2) from November 2020 to November 2021. This postponement allowed further time for preparation and discussions.
3. To replace the second face-to-face meeting, under the guidance of key facilitators, the Convention Secretariat carried out an online consultation on a series of documents that were prepared for that occasion. The members of the Working Group were required to provide online comments to guiding questions to further elaborate on the matters related to international (multilateral and bilateral) information exchange mechanisms, implementation priorities, areas of expertise-sharing and country assistance frameworks related to the articles assigned to the Working Group. Taking into account the input from the Working Group members, the documents that underwent online consultations were reviewed by the Convention Secretariat and discussed in a virtual meeting of the Working Group in June 2020.
4. In addition, the initial report on good practices to implement Article 12 of the Protocol, produced by the Convention Secretariat under the guidance of the Working Group to be promoted as requested by the mandate, had to be redrafted following feedback from members of the Working Group. Dissemination activities were carried out in March 2021 and included messages on social media, an online top story published on the WHO FCTC website and a dedicated webinar.
5. As suggested during the virtual meeting and under the guidance of key facilitators, a small drafting group was created to prepare an early draft of the report to MOP2. The drafting group carried out its work between November 2020 and March 2021. The document was shared with the full Working Group on 25 March 2021, prior to the final virtual meeting on 19 and 23 April 2021, where further discussion took place. Comments and recommendations were collected from members and considered to finalize this report of the Working Group on Assistance and Cooperation.
6. This Working Group trusts it has completed its mandate and would like to thank all Parties that participated in the consultation processes and for their contributions.

¹ https://www.who.int/fctc/treaty_instruments/mop/MOP_sept_2020_members-composition-WG_EG.pdf?ua=1.

OPTIONS (PRACTICAL, LEGAL AND INFORMATION TECHNOLOGY ASPECTS) TO EXCHANGE ENFORCEMENT INFORMATION (ARTICLE 21) AND MUTUAL ADMINISTRATIVE ASSISTANCE (ARTICLE 28)

Legal basis

7. Depending on the existing legal framework of individual Parties, Articles 21 and 28 of the Protocol may be considered as a sufficient legal obligation to engage in Mutual Administrative Assistance (MAA). These articles, however, lack certain details on procedures in practical implementation. Hence, there has been a need to consider not only what the articles provide for, but how to “fill in” and interpret the missing details.

Alternative legal instruments and platforms

8. Some Parties may already have certain legal instruments in place that have been developed and are functioning well, which may be suitable to develop similar exchanges of information as those under Articles 21 and 28.¹ Also, some international organizations have developed electronic platforms to support mutual assistance and the exchange of information.

9. These instruments and platforms may be multilateral (for example, World Customs Organization Nairobi Convention) or bilateral (typically, MAA agreements and protocols). A list of existing platforms is contained in Annex 1.

10. Considering the Parties with which most of the exchanges will be needed, a regional approach may be an interesting venue to explore.

11. In any case, Parties should remain free to choose the legal instrument and corresponding platform to perform their exchanges with the other Parties. Consideration needs to be given to existing instruments in force, possible legal constraints, the geographical situation, the need for mutual exchanges, and the avoidance of duplicative legal instruments and platforms, on a case-by-case basis.

Implementing Articles 21 and 28

12. For those Parties wishing to perform the exchanges of information described under Articles 21 and 28 and planning to use these articles as a legal basis, implementation details need to be developed. There are certain key elements already contained in Articles 21 and 28, or in the broader text of the Protocol, namely the purpose of the assistance, as well as its scope, object and certain definitions. However, further detail would be required to engage in mutual assistance.

13. For Parties that are less familiar with mutual assistance and that would need to have recourse to Articles 21 and 28 as the legal basis for the exchanges, the most common practical aspects needed to implement these articles are listed and detailed in Annex 2. This list and the guidance provided would be a tool for information exchange. It is intended to be used on a voluntary and case-by-case basis, and it is meant to be adapted to each Party’s characteristics and desires. Useful information may also be

¹ The European Union, for example, has concluded 52 agreements on MAA in customs matters covering 80 countries.

found on the website of the World Customs Organization (WCO), which has developed a model of bilateral agreement on MAA in customs matters, including useful commentaries.¹

PRIORITIES FOR ASSISTANCE AND COOPERATION (ARTICLE 24) AND FOR MUTUAL LEGAL ASSISTANCE (ARTICLE 29)

Law enforcement cooperation

14. The Working Group emphasizes the importance of developing or strengthening networks of law enforcement agencies, including police, customs and others, to curb tobacco product smuggling through intelligence sharing and joint-investigation efforts. In addition, in order to expand the network internationally and to amplify the scope of investigations beyond regional borders, the Working Group also emphasizes the importance of developing or strengthening regional cooperation, establishing, when necessary, arrangements with other international organizations. In some countries, cooperation strategies – such as fusions centres and international police cooperation centres – have proven effective in investigating transnational crimes and could also be explored to combat illicit trade in tobacco products. A list with the description of such mechanisms is provided in Annex 3.

15. Additionally, the Working Group considers that a collaboration with the International Criminal Police Organization (INTERPOL) and WCO may bring positive results for investigations. Developing and enhancing the Convention Secretariat's partnership with these two important international organizations would help Parties to investigate illicit trade in tobacco products, bearing in mind the importance to develop strategies protected from commercial and other vested interests of the tobacco industry.

16. The Working Group understands that agreements about “hot pursuit” of persons and a Joint Investigation Team (JIT) are also effective paths to build a legal cooperation framework to support investigations and prosecutions of crimes involving illicit trade in tobacco products. A list with the description of these agreements is also provided in Annex 3. Bearing in mind the complexity of JIT agreements, some Parties may wish to seek assistance to draft and execute these agreements to avoid the risk that evidence collected during the investigations is invalidated during judicial proceedings.

Implementing Article 29

17. A description with the main features of the Mutual Legal Assistance (MLA) mechanism enshrined in the Protocol is contained in Annex 4. The Working Group agrees that Parties must notify as soon as possible the Head of the Convention Secretariat about the designation of their central authorities for MLA, according to Article 29.6, and the language or languages they accept for MLA, according to Article 29.7.

18. Additionally, the Working Group understands that the elaboration of a form to be filled by the Parties with all the essential information involved in the MLA requests would expedite the procedure and avoid that a request is denied due to insufficient information. Models of such forms are available on the United Nations Office on Drugs and Crime (UNODC) Competent National Authorities Directory.

¹ <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/~media/DFAAF3B7943E4A53B12475C7CE54D8BD.ashx>.

19. Moreover, the Working Group stresses that the legal systems of Parties should be effectively prepared to comply with the Protocol MLA provisions. Since an MLA request is executed according to domestic legislation of the requested Party, this legislation has to include relevant provisions regulating the role of central authorities and other authorities, as well as the internal proceedings.

20. For effective MLA, the Working Group acknowledges that the criminalization of offences listed in Article 14.2 of the Protocol is mandatory, subject to domestic law. The criminalization is necessary for international cooperation through MLA, otherwise a Party would be able to deny an MLA request on the grounds of the absence of dual criminality.

21. Finally, the capacity-building and upskilling of central authorities and national authorities to deal with MLA requests under the Protocol is recommended, taking into account the specificities of these requests. Therefore, sharing international expertise regarding training and capacitation in the Protocol's MLA's requests should be a priority for Parties to achieve better results in combating illicit trade in tobacco products.¹

OPTIONS FOR DEVELOPING ASSISTANCE AND COOPERATION: TRAINING, TECHNICAL ASSISTANCE AND COOPERATION IN SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL MATTERS (ARTICLE 23)

22. Recognizing that cooperation is key to successful implementation and improves the effectiveness of law enforcement measures, the Protocol includes several provisions promoting international assistance and cooperation. More specifically, Article 23 puts emphasis on the necessary assistance and cooperation between Parties, in order to achieve the objectives of the Protocol. Following decision FCTC/MOP1(8) adopted by MOP1 in 2018, the Convention Secretariat was requested to develop, under the guidance of the Bureau of the MOP, a draft strategy with the aim to provide a framework to support Parties in implementing the Protocol,² through mechanisms of assistance and financial resources.

23. In this context, the Working Group notes the importance of the following activities: cooperating to get an up-to-date and deepened understanding of the illicit tobacco trade; achieving the full implementation of the Protocol by each Party; and facilitating regional and international cooperation to support the implementation and the functioning of the Protocol.

24. Technical assistance, in the form of capacity-building, transfer of expertise and cooperation, should focus on ensuring the implementation of the Protocol. It may range from legislative support (for example, by making available examples of legislation, regulations and concrete cases to assist Parties in the process of incorporating the Protocol in domestic legislation) to enforcement and information technology (IT) support.

¹ One example of this is where one central authority delivered an MLA Workshop to 80 prosecutors in another country to improve the quality and efficiency of future MLA exchanges between the two countries.

² Note: the draft strategy for mechanisms of assistance and for financial resources to support the implementation of the Protocol will be considered for adoption at MOP2.

25. The priorities in terms of technical assistance should consist of:

- assessments to identify needs and gaps in implementation of the Protocol;
- assistance to fulfil legal obligations set up by the Protocol, notably helping to establish a tracking and tracing system, and an interface to upload data to the global information-sharing focal point, as described in Article 8 of the Protocol; and
- assistance to strengthen enforcement capacities.

Assistance could take the form of webinars, e-learning, workshops, study visits and expert missions, as well as exchange of best practices and experiences.

26. Beneficiary Parties should draw an inventory of needs, prioritizing assistance areas and including a desirable plan and timeline. Coherence and synergy are key elements in this field and should be present from the planning stage. For the most efficient use of limited resources, it is of outmost importance to avoid overlaps and duplications in the technical assistance.

27. Parties with experience and having made significant progress in the implementation of the Protocol could provide, upon request through the Convention Secretariat, technical assistance to those Parties that are still in the initial stage after the ratification of the Protocol.

28. A regional approach could bring good results, both in raising mutual understanding and enhancing cross-border cooperation, and in building common solutions (for instance, assistance to Parties that belong to the same regional entity or organization to work together to implement a regional tracking and tracing system that meets the requirements of the Protocol across a wider geographical area in a similar way to the approach taken by the European Union).

PROMOTION OF THE EXCHANGE OF GOOD PRACTICES TO IMPLEMENT ARTICLE 12 (FREE ZONES AND INTERNATIONAL TRANSIT)

29. Illicit trade related to free zones is a well-documented and growing problem that is the key reason for the inclusion of Article 12 in the Protocol. The article requires Parties to implement effective controls on manufacturing and transactions, and to prohibit intermingling of tobacco and non-tobacco products in a single container. It also calls on Parties to adopt and apply control-and-verification measures to the international transit or trans-shipment of tobacco products.

30. Under the overall guidance of the Working Group, a report on *Examples of current practices on the implementation of Article 12 (Free zones and international transit) of the Protocol to Eliminate Illicit Trade in Tobacco Products* was produced by the Convention Secretariat to collate information and knowledge on regulatory practices among Parties, with the view to be promoted, and is available at the website of the Convention Secretariat.

31. The report focused on implementation of Article 12 with a view to showcasing examples in the operation and control of international operations in free zones. It has been reported that fraudsters and fraudulent economic operators or organizations are likely to use free zones to manufacture and transport illicit goods, including tobacco products, as legal requirements are more flexible and controls and inspections by enforcement agencies are carried out accordingly. To counterbalance the risks, some Parties require that consignments of tobacco products carry a special declaration with detailed

information that would enable joint investigations, effective risk management and electronic recordkeeping. Only a few Parties do not allow intermingling of tobacco products after adopting a policy that prohibits cigarettes from being placed in a container that also contains other commodities and requires that containers be weighed to ensure that the goods declaration is compatible with the reported contents. Requesting greater transparency in the movement of goods and the harmonization of data for better recordkeeping were some other practices presented in the report.

32. A promotion plan for the dissemination of the report was then developed and approved by Key Facilitators. Suggested activities took into consideration avenues already used by the Convention Secretariat and included an article, which appeared as a top story on the Convention website,¹ a webinar to launch the report and share some examples on regulatory measures put in place by Parties, further communication on social media, and direct emails to Parties and non-Parties focal points.

33. In March 2021, promotional activities were carried out by the Convention Secretariat using existing channels. The web story published on 5 March 2021 received 696 visitors. Messages on the WHO FCTC Twitter (8257 followers) and Facebook (4956 followers) accounts announcing the upcoming webinar entitled *Curbing Illicit Tobacco in Free Zones: Time to Close the Pandora's Box* reached 8118 people (7110 on Twitter and 1008 on Facebook) and a total number of 210 engagements, which includes post clicks, share and replies, 146 on Twitter and 64 on Facebook).

34. The webinar, which took place on 18 March 2021 and highlighted the issue of tobacco illicit trade in free zones and shared national examples from Panama, Thailand and the United Kingdom of Great Britain and Northern Ireland received 512 registrations and 384 attendees on that day. It was also the date when the report produced by the Convention Secretariat under the guidance of the Working Group was launched. Following the webinar and informative messages sent to stakeholders, including policy-makers from the customs, trade and health sectors, along with experts and representatives of intergovernmental and nongovernmental organizations, the report was seen 742 times (clicks) and downloaded 572 times (as of 16 April 2021).

ACTION BY THE MEETING OF THE PARTIES

35. The MOP is invited to note this report, provide further guidance and consider adopting the annexed draft decision that outlines the way forward in implementing the articles that were covered in the mandate of the Working Group.

¹ <https://www.who.int/fctc/mediacentre/news/2020/secretariat-launched-report-good-practices-free-zones/en/>.

ANNEX 1

MAPPING EXERCISE OF INFORMATION-SHARING PLATFORMS IN RELATION TO ARTICLES 21, 24, 28 AND 29

BACKGROUND

This mapping exercise follows from the discussions held by the Working Group on Assistance and Cooperation in its first session and aims at identifying examples of structures through which Parties can already share information with each other in order to assist in customs, law enforcement and judicial operations. The mapping will broadly take into account the following areas: existing platforms for information exchange (Article 21 of the Protocol); multilateral exchange mechanisms (Article 24); mutual administrative assistance; and (Article 28) and Mutual Legal Assistance (MLA) (Article 29).

(1) International networks for the exchange of information

The World Customs Organization (WCO) Customs Enforcement Network (CEN) Suite

<http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/cen-suite.aspx>

Customs administrations around the world play a vitally important role in the fight against transnational crime. In order to be effective, they require the necessary hardware and software, as well as the related knowledge and skills, to implement simplified and improved customs procedures, with modern customs operational techniques. The WCO has therefore developed a number of applications to assist its Members in their work and to provide them with the latest technology tools within a secure global network. They include:

- The Customs Enforcement Network (CEN) is an application that was conceived to assist customs in gathering data and information for intelligence purposes.
- The National Customs Enforcement Network (nCEN) is a system developed by WCO to assist customs administrations with the collection and storage of law enforcement information on the national level, with the additional capability to exchange this information at the regional and international levels.
- The Customs Enforcement Network Communication Platform (CENcomm) is a web-based communication system permitting a closed user group of officers to exchange messages via encrypted channels in real time for the duration of an operation or project. For tobacco there is a specific portal in this system called TobaccoNet.

Case study example

One tool that can be particularly helpful in this context is for parties to put in place a Memorandum of Understanding (MOU) with an associated operating protocol that sets out between parties the specifics of how cooperation might take place; some of the practical aspects outlined in Annex 2 can be taken into account. One example of how this has been used concerns a port that was identified as an origin of large volumes of illicit tobacco leading to large tax losses to another country. The two countries put in place a MOU and operating protocol that outlined ways in which the two parties could work jointly in tackling the issue. Within five years

of the arrangement being put in place, collaborative work between the two countries led to the seizure of over 600 million illicit cigarettes. This relationship also led to the prosecution of eight corrupt customs officers who worked within the port of risk and facilitated the trafficking of illicit tobacco.

I2C – WCO Information and Intelligence Centre

<http://www.wcoomd.org/topics/enforcement-and-compliance/instruments-and-tools/i2c.aspx>

In the spirit of the Globally Networked Customs initiative, the WCO has established an Information and Intelligence Centre (I2C) at its headquarters to facilitate communication and coordination on customs compliance and law enforcement-related matters. The centre promotes four key goals:

- enable better operational law enforcement coordination at the international level;
- provide Members with a help-desk function/interface for law enforcement subjects at the international level;
- collect and distribute open-source intelligence and other non-restricted customs-related intelligence to Members on a regular basis; and
- support or co-host WCO law enforcement operations.

I-24/7 secure network of the International Criminal Police Organization (INTERPOL)

<https://www.interpol.int/How-we-work/Databases>

INTERPOL manages a range of databases, 18 in total, containing information related to criminals and crimes. These databases contain millions of records with information on individuals, such as names and fingerprints, stolen property and weapons, and threats. National police can search these databases in real time and Member Countries contribute data on a voluntary basis. This is subject to a strict legal framework and data protection rules in order to foster trust and ensure the quality of the information.

These databases are accessed via I-24/7, which is a technical network that links law enforcement in all Member Countries and enables authorized users to share sensitive and urgent police information with their counterparts around the globe.

The Egmont Group of Financial Intelligence Units

<https://egmontgroup.org/en>

The Egmont Group is a body of 159 Financial Intelligence Units (FIUs). It provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing.

This is especially relevant as FIUs are uniquely positioned to cooperate and support national and international efforts to counter terrorist financing and are the trusted gateway for sharing financial information domestically and internationally in accordance with global anti-money laundering (AML) and counter financing of Terrorism (CFT) standards.

United Nations Office on Drugs and Crime (UNODC) SHERLOC Portal

<https://sherloc.unodc.org/cld/v3/sherloc/>

The SHERLOC portal is an initiative to facilitate the dissemination of information regarding the implementation of the United Nations Convention against Transnational Organized Crime, its three related protocols and the international legal framework against terrorism. It comprises several databases, including a directory of competent national authorities that have been designated for purposes of MLA.

(2) Regional networks for the exchange of information**Anti-Fraud Information System (AFIS)**

https://ec.europa.eu/anti-fraud/policy/preventing-fraud/customs-fraud_en

AFIS is a secure IT platform, managed by the European Anti-Fraud Office (OLAF), for timely and secure electronic exchange of fraud-related information among Member States and European Union (EU) administrations. AFIS supports mutual assistance in customs matters with tools accessible such as VOCU (Virtual Operations Coordination Unit) and specific information exchange modules and databases such as CIS+ (Customs Information System). These are dedicated tools relevant for the exchange of information on trafficking of tobacco products. Moreover, VOCU enables the secure exchange of information during operations and is accessible to partner third countries, international organizations and other EU institutions. Tobacco seizure cases (non-personal data) are transferred from CIS+ to the Customs Enforcement Network (CEN) of the WCO.

Secure information exchange network application (Siena) – European Union Agency for Law Enforcement Cooperation (Europol)

<https://www.europol.europa.eu/activities-services/services-support/information-exchange/secure-information-exchange-network-application-siena>

The Siena application from Europol is a platform that enables the swift and user-friendly exchange of operational and strategic crime-related information among:

- Europol’s liaison officers, analysts and experts;
- Member States;
- Third parties with which Europol has cooperation agreements.

The European Judicial Network (EJN)

https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx

The EJN promotes judicial cooperation in criminal matters among EU countries. It is a network of contact points of judicial authorities in the Member States of the European Union. These contacts are nominated from each Member State and all authorities with specific responsibilities in this field. The website of the Network offers e-tools that facilitate the cooperation between these contact points, prosecutors, judges and other legal professionals.

The Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States (OAS)

<http://web.oas.org/mla/en/Pages/default.aspx>

This Network was established in 2000 in order to increase and improve the exchange of information among OAS Member States in the area of mutual assistance in criminal matters. The public component of the Network provides legal information related to mutual assistance and extradition for the 34 Member States of the OAS.

The private component of the Network contains information for individuals who are directly involved in legal cooperation in criminal matters. The private site includes information on meetings, contact points in other countries, a glossary of terms and training on the secure electronic communication system. The purpose of the secure electronic communication system is to facilitate the exchange of information among central authorities who deal with issues of mutual assistance in criminal matters and extradition.

United Nations Office on Drugs and Crime (UNODC) judicial regional platforms

https://www.unodc.org/unodc/en/legal-tools/international-cooperation-networks.html#Sahel_Indian_Ocean_Commission

Judicial regional platforms have been established by UNODC to strengthen international cooperation in criminal matters in the regions of the Sahel and the Indian Ocean. Their main focus is to prevent and combat forms of serious crime, such as organized crime, corruption, drug trafficking and terrorism. They also identify technical assistance needs for strengthening judicial cooperation among them and sensitize national stakeholders of the penal chain on the role and mechanisms of the platforms. The national focal points meet at least once a year.

The Ibero-American legal assistance network

<https://iberred.notariado.org/en/iberreden>

The Ibero-American network (IberRed) is a network for cooperation in civil and criminal matters that was established in 2004. The contact points are in ministries of justice, central authorities, prosecution offices and judicial branches of its member countries (22 Ibero-American countries and the Supreme Court of Puerto Rico).

Commonwealth Network of Contact Persons

https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf

The purpose of the Commonwealth Network of Contact Persons is to facilitate international cooperation in criminal cases between Commonwealth Member States, including on Mutual Legal Assistance (MLA) and extradition, and to provide relevant legal and practical information. The network comprises at least one contact person from each of the jurisdictions of the Commonwealth.

ANNEX 2

MOST COMMON PRACTICAL ASPECTS NEEDED TO IMPLEMENT ARTICLES 21 AND 28 OF THE PROTOCOL TO ELIMINATE ILLCIT TRADE IN TOBACCO PRODUCTS

I. INTRODUCTION

1. Articles 21 and 28 Protocol to Eliminate Illicit Trade in Tobacco Products provide a legal basis and contain a legal obligation for Parties to cooperate providing each other with mutual administrative assistance (MAA). These articles, however, lack detail describing their practical implementation.
2. This Annex is a guidance tool for performing MAA between Parties. It lists the most relevant practical aspects that are not described in the Protocol but that Parties may need to consider when dealing with MAA. The list is indicative (not exhaustive).
3. As guidance, this tool is to be used on a voluntary and case-by-case basis and is meant to be adapted to each Party's characteristics and desires. Parties should remain free to choose any of the options mentioned in this annex or an alternative one of their choice, in agreement with their respective MAA counterpart. They can also choose the instrument in which to include them: mutual arrangements, memorandum of understanding (MOU), administrative agreements, etc.¹
4. Useful information can also be found on the website of the World Customs Organization (WCO) which has developed a model of bilateral agreement on MAA in customs matters.

II. RELEVANT ELEMENTS WHICH SHOULD BE DETAILED FOR MAA IMPLEMENTATION

5. The object, scope and purpose of MAA, as well as some definitions, are already included in the Protocol. Some other relevant aspects for MAA are mentioned in the below list.

Definitions

6. The Protocol contains certain definitions. However, the Parties are free to agree on definitions of other relevant terms they might consider useful for MAA implementation, such as "information" "requested administration" or "requesting administration".

Contact/focal points

7. Parties should appoint contact points (persons or offices) to perform the exchanges of information. The Convention Secretariat would keep the contact points list updated. Members should decide whether this list should be published on the WHO Framework Convention on Tobacco Control (WHO FCTC) website with public and easier access, or should be kept for the professional use of Parties for higher

¹ <http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/~media/DFAAF3B7943E4A53B12475C7CE54D8BD.ashx>.

confidentiality as the list will contain the names of persons or offices that would handle sensitive information.

Requests for information

Content

8. The requests should contain certain essential elements to allow for their compliance. They should include the following details:

- (a) the name of the requesting administration;
- (b) the matter at issue, type of assistance requested, and reasons for the request;
- (c) a brief description of the case under review and the legal and administrative provisions that apply;
- (d) the names and addresses of the persons to whom the request relates, if known; and
- (e) the verifications already made.

Reciprocity

9. Where the requesting administration would be unable to comply with a similar request by the requested administration, it should draw attention to that fact in its request. Compliance with such a request would be at the discretion of the requested administration.

Form

10. The requests should normally be made in writing, in paper or electronic form. Where circumstances so require, requests may be made verbally and be confirmed as soon as possible in writing, either by paper or electronically. Originals should only be requested in cases where copies would be insufficient, and should be returned at the earliest opportunity.

Language

11. Requests should be made in a language acceptable to both customs administrations. Any accompanying documents should be translated, to the extent necessary, into a mutually acceptable language. The Parties may also decide that a certain language should always be considered an acceptable one.

Provision of information

Means of obtaining information

12. If the requested administration does not have the information requested, it should initiate enquiries to obtain that information or transmit the request to the appropriate authority.

Form

13. The information should be provided in writing, in printed or electronic form, together with relevant documents, certified copies or other items.
14. Original documents could be transmitted, only upon request of the requesting authority, in cases where certified copies would be insufficient. The requesting authority should return the originals at the earliest opportunity.

Timelines to reply to requests

15. The requested administration should reply to a request for assistance as soon as possible. To this end, the Parties may agree on deadlines for replies to requests.

Use of the information

16. In principle, the information or documents should be used solely for the purpose stated in the request. The use given to the information should be clearly stated, including a possible prior authorization from the requested Party in writing to share the information with other national authorities or to use it in criminal cases. This is mentioned under Article 21.2. of the Protocol.

Confidentiality and data protection

17. The Parties should detail the level of confidentiality required to the information provided, as well as the data protection rules for personal data. This mostly important element is specified under Article 28 and is also the object of Article 22 of the Protocol.

Exceptions and conditions. Postponement.

18. Assistance may be declined or subject to certain conditions where it would:
- infringe the sovereignty, security, public policy or any other substantive national interest of the requested Party, or
 - prejudice any legitimate commercial or professional interest.
19. Assistance might be postponed where it would interfere with an ongoing administrative or judicial investigation, prosecution or proceeding.
20. Where assistance is declined or postponed, the reasons shall be given.

Expenses

21. As a general rule, the expenses should be borne by the requested Party.
22. However, expenses and allowances paid to experts, translators or interpreters, other than Government employees, should be borne by the requesting Party.

23. If the execution of a request requires expenses of a substantial or extraordinary nature, the Parties shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Other issues

24. The list of topics provided is not exhaustive. The Parties may further detail whichever aspect they may consider relevant to guide and facilitate the performance of their MAA obligations under the Protocol.

ANNEX 3

LIST OF ORGANIZATIONS AND AGREEMENTS AVAILABLE FOR COOPERATION AND ASSISTANCE TO INVESTIGATE AND PROSECUTE CRIMES INVOLVING ILLICIT TOBACCO PRODUCTS

1. ORGANIZATIONS

(a) **Regional police organizations:** Regional police organizations have proved very effective in bringing together law enforcements officers from different countries in fighting illicit trade in tobacco products. In the Region of the Americas, efforts have been made to enhance the role of the Police Community of the Americas (Ameripol) globally with a treaty proposal to establish legal personality which would contribute to institutionalize the organization in the international scenario. Agreements between the European Union Agency for Law Enforcement Cooperation (Europol) and third countries (strategic and operational agreements) have also been developed to increase cooperation beyond regional borders.

(b) **European Union Agency for Criminal Justice Cooperation (EUROJUST):** Eurojust is an agency of the European Union for judicial cooperation in criminal matters and it coordinates cross-border investigations and prosecutions among members. Eurojust also provides operational, legal and financial support for Joint Investigation Teams. The agency has the capacity to establish agreements with non-Members allowing third countries to benefit from Eurojust's tools and expertise for international cooperation and to station Liaison Prosecutors at Eurojust's headquarters to work side by side with colleagues from Member States. Such arrangements facilitate the coordination of investigations and prosecutions of cross-border crimes set forth in the agreements involving the third country and the European Union.

(c) **International Police Cooperation Center (CCPI):** It is a police cooperation model developed in Brazil for the 2014 World Cup and the 2016 Olympic Games, which has proved to be an important legacy to prevent and investigate cross-border crimes. The CCPI is a team of police officers from various countries stationed in Brazil that promptly communicate with their home country providing real-time communication, searching their own countries' databases and matching data. The model contributes to a faster exchange of information and results in effective arrests of criminals.

(d) **Fusion centres:** Certain countries have established fusion centres to organize domestic intelligence through an integrated system of various law enforcement agencies of a country. These centres employ public officials from various levels of the administration (federal, state and local) with the aim to better manage and share information for public security. Even though fusion centres are mostly used to prevent and counter terrorism, they can also serve as effective hubs for combating illicit trade in tobacco products since, on many occasions, an operation to curb illicit trade depends on a coordinated participation of agents from municipal, state and federal levels. Fusion centres may seem to comply with the interinstitutional approach envisaged in Article 24(2) of the Protocol.

2. AGREEMENTS

(a) **Hot pursuit of persons:** These agreements empower law enforcement agents of one country who are pursuing a person caught in the act of committing or of participating in a crime in a specific country to continue the pursuit in the territory of another country without the latter's prior authorization.

In the Schengen Agreement, this measure is provided in Article 41, and in South America, MERCOSUR members recently signed a similar agreement to foster police cooperation across borders.

(b) **Joint Investigation Team:** A Joint Investigation Team (JIT) is a mechanism of international criminal cooperation established among competent authorities of two or more countries when there are parallel investigations conducted in those countries about corelated crimes. The investigation team involves not only law enforcement officers but also judicial authorities such as judges, prosecutors, etc. JITs contribute to a fast, direct and efficient exchange of information and evidence, allowing investigations to progress much faster and more effectively than traditional channels of judicial cooperation. Information and evidence collected in accordance with the legislation of the participating country in which it was obtained can be shared based on the JIT agreement without the need to use formal Mutual Legal Assistance (MLA). Depending on their legal systems, Parties will need a legal basis to engage in a JIT. The European Union developed a JIT agreement model appended to Council Resolution (2017/C 18/01). In South America, a Framework Agreement of Cooperation among Member States of MERCOSUR and the Associated States for the Creation of Joint Investigation Teams was approved. Agreements should be carefully drafted in order to avoid any risks in judicial proceedings. Furthermore, heterogeneous legislation among countries can be an obstacle for joint investigations and could compromise the collection of evidence. Joint investigations would benefit from the expertise of international judicial cooperation agencies such as Eurojust and from the creation of a knowledge hub that would orientate Parties in this field.

ANNEX 4

MAIN FEATURES OF THE MUTUAL LEGAL ASSISTANCE MECHANISM PROVIDED IN THE PROTOCOL

1. Introduction

The purpose of this annex is to provide general information on Mutual Legal Assistance (MLA) under the Protocol to Eliminate Illicit Trade in Tobacco Products. The only role of the Convention Secretariat with regards to MLA is to assist Parties in finding information on MLA, including MLA requirements of the requested Party, such as through the United Nations Office on Drugs and Crime (UNODC).

2. Definition

MLA is an international criminal cooperation method to exchange information and evidence in criminal cases that cannot be obtained through traditional channels of international police cooperation, particularly criminal investigations that require coercive measures abroad. Article 29.3 of the Protocol describes the purposes for which MLA may be requested by Parties.

3. Legal basis

Requests for MLA can be based on reciprocity, multilateral conventions or bilateral agreements on criminal matters. International treaties provide that the processing of requests will take place directly through the central authorities of countries, eliminating the need to transmit them through diplomatic channels. The current MLA international agreements incorporated into the Parties legal systems are important arrangements to afford MLA under the Protocol. Moreover, according to Article 29.5, Parties that are not bound by a treaty or intergovernmental agreement of an MLA shall apply, on the basis of reciprocity, the MLA procedure set forth in paragraphs 6 to 24 of Article 29.

4. Central authorities

A central authority is a channel of communication for States to send and receive requests for international cooperation from other countries. The staff of central authorities must have knowledge of foreign languages and expertise in international cooperation procedures. Parties should designate their central authorities through a notification to the Head of the Convention Secretariat according to Article 29.6 of the Protocol.

5. MLA procedure

MLA requests can be divided in two categories: MLA outgoing requests; and MLA incoming requests. An outgoing MLA request is a request sent to another Party to obtain a specific measure abroad, while an incoming MLA request is a request received from another Party to perform a measure at the domestic level. In both cases, the central authority verifies if the request is duly founded according to the provisions set forth in the treaty and if it contains all the necessary information requirements.

In general, an MLA request is elaborated by the public officer in charge of the investigation. This request is transmitted to the central authority of that Party, which forwards it to the central authority of the requested Party. The central authority of the requested Party, according to domestic legislation, sends

the request to the competent authority in charge of executing the requested measure. After the measure is performed, the requested Party returns the application to the requesting Party.

Incoming MLA requests are performed according to domestic legal system of the requested Party. In these cases, Parties should develop domestic institutional agreements and arrangements between their central authorities and other national institutions such as attorney general offices, prosecution offices, police departments, administrative agencies and courts in order to guarantee the proper execution of a MLA request.

6. MLA request requirements

The request must be written in the language acceptable by the requested Party, according to the notification made under Article 29.7 and fulfil the conditions stipulated in Article 29.8. Moreover, it is important that Parties make available to the other Parties any additional requirements of their legal system regarding an MLA request.

National authorities may find helpful instructions on how to draft an MLA request. For this purpose, UNODC has developed a Mutual Legal Assistance Request Writer Tool (MLA Tool) to assist criminal justice practitioners in drafting expeditiously MLA requests. This practice helps national authorities to tailor their MLA requests pursuant to their objectives and, therefore, expedite the international cooperation procedures and avoid the risk that an MLA is returned due to lack of adequate information.

7. Transmission of MLA requests

Based on modern practice, it is recommended that Parties indicate the accepted channels for a transmission of an MLA request. Experience also shows that transmission should be made preferably by electronic channels. This measure is compatible with the modern practice of international cooperation since it avoids delays in the procedures, increases the data protection, and optimizes physical and human resources.

8. Compilation of information from Parties regarding MLA

A compilation of the main information from Parties regarding their requirements concerning MLA requests is a good practice adopted by UNODC. The organization has developed forms that require from countries basic information related to MLA requests. Models of such forms are available on UNODC Directory of Competent National Authorities.

ANNEX 5

**DRAFT DECISION [RELATED TO THE WORKING GROUP]
ON ASSISTANCE AND COOPERATION**

The Meeting of the Parties (MOP),

Noting the report prepared by the Working Group on Assistance and Cooperation for the Protocol to Eliminate Illicit Trade in Tobacco Products contained in document FCTC/MOP/2/7;

Considering the options developed by the Working Group on Assistance and Cooperation and welcoming the documentation produced, including the report on *Examples of current practices in the implementation of Article 12 (Free zones and international transit) of the Protocol to Eliminate Illicit Trade in Tobacco Products*;

Recognizing that the full and effective implementation of Articles relating to international cooperation and mutual assistance in aspects related to enforcement (Article 21), investigation and prosecution of offences (Article 24), administrative (Article 28), legislative (Article 29) and scientific, technical and technological matters (Article 23) is crucial for the successful achievement of the objectives of the Protocol;

Recognizing also the high level of interest in practical examples of implementation of Article 12 (Free zones and international transit);

Bearing in mind the provisions of Article 5.3 of the WHO Framework Convention on Tobacco Control and Article 4.2 of the Protocol;

Noting with satisfaction the outcome of the Working Group on Assistance and Cooperation, which has completed its mandate, and thankful for the work of Parties that participated in the consultation processes,

1. REMINDS Parties:

in the context of Article 21:

(a) to provide the Convention Secretariat with updated information on designated competent national authorities, as provided for in Article 22;

in the context of Article 29:

(b) to provide the Convention Secretariat with updated information about central authorities designated for Mutual Legal Assistance (MLA) and the languages accepted, as provided for in this Article;

in the context of Article 12:

(c) to take appropriate measures – both legal and operational – to efficiently tackle fraud in free zones, including prohibiting intermingling upon removal from free zones;

2. INVITES Parties:

in the context of Articles 21, 28 and 29:

- (a) to adopt appropriate instruments and measures to facilitate the exchange of information;
- (b) provide the Convention Secretariat with updated information on contact points to implement Mutual Administrative Assistance (MAA) as provided for in Article 28;
- (c) to build upon experience and existing instruments, avoiding duplication – as described in Annex 1 of the report of the Working Group on Assistance and Cooperation (document FCTC/MOP/2/7);
- (d) to utilize, but not be limited by, the elements in Annex 2 of the report of the Working Group on Assistance and Cooperation (document FCTC/MOP/2/7) to facilitate and enable the exchange of information;
- (e) to use international legal instruments in force, as appropriate;
- (f) to share expertise through training and capacity-building about MAA and MLA focused on the Protocol provisions;

in the context of Article 24:

- (g) to strengthen cooperation between law enforcement authorities at the national level, as described in Annex 3 of the report of the Working Group on Assistance and Cooperation (document FCTC/MOP/2/7);
- (h) to develop regional cooperation instruments (tackling cross-border illicit trade), as described in Annex 3 the report of the Working Group on Assistance and Cooperation (document FCTC/MOP/2/7);
- (i) to engage and foster cooperation with the World Customs Organization (WCO), and international and regional law enforcement organizations;

in the context of Article 23:

- (j) to focus, as a priority, on the implementation of the legal obligations, notably in relation to tracking and tracing systems;
- (k) when considering requesting assistance, to assess their own needs and priorities, in order to draw plans and avoid possible overlaps or redundant actions;

in the context of Article 12:

- (l) to continue to share good practices with each other, including through the Convention Secretariat;
- (m) to explore benefits of regional actions;

3. REQUESTS the Convention Secretariat:

(a) to act as a facilitator of cooperation between Parties, upon request, with special regards to provisions included under Articles 21, 23, 24 and 28 of the Protocol;

in the context of Articles 21, 28 and 29:

(b) to maintain up-to-date information on existing tools and instruments;

(c) to maintain updated lists of competent authorities or contact points for customs MAA and of central authorities for MLA;

(d) to find a platform to store the above-mentioned information in a secured area, for Parties to share and access, taking into account requirements for confidentiality, data protection and adequate legal basis;

(e) to assist Parties in finding information on MLA, including MLA requirements of the requested Party, for example through the United Nations Office on Drugs and Crime (UNODC);

in the context of Article 24:

(f) to invite competent international and regional intergovernmental organizations, such as the WCO and the International Criminal Police Organization (INTERPOL), to apply for the status of observer to the MOP and/or contribute to the implementation of the Protocol;

in the context of Article 23:

(g) as required and within its limited resources, to support Parties in assessing their needs and obtaining appropriate assistance, using the whole range of available tools;

in the context of Article 12:

(h) to maintain up-to-date information about good practices on controls of tobacco products in the free zones and related to international transit;

(i) to create a training module on tobacco control in free zones and related to international transit, and organize regional workshops focused on customs and trade sectors.

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