



**Needs Assessment for the implementation of the
Protocol to Eliminate Illicit Trade in Tobacco Products
in the Kingdom of Eswatini**



Group photo of the end-of-mission debriefing meeting with key stakeholders consulted during the needs assessment mission.

Convention Secretariat

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ABBREVIATIONS AND ACRONYMS

ACC	Anti-Corruption Commission
BIN	Business Identification Number
COP	Conference of the Parties
CMMA	Criminal Matters (Mutual Assistance) Act
EA	Extradition Act, 1968
ERS	Eswatini Revenue Services
FCTC	Framework Convention on Tobacco Control
MCIT	Ministry of Commerce, Industry and Trade
MLFPA	Money Laundering and Financing of Terrorism (Prevention) Act
MOF	Ministry of Finance
MOP	Meeting of the Parties
NCM	Eswatini National Coordinating Mechanism for Tobacco Control
REPS	Royal Eswatini Police Service
SACU	Southern African Customs Union
SADC	Southern African Development Community
TPCA	Tobacco Products Control Act, 2013
UEDF	Umbutfo Eswatini Defence Force
WHO	World Health Organization
WHO AFRO	WHO Regional Office for Africa
WHO FCTC	WHO Framework Convention on Tobacco Control
WCO	World Customs Organization

INTRODUCTION

THE PROTOCOL TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS

The Protocol to Eliminate Illicit Trade in Tobacco Products (Protocol) is the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC), and a new international treaty in its own right.

It was adopted by consensus on 12 November 2012 at the Fifth session of the Conference of the Parties (COP) to the WHO FCTC (Seoul, Republic of Korea, 12-17 November 2012). It came into force on 25 September 2018.

The Protocol builds upon and complements Article 15 of the WHO FCTC, which addresses means of countering illicit trade in tobacco products, a key aspect of a comprehensive tobacco control policy.

Illicit trade increases the accessibility and affordability of tobacco products, thus fuelling the tobacco epidemic and undermining tobacco control policies. It also causes substantial losses in government revenues, and at the same time contributes to the funding of transnational criminal activities.

The objective of the Protocol is the elimination of all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO FCTC. The Protocol, in particular, aims to secure the supply chain of tobacco products, measures widely considered to be the “heart” of the Protocol. The Protocol requires the establishment of a global tracking and tracing regime within five years of entry into force of the Protocol, comprising national and/or regional tracking and tracing systems and a global information sharing point located in the Convention Secretariat.

Other provisions to ensure control of the supply chain cover licensing, due diligence, record keeping, security and preventive measures, as well as measures in relation to internet and telecommunication-based sales, duty free sales, free zones and international transit.

The Protocol also covers important matters concerning offences, with provisions on liability, prosecutions and sanctions, seizure payments and special investigative techniques, as well as the disposal and destruction of confiscated products.

Another key group of substantive articles address the issue of international cooperation, such as measures on information sharing, technical and law enforcement cooperation, protection of sovereignty, jurisdiction, mutual legal and administrative assistance, and extradition.

THE NEEDS ASSESSMENT EXERCISE

At its Second session in November 2021, the Meeting of the Parties (MOP) to the Protocol, through decision FCTC/MOP2(7)¹, requested the Convention Secretariat, 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 response to this request, the Convention Secretariat developed a needs assessment process and methodology to assist Parties in identifying the objectives to be achieved under the Protocol, the resources available to meet these objectives, and any resource gaps requiring attention for effective implementation. The development of this methodology was guided by the existing needs assessment approach used for the WHO FCTC.

This strategy was subsequently adopted at the Second Session of the MOP, through decision FCTC/MOP2(11)², under the title Strategy for Mechanisms of Assistance and Mobilisation of Financial Resources to Support the Implementation of the Protocol.

The Protocol needs assessment exercise is carried out jointly with the host government pursuant to an official request received by the Convention Secretariat.

The needs assessment exercise consists of three phases:

- (i) the pre-needs assessment phase, during which the Convention Secretariat reviews relevant documents and Party reports;
- (ii) the needs assessment mission, where an international team engages with the various national stakeholders and other relevant international intergovernmental and nongovernmental organizations; and
- (iii) the post-mission and follow-up phase, in collaboration with national stakeholders, finalizes the needs assessment report and works with the Government and international partners to develop plans to accelerate the implementation of the Protocol, with a focus on the report's recommendations.

The report presents a detailed overview of the relevant Protocol provisions, the current status of their implementation, and corresponding recommendations to support full compliance with Protocol requirements. Based on the findings and priorities identified in the reports, post-needs assessment assistance may be provided to Parties that have undertaken needs assessments.

¹ WHO Framework Convention on Tobacco Control (2021) Decision FCTC/MOP2(7): Strategy for mechanisms of assistance and mobilization of financial resources to support the implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products. Geneva: WHO Framework Convention on Tobacco Control. Available at: <https://iris.who.int/bitstream/handle/10665/369084/fctc-mop-2-7-en.pdf?sequence=1>

² WHO Framework Convention on Tobacco Control (2021) Decision FCTC/MOP2(11): Strategy for mechanisms of assistance and mobilization of financial resources to support the implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products. Geneva: WHO Framework Convention on Tobacco Control. Available at: <https://iris.who.int/bitstream/handle/10665/369140/fctc-mop-2-11-en.pdf?sequence=1>

EXECUTIVE SUMMARY INCLUDING KEY FINDINGS AND RECOMMENDATIONS

The Protocol was adopted in 2012 by Parties to the WHO FCTC to specifically address the problem of illicit tobacco trade.

Eswatini acceded to the Protocol on 21 September 2016.³

At the request of the Government of the Kingdom of Eswatini, through the Ministry of Health, a needs assessment exercise for the implementation of the Protocol was jointly conducted by the Government, the Convention Secretariat and WHO from 17 to 21 March 2025.

In preparation for the needs assessment mission, the Convention Secretariat reviewed existing national legislations and documents relevant to the implementation of the Protocol.

During the mission, consultations were conducted with representatives from government ministries and agencies, as well as intergovernmental, non-governmental organizations, as well as representatives of the civil society (see Annex). These discussions aimed to examine key elements of the institutional and legal framework, and to identify the current status, main gaps, and needs in the effective implementation of the Protocol in Eswatini.

Post-needs assessment assistance can be provided by the Convention Secretariat, based on the report's recommendations and priorities identified, subject to the availability of resources.

This needs assessment report presents an article-by-article analysis of the progress Eswatini has made in the implementation of the Protocol; the gaps in implementation that exist and the recommended actions that can be taken for its full implementation.

The key elements that need to be put in place to enable Eswatini to fully meet its obligations under the Protocol are summarized below. Further details are contained in the report itself.

First, on the legal framework, the Protocol requires Parties to adopt and implement effective legislative, executive, and administrative measures to ensure its full implementation. While Eswatini has made progress, the Tobacco Products Control Act, 2013 (TPCA), adopted before Eswatini ratified the Protocol, does not yet fully reflect the Protocol's obligations. It is recommended that Eswatini amend the TPCA to establish the Tobacco Products Licensing Board, extend the licensing system to cover manufacturing equipment, and introduce comprehensive licensing requirements in line with Article 6 of the Protocol. Licensed entities should be required to conduct due diligence, report suspicious transactions and cross-border cash transfers, and comply with all applicable regulatory provisions.

A national **tracking and tracing system** should also be developed through regulatory instruments, with associated costs borne by the tobacco industry. The destruction of confiscated

³ United Nations (2012) Protocol to Eliminate Illicit Trade in Tobacco Products. Treaty Series, Chapter IX: Health. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IX-4-a&chapter=9&clang=en (Accessed: 6 May 2025).

tobacco products and equipment should be carried out using environmentally friendly methods under official supervision. Internet sales should be monitored by a designated competent authority. In free zones, Eswatini should enforce appropriate controls and prohibit the intermingling of tobacco and non-tobacco products. Duty-free sales must be brought under full regulatory oversight. In accordance with Article 14, Eswatini should strengthen penalties, criminalize the laundering of proceeds from illicit trade, and authorize the use of special investigative techniques, including controlled delivery and undercover operations.

Second, on national coordination, the Protocol calls on Parties to ensure effective collaboration among competent authorities. Eswatini's National Coordinating Mechanism for Tobacco Control, established in 2020, offers a foundation for coordination, but was not designed with the Protocol's implementation in mind. It is recommended that the mechanism's mandate and composition be reviewed and revised to support implementation of the Protocol.

The mission noted the absence of a formal framework for routine **information exchange** between enforcement and regulatory bodies. Eswatini also lacks a national strategy or roadmap for implementing the Protocol. It is therefore recommended that Eswatini establish a dedicated subcommittee under the National Coordinating Mechanism to oversee Protocol implementation, create formal communication channels among relevant agencies, and adopt a national strategy that clearly defines institutional responsibilities.

Third, on international and regional cooperation, the Protocol encourages Parties to strengthen cross-border collaboration and engage in bilateral, regional, and multilateral efforts to combat illicit trade. Although Eswatini is a member of the Southern African Customs Union (SACU), the Southern African Development Community (SADC), and other regional frameworks, operational cooperation remains limited. The mission identified the need for improved collaboration with subregional and international enforcement bodies.

It is recommended that Eswatini strengthen cooperation with SACU, SADC, Interpol, and the World Customs Organization (WCO). It should also make strategic use of the Trilateral Planning Cell, a regional law enforcement coordination mechanism to combat drug trafficking and associated organized crime along the Southern Route of the Indian Ocean, as a platform for cross-border security collaboration. In addition, Eswatini should expand operational cooperation with neighbouring countries, particularly Mozambique; and explore the establishment of a cross-border informant network to monitor informal crossings and trafficking routes.

Fourth, on engagement with intergovernmental organizations, the Protocol encourages continued collaboration with such bodies to access technical assistance, training, and best practices.

It is recommended that Eswatini actively engage with the World Bank, WCO, United Nations Office on Drugs and Crime (UNODC), and Interpol to strengthen its capacity to combat illicit tobacco trade.

Fifth, limited awareness of the Protocol among public officials and enforcement agencies may hinder effective implementation. The mission observed that several key institutions involved in

tobacco control lack adequate understanding of the Protocol and the country's obligations under the Protocol.

It is recommended that Eswatini launch targeted awareness campaigns across all branches of government including the legislative, executive, and judiciary with special focus on law enforcement, Parliament, and the Ministry of Commerce, Trade and Industry. Training on the Protocol should be incorporated into the curriculum of the Royal Eswatini Police Service (REPS). Civil society should be engaged in awareness-raising efforts, and public messaging should reinforce the provisions of the TPCA, particularly those related to health warnings that are already enforceable.

Sixth, on the **involvement of civil society**, Article 4.7 of the WHO FCTC recognizes the essential role of civil society in advancing tobacco control objectives. In Eswatini, civil society participation remains limited, with only the Association of Students Against Drug Abuse and Trafficking (SADAT) currently active in tobacco control. Organizations focused on transparency, anti-corruption, and anti-money laundering have not yet engaged on this issue. It is recommended that Eswatini broaden civil society engagement to include groups working in transparency, governance, and financial accountability to support Protocol implementation.

Finally, in line with **Article 5.3 of the WHO FCTC**, Parties must protect public health policies from the vested interests of the tobacco industry. This principle also applies to the implementation of the Protocol.

It is recommended that Eswatini adopt measures to protect the Protocol's implementation from tobacco industry interference, ensuring that all tobacco control policies are developed and enforced independently and transparently.

COUNTRY OVERVIEW

Eswatini ratified the WHO FCTC on 13 January 2006⁴ and acceded to the Protocol on 21 September 2016⁵.

ILLICIT TRADE IN TOBACCO PRODUCTS IN ESWATINI

Currently, there are no independent academic studies quantifying the extent of illicit tobacco trade in Eswatini. However, a World Bank study estimates that the illicit market accounts for approximately 10 million cigarette sticks annually, around 20 percent of the national market, resulting in tax losses of roughly USD 0.8 million each year. These estimates are based on data from the tobacco industry and have not been independently verified.⁶

Eswatini does not have any local cigarette manufacturing. A significant portion of illicit cigarettes circulating in the country and across the SACU region is believed to originate from Zimbabwe, where an estimated six factories produce over 20 brands. Although South Africa is the main destination for these products, a portion enters the Eswatini market through informal and illegal channels.⁷

The needs assessment mission found that illicit cigarettes from Mozambique, particularly the GT brand, are among the most commonly sold in Eswatini. The country also serves as a transit corridor for smuggled cigarettes and tobacco products, which are often misdeclared and transported in shipping containers, commercial trucks, or hidden in passenger vehicles. Some of these products are believed to originate in China and reach Eswatini via Mozambique and South Africa. Despite this, Eswatini does not maintain a systematic mechanism for tracking or reporting on illicit tobacco flows.⁸

While no comprehensive academic or official study exists on the trafficking routes within the SACU region, customs officials and limited public sources suggest well-established smuggling patterns across borders.

Enforcement authorities in Eswatini have also highlighted the widespread sale of single cigarettes, particularly in informal markets, as a persistent challenge. The practice hinders product traceability, facilitates the circulation of untaxed and illicit goods, and undermines

⁴ World Health Organization (2003) *WHO Framework Convention on Tobacco Control*. United Nations Treaty Series, vol. 2302. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=IX-4&chapter=9&clang=en

⁵ United Nations (2012) *Protocol to Eliminate Illicit Trade in Tobacco Products*. United Nations Treaty Series, vol. 3276. Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtsg_no=ix-4-a&chapter=9&clang=en

⁶ World Bank Group (2021) *Confronting illicit tobacco trade: a global review of country experiences – focus on SACU countries*. Washington, DC: World Bank. Available at: <http://documents1.worldbank.org/curated/en/677451548260528135/pdf/133959-REPL-PUBLIC-6-2-2019-19-59-24-WBGTobaccoIllicitTradeFINALvweb.pdf>

⁷ Ibid

⁸ Global Initiative Against Transnational Organized Crime (2023) *Organized Crime Index: Eswatini country profile 2023*. Available at: https://ocindex.net/assets/downloads/2023/english/ocindex_profile_eswatini_2023.pdf

enforcement efforts. Moreover, it increases minors' access to tobacco products, posing additional public health risks.⁹

STATUS OF IMPLEMENTATION AND RECOMMENDATIONS

This section of the report is structured around the substantive articles of the Protocol.

Each section outlines the requirements under the respective article, reviews the current stage of implementation of that article in Eswatini, highlights key achievements, and identifies gaps between the Protocol's obligations and the level of national implementation.

Finally, it provides targeted recommendations on how the identified gaps can be addressed to ensure that Eswatini fully meets its obligations under the Protocol.

PART II: GENERAL OBLIGATIONS

Article 4: General obligations

Article 4 sets out essential principles to guide the effective implementation of the Protocol. It emphasizes the need for Parties to adopt measures to control and regulate the supply chain of tobacco products to prevent and combat illicit trade. It also calls for the provision of technical assistance and financial support, as well as the strengthening of regional and international cooperation to enhance the effectiveness of customs, police, and other enforcement authorities.

A key element of this article is ensuring coordination among all relevant national authorities and agencies involved in implementing the Protocol's provisions.

In addition, Parties are required to maintain the highest level of transparency in any interactions with the tobacco industry, in accordance with Article 5.3 of the WHO FCTC and its guidelines for implementation.

Status

Eswatini established the multisectoral National Coordinating Mechanism (NCM) for tobacco control in 2020 to strengthen collaboration among ministries and agencies, in line with Article 5.2(a) of the WHO FCTC. While the NCM supports coordinate efforts for the WHO FCTC implementation, the needs assessment mission identified key gaps in relation to Protocol. These include the absence of a formal framework for information exchange and coordination among relevant stakeholders as well as the lack of a strategic plan or roadmap for implementing the Protocol. Addressing these gaps is critical to enhancing coordination, planning, and resource allocation across sectors.

⁹ World Bank Group (2021) *Confronting illicit tobacco trade: a global review of country experiences – focus on SACU countries*. Washington, DC: World Bank. Available at: <http://documents1.worldbank.org/curated/en/677451548260528135/pdf/133959-REPL-PUBLIC-6-2-2019-19-59-24-WBGTobaccoIllicitTradeFINALyweb.pdf>

Recommendations

It is recommended to strengthen coordination among government agencies by establishing a subcommittee under the NCM for tobacco control to focus specifically on the implementation of the Protocol. A specialized multi-stakeholder platform for information and intelligence sharing should also be created, involving key entities such as the Eswatini Revenue Service (ERS) and the Anti-Corruption Commission (ACC).

It is further recommended that a strategy or roadmap should be developed for the Protocol's implementation, assigning specific responsibilities to each relevant government agency.

Eswatini is also recommended to increase awareness of the Protocol among public officials involved in combating illicit tobacco trade and to expand existing transparency and accountability platforms to cover efforts against illicit tobacco trade.

Article 5: Protection of personal data

Article 5 of the Protocol requires Parties to protect the personal data of individuals, in accordance with international standards, irrespective of the individuals' nationality or place of residence, when implementing the Protocol.

Status

Eswatini has made significant progress in establishing legal frameworks for data protection, particularly with regard to personal data privacy. Here are some specifics regarding the legislation and agencies involved:

- Data Protection Act, 2022¹⁰: This Act provides a comprehensive legal framework for the protection, processing, and disclosure of personal data. It also addresses the security of personal information and regulates the transborder flow of data, both within SADC member states and beyond¹¹. The Act designates the Eswatini Communications Commission as the National Data Protection Authority (EDPA), responsible for overseeing the handling of personal information, investigating breaches¹², and resolving complaints related to data protection.
- The Electronic Communications and Transactions Act, 2020¹³ supports data protection by addressing privacy in the context of electronic communications. While it provides a foundational framework for safeguarding information exchanged electronically, it does not establish a comprehensive regime for the protection of personal data. Instead, it contains provisions that indirectly contribute to data privacy. This legislation should be

¹⁰ Kingdom of Eswatini (2022) Data Protection Act, 2022 (Act No. 2 of 2022). Enacted 4 March. Available at: <https://www.esccom.org.sz/legislation/DATA%20PROTECTION%20ACT.pdf> (Accessed: 10 April 2026).

¹¹ Ibid, part V, Articles 32 and 33

¹² Ibid, part II, article 5(1)

¹³ Kingdom of Eswatini (2022) Electronic Communications and Transactions Act, 2020 (Act No. 2 of 2022). Enacted 23 February. Available at: <https://www.esccom.org.sz/legislation/ELECTRONIC%20COMMUNICATIONS%20TRANSACTIONS%20ACT.pdf>

viewed as complementary to the Data Protection Act, 2022, which serves as Eswatini's primary legal framework for personal data protection.

Recommendations

It is recommended that Eswatini take steps to ensure that the data of individuals is fully protected while implementing the Protocol, in consultation with the Eswatini Communications Commission, which serves as the National Data Protection Authority.

PART III: SUPPLY CHAIN CONTROL

Article 6. Licence, equivalent approval or control system

Article 6.1 of the Protocol requires Parties to establish a licensing system, overseen by a competent authority, to regulate the manufacture, import, and export of tobacco products and manufacturing equipment. Under **Article 6.2**, this licensing system must also extend to related activities, including retailing, large-scale growing (excluding traditional small-scale production), transporting, wholesaling, brokering, warehousing, and distributing tobacco products and equipment.

In accordance with **Article 6.3**, Parties must ensure that a competent authority is responsible for issuing, renewing, and revoking licenses, monitoring compliance, collecting fees, and preventing fraudulent practices. This authority must also conduct regular inspections, audits, and reviews of licensed activities to ensure adherence to the Protocol's requirements.

Article 6.4 provides that license holders must report any significant changes in their operations, including the acquisition or disposal of manufacturing equipment. Furthermore, under **Article 6.5**, the destruction of such equipment must be supervised by the competent authority, and licenses may not be assigned or transferred without prior notification and approval from that authority.

Status

The TPCA serves as the primary legislation governing the licensing system for tobacco products.¹⁴ Under this Act, the Tobacco Products Control Licensing Board is tasked with regulating, supervising, and monitoring tobacco and tobacco products,¹⁵ including the consideration of applications for the manufacture, import, export, sale, and distribution of such products, as well as the granting, renewal, or revocation of related licenses.¹⁶ However, since the Licensing Board is not yet operational, licensing responsibilities currently fall to the Department of Commerce within the Ministry of Commerce, Industry and Trade (MCIT).

¹⁴ Kingdom of Eswatini (2013) Tobacco Products Control Act, 2013 (Act No. 4 of 2013), Part II. Available at: <https://assets.tobaccocontrol.org/uploads/legislation/Eswatini/Eswatini-2013-TC-Act-native.pdf>

¹⁵ *Ibid*, Section 4(2)(a):

¹⁶ *Ibid*, Section 4(2)(b)

At present, there is no specific tobacco license issued; instead, the MCIT issues Trading License, which serves as the general license required for conducting various business activities. For manufacturing and sales activities, applicants must apply for a standard trading license, with the MCIT verifying the legality and relevance of the supporting documentation. For import and export activities, applicants must first obtain an import or export permit from the Ministry of Finance (MOF) before applying for a trading license from the MCIT. An exception to this general licensing system exists for the sale of liquor. The sale and distribution of alcoholic beverages are regulated separately by the Liquor Licensing Board, a regulatory body established under the Liquor Licences Act, 1964¹⁷. The Board's primary function is to oversee the licensing and regulation of activities related to alcoholic beverages within the country.

Regarding tobacco growers, they are issued a Dealer in Farm Produce License, which is not specific to tobacco cultivation but applies broadly to farm produce. Traders may operate licensed bonded warehouses, a license also issued by the MCIT and overseen by the ERS.

Licenses are tracked through the license grant number associated with the Business Identification Number (BIN). The MCIT conducts regular business inspections, which include verifying compliance with trade license conditions.

The TPCA regulates the manufacture, import, sale and distribution of tobacco products and establishes conditions for compliance. However, it does not set out detailed licensing procedures or a comprehensive licensing framework. In addition, the Customs and Excise Act, 1971¹⁸ provides for the classification and taxation of tobacco products, including cigarettes, primarily for customs and excise purposes, rather than prescribing product specifications.

Currently, the licensing system does not cover manufacturing equipment in relation to its production, import, or export. It remains unclear whether there is a formal mechanism for detecting fraud within the licensing system, or whether the system undergoes regular evaluations and reviews. Finally, the TPCA does not clearly specify whether the licensing system applies equally to natural and legal persons.

Recommendations

It is recommended that Eswatini fully implement Section 3 of the TPCA by establishing the Tobacco Products Licensing Board, following the model of the Liquor Licensing Board.

Furthermore, Eswatini should ensure that all requirements for license applications, as outlined in Article 6.3 of the Protocol, are met and submitted to the competent authority. These requirements include:

- *Documentation regarding criminal records;*
- *Full identification of bank accounts to be used and other payment details;*

¹⁷ Kingdom of Eswatini (1964) Liquor Licences Act, 1964 (Act No. 30 of 1964). Available at: <https://eswatini.ii.org/akn/sz/act/1964/30/eng@1998-12-01>

¹⁸ Kingdom of Eswatini (1971) Customs and Excise Act, 1971. Available at: <https://www.ers.org.sz:8000/documents/CustomsandExciseAct1971.pdf>

- *Information on the intended use and market of sale to ensure that tobacco production or supply aligns with reasonably anticipated demand;*
- *An obligation to inform the competent authority of any acquisition or disposal of manufacturing equipment;*
- *Supervision by the competent authority for the destruction of any manufacturing equipment.*

It is also recommended that Eswatini ensure the licensing scheme explicitly covers manufacturing equipment, in accordance with Article 6.2 of the Protocol.

In addition, Eswatini should consider allocating levied license fees toward the effective administration and enforcement of the licensing system, or for public health and related activities, as encouraged under Article 6.3(c) of the Protocol.

Finally, it is recommended that Eswatini ensure that the Tobacco Products Licensing Board, or another designated authority, monitors licensed entities' compliance with all legal requirements.

Article 7: Due diligence

Article 7 of the Protocol establishes due diligence obligations for all entities involved in the tobacco supply chain. Parties must ensure that such entities conduct due diligence both before entering into and throughout the duration of business relationships. This includes monitoring sales to confirm that they align with reasonably anticipated market demand and reporting any customer activities that may breach the provisions of the Protocol.

In addition, **Articles 7.2 and 7.3** require comprehensive customer identification, including providing detailed information on the intended use and target market for tobacco products or manufacturing equipment, as well as the precise location where such equipment will be installed and operated.

Status

In Eswatini, under the Companies Act No. 8 of 2009,¹⁹ traders are required to register their businesses with the Registrar of Companies within the MCIT. This process involves submitting the necessary documentation, including business name registration and incorporation details, followed by obtaining the relevant licenses. Applicants must also ensure compliance with health and safety regulations, which may involve inspections and the implementation of quality control measures for manufacturing activities.

The national framework for anti-money laundering, counter-financing of terrorism, and counter-proliferation financing includes requirements for customer and beneficial owner identification, recordkeeping, and the reporting of suspicious transactions. Enhanced due diligence measures are required for high-value transactions.

¹⁹ Kingdom of Eswatini (2009) Companies Act (Act No. 8 of 2009). Available at: <https://www.osall.org.za/docs/Swaziland%20-%20Companies%20Act%208%20of%202009%20including%20commencement%20notice.pdf>

Specifically, the Money-Laundering and Financing of Terrorism (Prevention) Act, 2011²⁰ (MLFPA) requires accountable institutions to identify and verify their customers and beneficial owners, particularly in transactions involving legal entities. Enhanced due diligence is required for transactions exceeding 20,000 emalangen, and for cash transactions over 10,000 emalangen.

Recommendations

It is recommended that Eswatini require all licensed entities, particularly those involved in the manufacture, import, export, sale, and distribution of tobacco and tobacco products, to conduct due diligence both prior to establishing and throughout the course of their business relationships, in accordance with the provisions of the Protocol.

Article 8. Tracking and tracing

Article 8 of the Protocol establishes detailed requirements for the tracking and tracing of tobacco products to eliminate illicit trade. Under **Article 8.3**, all unit packets and packages of cigarettes must carry unique, secure, and non-removable identification markings within five years of the Protocol's entry into force, and all other tobacco products within ten years. These markings, such as codes or stamps, are indispensable to ensure the traceability of products from manufacture to the final point of sale.

According to **Article 8.4**, the tracking and tracing system must include information necessary to determine the origin and point of diversion of tobacco products, as well as to monitor and control their movement and legal status. **Article 8.5** specifies that such information must be recorded at key points in the supply chain, including at the time of production, upon the first shipment by any manufacturer, and at the point of import.

Accessibility and sharing of the recorded information are key components of the system. **Article 8.6** requires that the recorded information be linked to the unique identification markings and made accessible to the Party. Furthermore, **Article 8.8** mandates that this information must be available upon request through a secure, standardized electronic interface with national and/or regional central points.

In addition, **Articles 8.9 and 8.11** encourage Parties to share information and best practices with each other and with competent international organizations to strengthen global efforts against illicit trade. Importantly, **Articles 8.12 to 8.14** prohibit delegating tracking and tracing obligations to the tobacco industry, although industry may be required to bear the costs associated with implementing the system.

Status

In Eswatini, the TPCA, specifically addresses the tracking and tracing of tobacco products in Section 41(h). This section empowers the Minister to establish regulations that facilitate the

²⁰ Kingdom of Eswatini (2011) Money Laundering and Financing of Terrorism (Prevention) Act, 2011. Available at: <https://eswatini.leg.gov.sz/act/2011/6/eng@2016-09-28>

monitoring of tobacco products throughout the distribution chain, from manufacture to the point where all relevant duties and taxes have been paid. The provisions under this section include:

- the use of overt or covert markings to uniquely identify each tobacco product or its packaging to ensure distinct recognition;
- overt markings that clearly indicate the intended legal end-market destination of tobacco products; and
- the scanning of tobacco products and their packaging, or the use of other procedures to identify their origin and monitor their passage through the distribution chain.

Section 11(1)(d) of the TPCA, stipulates that no person shall manufacture, sell, or import a tobacco product unless the package, in the prescribed form and manner, including through an enclosed leaflet, displays information on markings designed to facilitate the identification of illegally manufactured or distributed products, or products on which taxes have not been paid.

However, at the time of the mission, there was no system in place in Eswatini to provide unique, secure, and non-removable identification markings, nor was there a functioning tracking and tracing system in operation, as required under Article 8 of the Protocol.

Recommendations

It is recommended that Eswatini issue regulations under sections 11(1)(d) and 41(h) of the TPCA to establish an independent, government-controlled and comprehensive tracking and tracing system for tobacco products across the supply chain. This system should include unique, secure and non-removable identification markings, in line with Article 8.3 of the Protocol.

Eswatini should designate a national focal point to participate in the global information-sharing system under Article 8, in line with Decision FCTC/MOP/4/6 and ensure that its tracking and tracing system is interoperable for the secure exchange of information with other Parties.

It is further recommended that Eswatini establish mechanisms to ensure that the tobacco industry bears the costs associated with the tracking and tracing system, without being assigned any system management responsibilities.

Eswatini should ensure that all relevant authorities have full and timely access to the tracking and tracing system to support enforcement, monitoring and regulatory functions.

Finally, Eswatini is encouraged to seek technical support from WHO AFRO, including through a study visit to a reference country with an operational tracking and tracing system, to strengthen national capacity and inform system development.

Article 9. Record-keeping

Article 9 of the Protocol establishes comprehensive record-keeping obligations for entities involved in the tobacco supply chain to support the fight against illicit tobacco trade.

Under **Article 9.1**, all natural and legal persons engaged in the production, distribution, and handling of tobacco, tobacco products, and manufacturing equipment are required to maintain complete and accurate records of all transactions.

Article 9.2 specifies that the records must include information such as general market volumes, trends, forecasts, and the quantities of tobacco products and manufacturing equipment held by the licensee.

According to **Article 9.3**, licensed entities must, upon request from competent authorities, provide detailed information when tobacco products or manufacturing equipment leave their control. This includes shipment dates, product descriptions, transportation routes, destinations, recipients, and intended markets.

Article 9.4 further encourages Parties, where feasible, to require retailers and tobacco growers (excluding non-commercial traditional growers) to maintain full and accurate transaction records.

In addition, **Article 9.5** mandates that Parties ensure these records are kept for a minimum of four years, maintained in a uniform format, and made available to competent authorities upon request.

Article 9.6 calls for the establishment of mechanisms to allow the sharing of record-keeping information with other Parties, enhancing international cooperation.

Finally, **Article 9.7** highlights the importance of collaboration among Parties and with competent international organizations to progressively improve and harmonize record-keeping practices over time.

Status

Eswatini's legal framework includes several general recordkeeping obligations that contribute to transparency but do not fully align with the specific requirements of Article 9 of the Protocol.

The Tobacco Act, 1933²¹ requires all tobacco traders to maintain complete and accurate records of all relevant transactions. These records typically include details of purchases, sales, transfers, weights, names and addresses of all parties involved, as well as any supporting documentation concerning the tobacco products.²² Records are usually kept at the business premises and must be made available for review by regulatory authorities upon request.

²¹ *Kingdom of Eswatini (1933) Tobacco Act, 1933. Available at:*

<https://assets.tobaccocontrolaws.org/uploads/legislation/Eswatini/Eswatini-Tobacco-Act-1933-native.pdf>

²² *Ibid, Section 7*

Additional recordkeeping obligations are established under Section 8 of the MLFTP, which requires accountable institutions to retain accurate and up-to-date records of client identities, transactions, and business correspondence for a minimum of five years. These records must be sufficient to reconstruct transactions and accessible to competent authorities when requested. While the MLFTP strengthens financial transparency and oversight, its provisions are not tailored to the specific requirements of the tobacco sector.

Similarly, the Companies Act, 2009 mandates that all registered companies maintain financial records, including information on income, expenditure, assets, and liabilities. These records must be retained for at least five years and made available for inspection by relevant authorities, including the Registrar of Companies, within 21 days of request. Although this establishes a general legal foundation for corporate recordkeeping, it does not impose obligations specific to actors in the tobacco supply chain.

There is currently no legal requirement for maintaining records related to tobacco manufacturing equipment, nor are there specific bookkeeping obligations for tobacco growers.

In terms of record format, the Registrar of Companies requires the retention of both physical documents such as tax invoices, credit and debit notes, and account books and electronic records stored on digital media.

On information sharing, Eswatini is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes,²³ which supports its efforts to strengthen international cooperation in tackling offshore tax evasion by promoting standards on transparency and exchange of tax-related information.

Recommendations

It is recommended that Eswatini strengthen its recordkeeping framework by introducing sector-specific obligations for all actors in the tobacco supply chain, including manufacturers, importers, distributors, retailers, and growers. This should include legal requirements to maintain comprehensive records of transactions, product volumes, market forecasts, and manufacturing equipment.

The framework should also mandate standardized formats for record retention, both physical and electronic, and ensure that such records are accessible to competent authorities upon request.

It is also recommended that Eswatini extends all recordkeeping obligations to cover tobacco manufacturing equipment, and provisions should be introduced to monitor recordkeeping compliance across the supply chain in alignment with Article 9 of the Protocol.

²³ Organisation for Economic Co-operation and Development (OECD) (n.d.) Global Forum on Transparency and Exchange of Information for Tax Purposes: Members. Available at: <https://web-archive.oecd.org/tax/transparency/who-we-are/members/index.htm> (Accessed: 6 May 2025).

Article 10. Security and preventive measures

Article 10.1 of the Protocol requires Parties to ensure that all licensed natural and legal persons engaged in the tobacco supply chain take effective measures to prevent the diversion of tobacco products into illicit trade channels. These measures include reporting cross-border transfers of cash and payments in kind as required by national law, reporting all suspicious transactions, and supplying tobacco products and manufacturing equipment only in quantities that correspond to legitimate market demand.

In addition, **Articles 10.2 and 10.3** require Parties to ensure that all payments and transactions are conducted in the currency and amount stated on the invoice and processed exclusively through legal payment methods using financial institutions operating within the territory of the intended market. The use of alternative remittance systems is expressly prohibited.

Finally, under **Article 10.4**, Parties must ensure that any violations of these obligations are subject to appropriate, effective, proportionate, and dissuasive criminal, civil, or administrative procedures and sanctions.

Status

In Eswatini, measures to prevent the diversion of tobacco products into illicit trade channels rely on a combination of regulatory frameworks and enforcement practices. Importers, exporters, sellers, and distributors are required to obtain a general trading license from the MCIT; however, the absence of a specific licensing system for tobacco products limits the ability of the general trading license to effectively control diversion. Also, the lack of mandatory markings and the absence of a tracking and tracing system further increase the risk of licit tobacco products entering illicit channels, and vice versa.

Enforcement is carried out by government agencies such as the MCIT, the REPS, the Umbutfo Eswatini Defence Force (UEDF), and the ERS, which conduct inspections and investigations to detect and prevent illicit trade within the country and at its borders.

According to the TPCA, any person who contravenes the Act or any regulations related to the manufacture, import, sale, or distribution of tobacco products commits an offence and, upon conviction, is liable to a fine not exceeding twenty thousand Emalangeneni or a term of imprisonment not exceeding four years, or both.²⁴ This sanction serves as a legal deterrent; however, in the absence of a comprehensive control system aligned with Article 10 of the Protocol, including due diligence requirements, transaction monitoring, and proportional product supply, it remains insufficient to fully mitigate the risk of diversion of tobacco products into illicit trade channels.

²⁴ *Kingdom of Eswatini (2013) Tobacco Products Control Act, 2013 (Act No. 4 of 2013), s. 9(2)*. Available at: <https://assets.tobaccocontrollaws.org/uploads/legislation/Eswatini/Eswatini-2013-TC-Act-native.pdf>

Recommendations

It is recommended that Eswatini ensure that all licensed entities are required to report to competent authorities:

- *any cross-border transfer of cash or payment in kind above thresholds established by national law; and*
- *all suspicious transactions that could indicate involvement in illicit trade activities.*

It is further recommended that Eswatini strengthen its existing legal framework to prevent the diversion of tobacco products into illicit trade channels by requiring that licensed entities supply tobacco products and manufacturing equipment only in quantities that are commensurate with the legitimate demand within the intended market of retail sale or use.

Eswatini is also recommended to strengthen measures to ensure the traceability and transparency of payments and transactions related to tobacco products, in line with Article 10.2 and 10.3 of the Protocol. Specifically, legislation should:

- *Require that all payments be made in the same currency and for the same amount as stated on the invoice;*
- *Mandate that payments be processed only through legal financial institutions located within the territory of the intended market; and*
- *Prohibit the use of alternative remittance systems or other informal forms of payment that could facilitate illicit trade.*

Article 11. Sale by internet, telecommunication or any other evolving technology

Article 11.1 of the Protocol requires Parties to ensure that all transactions involving tobacco products conducted through the internet, telecommunications, or any other evolving technologies are subject to all relevant obligations established by the Protocol. Recognizing the risks associated with these evolving sales channels, **Article 11.2** encourages Parties to consider adopting measures to prohibit the sale of tobacco products through such means where necessary to prevent illicit trade and strengthen tobacco control efforts.

Status

Section 27 of the TPCA prohibits the sale or delivery of tobacco products by mail, on the internet, vending machines, or other delivery services, except where the transaction occurs between a manufacturer and a retailer. Violation of this provision constitutes an offence, subject to a fine, imprisonment or both.

However, the TPCA allows sales through vending machines and similar devices in locations not reasonably accessible to the public, or in bars, taverns, or beverage rooms equipped with a prescribed security mechanism.

Despite these restrictions, the needs assessment mission was informed that tobacco products remain accessible through online platforms in Eswatini and can be purchased without barriers.

Currently, there is no legislation regulating the sale of tobacco products through telecommunications or other evolving technologies.

Recommendations

It is recommended that Eswatini expand its legal framework to explicitly include the ban of sales through telecommunications and other evolving technologies, to fully align with the requirements of the Protocol.

It is further recommended that Eswatini designate a competent authority to monitor compliance with and enforce the prohibition on the sale of tobacco and tobacco products via the internet.

Article 12: Free zones and international transit

Article 12 of the Protocol requires each Party to implement effective controls on all manufacturing activities and transactions involving tobacco and tobacco products within free zones.

Under **Article 12.1**, Parties must apply the relevant control measures outlined in the Protocol to ensure that activities within free zones do not facilitate illicit trade. **Article 12.2** further mandates the prohibition of intermingling tobacco products with non-tobacco products in a single container or equivalent unit when products are removed from free zones.

In addition, **Article 12.3** obliges Parties to adopt and apply control and verification measures to all international transit or transshipment of tobacco products within their territory, ensuring full traceability and preventing diversion into illicit markets.

Status

Eswatini's Special Economic Zones Act, 2018²⁵ establishes the legal framework for the creation and regulation of special economic zones. The Act requires all companies operating within **free zones** to comply with national laws, including customs and regulatory provisions, unless specific exemptions are granted. Oversight is exercised by the Special Economic Zones Committee and the ERS, which is responsible for customs controls and inspections at the free zones' borders.

The ERS conducts thorough inspections and employs advanced scanning technologies to detect contraband, while the MCIT is authorized to carry out additional enforcement and inspection activities within the zones. The Special Economic Zones Committee is also empowered to investigate any matters arising from the application of the Act, further reinforcing regulatory oversight within these areas.

²⁵ Kingdom of Eswatini (2018) *Special Economic Zones Act, 2018*. Available at: <https://leap.unep.org/en/countries/sz/national-legislation/special-economic-zones-act-2018>

Section 36 of the TPCA empowers inspectors to seize or detain tobacco products that do not comply with regulatory requirements. It outlines the authority of inspectors to enter premises, inspect products, and take necessary actions, including seizure or detention, to ensure compliance with the Act. However, the provision does not explicitly address the status of tobacco products located in free zones or those in international transit. As a result, it remains unclear whether this authority granted under Section of the 36 of the TPCA extends to tobacco products within free zones or those subject to international transit.

Furthermore, Eswatini does not currently have an explicit legal prohibition against the intermingling of tobacco products with non-tobacco products in transportation units upon removal from free zones, as required under Article 12.2 of the Protocol.

Recommendations

It is recommended that Eswatini strengthen the control of manufacturing activities and transactions involving tobacco and tobacco products within free zones, in line with Article 12 of the Protocol. While the Special Economic Zones Act and existing customs controls provide a foundation, additional measures should be introduced to ensure that all tobacco-related activities in free zones are subject to the same effective regulatory oversight applied elsewhere in the national territory.

It is further recommended that Eswatini enhance monitoring and enforcement mechanisms within free zones by increasing the frequency of inspections carried out by the MCIT, the ERS, and other relevant agencies. Improvements should also be made in record-keeping, reporting requirements, and the imposition of stricter, dissuasive penalties for non-compliance.

Finally, it is recommended that Eswatini explicitly prohibit the intermingling of tobacco products with non-tobacco products in the same container or equivalent transportation unit at the time of removal from free zones, as required under Article 12.2 of the Protocol. This measure would further prevent the diversion of tobacco products into illicit trade channels and reinforce the integrity of customs controls.

Article 13: Duty free sales

Article 13 of the Protocol requires Parties to ensure that all duty-free sales of tobacco products are subject to the relevant provisions of the Protocol. Effective controls, including licensing measures under Article 6, must be applied to duty-free operations. These measures are intended to ensure that tobacco products sold through duty-free channels are properly regulated, monitored, and protected from diversion into illicit trade.

Status

In Eswatini, the duty-free sale of tobacco products is permitted in limited quantities, primarily at international airports and for travellers, as regulated under the Customs and Excise Act. The establishment and operation of duty-free shops are required to comply with all applicable

national legislation, including obtaining trade licenses, liquor licenses, and other relevant authorizations.

However, there is currently no available information on whether similar regulatory controls are applied to duty-free sales of tobacco products at other points of entry beyond airports.

Recommendations

It is recommended that Eswatini implement effective measures to ensure that all duty-free sales of tobacco products are fully subject to the relevant provisions of the Protocol, including licensing, tracking and tracing, and enforcement requirements.

Furthermore, it is recommended that Eswatini strengthen its border control capacities, particularly at land borders, by enhancing inspection procedures, improving the monitoring of goods in transit, and deploying additional resources to prevent the spread of illicit tobacco products into the national territory.

PART IV: OFFENCES

Article 14. Unlawful conduct including criminal offences

- **Articles 14.1(a) and (b)**

Each Party must adopt legislative and other necessary measures to ensure that specific conduct is established as unlawful under its national law, as required by **Articles 14.1(a) and (b)** of the Protocol. This includes the production, manufacture, storage, distribution, transit, transport, or sale of tobacco, tobacco products, or manufacturing equipment without the required license or in violation of applicable regulations, as set out under **Article 14.1(a)**.

It also covers smuggling, attempted smuggling, and any other form of illicit trade in tobacco products or manufacturing equipment, as stipulated under **Article 14.1(b)**.

Status

Several legal instruments in Eswatini, including the Criminal Procedure and Evidence Act, 1938²⁶; the Prevention of Organised Crime Act, 2018²⁷; the TPCA, and the Customs and Excise Act, 1971²⁸, define the following conduct as unlawful in relation to tobacco and tobacco products:

²⁶ Kingdom of Eswatini (1938) Criminal Procedure and Evidence Act, 1938. Available at: <https://eswatini.ii.org/akn/sz/act/1938/67/eng@1998-12-01>

²⁷ Kingdom of Eswatini (2018) Prevention of Organised Crime Act, 2018. Available at: https://gov.sz/images/justice/Prevention-of-Organised-Crime-Act-2018_23012019_114020.pdf

²⁸ Kingdom of Eswatini (1971) Customs and Excise Act, 1971. Available at: <https://www.ers.org.sz:8000/documents/CustomsandExciseAct1971.pdf>

- The manufacture, import, sale, or distribution of tobacco and tobacco products without the required license;
- Smuggling or attempted smuggling of tobacco products;
- Falsification of markings on tobacco products;
- Acting in bad faith within the tobacco supply chain;
- Failure to create or maintain required records, or the maintenance of false records.

These measures contribute to aligning Eswatini’s national legal framework with several key obligations under the Protocol.

However, Eswatini has not criminalized offences related to the illicit manufacture, possession, or distribution of tobacco manufacturing equipment, as required by the Protocol.

Recommendations

It is recommended that Eswatini conduct a comprehensive review of its legislative framework to determine how these laws can be better leveraged and harmonized to effectively combat illicit trade in tobacco products, in line with the requirements of the Protocol.

Eswatini should also establish a system for regularly collecting and publishing statistical data on enforcement actions related to illicit trade in tobacco products. Strengthening data collection would help identify gaps in the current sanctioning regime and guide the development of more effective and proportionate enforcement responses, as encouraged by the Protocol.

In addition, it is recommended that Eswatini amend the TPCA to explicitly include provisions addressing the illicit manufacture, possession, and trade of tobacco manufacturing equipment. This amendment would ensure full alignment with the obligations set out under the Protocol.

Finally, Eswatini is encouraged to ensure that the Illicit Drugs, Drug Trafficking, Poisons, and Related Substances Control Bill currently under development explicitly incorporates provisions supporting the enforcement against illicit trade in tobacco products, thereby enhancing the range of legal tools available to national authorities.

- **Article 14.1(c)-(e)**

Parties are required to prohibit the illicit manufacture of tobacco products and manufacturing equipment, as well as the use of false identification markings on packaging, in accordance with **Article 14.1(c)(i)** of the Protocol. This prohibition must also extend to all related commercial activities involving illicitly manufactured products.

Parties must also prohibit the mixing of tobacco and non-tobacco products for the purpose of concealment, as outlined in **Article 14.1(d)**, and the intermingling of tobacco products with non-tobacco products in a single container when removed from free zones, as required under **Article 14.1(e)**.

Status

Several provisions in Eswatini's Criminal Procedure and Evidence Act, the Prevention of Organised Crime Act, the TPCA, and the Customs and Excise Act, establish that the illicit manufacture, testing, sale, transport, storage, packaging, labelling, import, and export of tobacco and tobacco products are unlawful. These measures contribute to the implementation of key obligations under the Protocol.

However, there is currently no explicit prohibition in national legislation against the mixing of tobacco products with non-tobacco products for the purpose of concealment, nor against the intermingling of tobacco products with non-tobacco products in a single container when removed from free zones, as required under Article 14.1(d) and Article 14.1(e) of the Protocol.

Recommendations

It is recommended that Eswatini strengthen its regulatory framework governing the wholesaling, brokering, sale, and transport of tobacco products. This should include the introduction of stricter penalties for violations, the enhancement of inspection protocols, and the establishment of comprehensive documentation and security measures for transshipment activities.

It is further recommended that Eswatini amend the TPCA to reinforce provisions related to the transportation of tobacco products, both generally and during their removal from Free Zones, to prevent diversion into illicit trade channels.

- **Article 14.1(f)-(i)**

Under **Article 14.1(f)** of the Protocol, Parties must adopt measures to prohibit the use of the Internet, telecommunications, or any other evolving technologies to facilitate the illicit trade in tobacco products.

In accordance with **Article 14.1(g)**, Parties are also required to prohibit licensed individuals from purchasing tobacco products or manufacturing equipment from unlicensed persons.

Furthermore, under **Article 14.1(h)**, Parties must make it unlawful to obstruct or otherwise interfere with public officials in the execution of their duties related to the enforcement of laws against illicit trade.

Article 14.1(i) requires Parties to criminalize specific acts, including making false or incomplete statements (**Article 14.1(i)(i)**), mis-declaring information to avoid duties or taxes (**Article 14.1(i)(ii)**), and falsifying or failing to maintain accurate records (**Article 14.1(i)(iii)**).

Status

Several provisions in Eswatini's Criminal Procedure and Evidence Act, the Prevention of Organised Crime Act, the TPCA, and the Customs and Excise Act, define the following acts as unlawful in relation to tobacco and tobacco products:

- Sales of tobacco products through the internet, mail, and other delivery services;
- Sales through vending machines under certain restricted circumstances;
- Obstructing any public officer or authorized officer in the performance of their duties;
- Making false, misleading, or incomplete statements to public officers or authorized officers during activities related to the prevention, deterrence, detection, investigation, or elimination of illicit trade in tobacco, tobacco products, or manufacturing equipment;
- Tax evasion is connected to the trade of tobacco products.

Recommendations

It is recommended that Eswatini strengthen monitoring and compliance mechanisms across all prohibited sales channels, including the internet, postal services, and vending machines. This should include the introduction of stricter penalties, improved record-keeping requirements, and increased public awareness initiatives.

It is further recommended that Eswatini enhance inter-agency collaboration and leverage technology to enable real-time monitoring of sales activities. Regulatory bodies should also be equipped with adequate training and resources to conduct effective inspections and enforce tobacco control measures.

- **Article 14.1(j)**

Article 14.1(j) of the Protocol requires Parties to establish the laundering of proceeds derived from illicit activities related to tobacco products and manufacturing equipment as a criminal offence. This includes proceeds generated from offences such as illicit manufacture, sale, distribution, smuggling, and misrepresentation.

Criminalizing the laundering of these proceeds strengthens national enforcement frameworks and reduces the financial incentives driving illicit trade.

Status

In Eswatini, the Prevention of Corruption Act, 2006²⁹ criminalizes a range of corrupt practices, including bribery, conflicts of interest, and the defrauding of public revenue. Money laundering is addressed separately under section 4 of the MLFPA, which explicitly criminalizes such conduct and defines the offences that constitute money laundering under national law.

In addition, the Serious Offences (Confiscation of Proceeds) Act, 2001³⁰ and the MLFPA provide for the forfeiture of property, proceeds and instrumentalities associated with unlawful activities or money laundering offences, with such measures undertaken by the Office of the Director of Public Prosecutions. Eswatini also extends liability to participatory acts in money

²⁹ Kingdom of Eswatini (2006) *Prevention of Corruption Act, 2006*. Available at: <https://faolex.fao.org/docs/pdf/swa202793.pdf>

³⁰ Kingdom of Eswatini (2001) *Serious Offences (Confiscation of Proceeds) Act, 2001 (Act No. 8 of 2001)*. Available at: <https://eswatini.ii.org/akn/sz/act/2001/8/eng@2001-09-21>

laundering committed outside its territory, treating such conduct as offences subject to penalties comparable to those applicable to domestic offences.

Despite these positive developments, important gaps remain. Notably, Eswatini currently lacks a clear legal framework establishing competent jurisdiction over extraterritorial money laundering offences. This creates limitations in effectively prosecuting acts committed outside the national territory, which is particularly relevant given the cross-border nature of illicit trade in tobacco products.

Furthermore, while money laundering is broadly criminalized, there is no explicit provision linking the laundering of proceeds from illicit trade in tobacco products and manufacturing equipment to national anti-money laundering laws, potentially weakening enforcement aligned with the Protocol. In addition, operational enforcement mechanisms, such as coordinated investigations and specialized prosecutorial approaches specifically targeting proceeds from illicit tobacco trade, have yet to be formally established.

Recommendations

It is recommended that Eswatini ensure sanctions under national legislation are fully applied to all illicit activities involving tobacco products and manufacturing equipment, with consistent and effective penalties.

Eswatini should also strengthen data collection systems and inter-agency coordination to improve the tracking and reporting of corruption and money laundering cases linked to illicit trade.

It is recommended that Eswatini establish clear jurisdiction over money laundering offences committed outside its territory to enable the effective prosecution of cross-border illicit activities.

To fully comply with Article 14.1(j) of the Protocol, Eswatini is recommended to explicitly include the laundering of proceeds from illicit tobacco trade within its anti-money laundering framework and strengthen enforcement mechanisms.

Article 15: Liability of legal persons

Article 15 of the Protocol requires Parties to establish the liability of legal persons, whether criminal, civil, or administrative (**Article 15.2**), for unlawful conduct outlined in Article 14. This liability must be established without prejudice to the criminal or civil liability of natural persons who engage in such conduct (**Article 15.3**). In doing so, Parties ensure that both individuals and legal entities are held accountable for offences related to the illicit trade in tobacco products (**Article 15.1**).

Status

Under the Prevention of Organised Crime Act, the Criminal Procedure and Evidence Act, and the MLFTPA, Eswatini establishes criminal, civil, and administrative liability for legal persons, irrespective of the liability of the natural persons involved. These provisions provide a basis for holding companies and other legal entities accountable for unlawful activities, including those related to illicit trade.

However, there is no specific legal provision in Eswatini's current framework explicitly linking the liability of legal persons to offences related to the illicit trade in tobacco products and manufacturing equipment.

Recommendations

It is recommended that Eswatini ensure the full application of measures establishing the liability of legal persons involved in offences related to the illicit trade in tobacco products and manufacturing equipment.

Eswatini should apply effective, proportionate, and dissuasive sanctions to any legal person used or created to facilitate such offences, in full compliance with the requirements of Article 15 of the Protocol.

Article 16: Prosecutions and sanctions

Article 16 of the Protocol requires Parties to establish effective, proportionate, and dissuasive criminal or non-criminal sanctions, including monetary penalties, for unlawful conduct described under Article 14.

In addition, **Article 16.2** calls on Parties to exercise any discretionary legal powers available to them to maximize the effectiveness of enforcement measures, with a particular focus on strengthening deterrence against illicit trade in tobacco products.

Status

In Eswatini, the Criminal Procedure and Evidence Act, the TPCA, and the Tobacco Act, 1933, establish a system of effective, proportionate, and dissuasive **sanctions** to address illicit tobacco trade activities. These sanctions include a combination of criminal penalties, such as fines and imprisonment, and non-criminal measures, including the confiscation of goods and revocation of licenses.

Under the TPCA, a person who contravenes the regulations may, upon conviction, be liable in the case of a natural person to a fine not exceeding one thousand Emalangeni or to imprisonment for up to three months for a first offence. For a second or subsequent offence, the penalty increases to a fine not exceeding five thousand Emalangeni or imprisonment for up to one year. In the case of a body corporate or an association of persons, the fine may be up to thirty thousand Emalangeni for a first offence, and up to fifty thousand Emalangeni for subsequent offences.

This framework reflects the intent of Article 16.1 of the Protocol by combining criminal, civil, and administrative sanctions.

While sanctions are established, the fines imposed for natural persons, particularly for first offences, may not be sufficiently dissuasive to deter serious illicit trade activities. There is limited evidence of systematic use of discretionary legal powers, such as enhanced penalties or forfeiture mechanisms, to maximize deterrence as encouraged under Article 16.2.

Recommendations

It is recommended that Eswatini strengthen inter-agency collaboration among the Public Prosecutor's Office, the Attorney General's Office, the Anti-Corruption Commission, the Eswatini Revenue Service (ERS), the REPS, and other enforcement stakeholders through regular information exchange, joint training, and coordinated operations to enhance the effectiveness of enforcement actions against illicit trade in tobacco products.

It is further recommended that Eswatini reinforce its legal and operational framework by improving enforcement capabilities through ongoing professional training, investment in technological tools, and the conduct of proactive investigations. In addition, proportionate, dissuasive, and sufficiently stringent penalties should be applied to deter serious offences.

Article 17: Seizure payments

Article 17 recommends that Parties consider adopting legislative and other measures that authorize authorities 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.

Status

In Eswatini, neither the legislation nor other measures allow for the levying of an amount proportionate to lost taxes and duties where tobacco, tobacco products and/or manufacturing equipment has been seized.

Recommendations

It is recommended that the existing legal and sanctioning framework be reviewed to ensure that the competent authorities may require the producer, manufacturer, distributor, importer or exporter of tobacco, tobacco products and/or manufacturing equipment that have been seized to pay an amount proportional to the amount of taxes and duties not collected.

Article 18: Disposal or destruction

Article 18 recommends that all confiscated tobacco, tobacco products, and manufacturing equipment be destroyed using environmentally friendly methods to the greatest extent possible or disposed of in accordance with national law.

Status

According to the TPCA, any tobacco product that is seized, detained, and determined not to meet regulatory requirements may be confiscated and destroyed, or otherwise disposed of, as ordered by the adjudicator handling the case.

In practice, seized tobacco products are handed over to the REPS, which seeks advice from the Eswatini Environmental Authority on environmentally appropriate methods of destruction. Generally, destruction has been carried out at the premises of private companies equipped with incinerators, in line with environmental considerations.

Eswatini does not have specific legislation requiring the destruction to be conducted using environmentally friendly methods, as recommended under Article 18 of the Protocol. Furthermore, there is no legal provision addressing the destruction or disposal of confiscated tobacco manufacturing equipment.

Recommendations

It is recommended that, to the greatest extent possible, Eswatini adopt environmentally friendly methods for the destruction of all confiscated tobacco, tobacco products, and manufacturing equipment, in accordance with Article 18 of the Protocol.

It is also recommended that Eswatini introduce comprehensive legislative measures to regulate the environmentally sound disposal and destruction of confiscated tobacco products and manufacturing equipment. This should include the adoption of clear regulations developed in consultation with relevant stakeholders, with specific guidelines on approved destruction methods to ensure consistency, transparency, and environmental compliance.

Article 19: Special investigative techniques

Article 19 of the Protocol requires Parties to permit competent authorities to use "controlled delivery" and, where appropriate, other special investigative techniques such as electronic surveillance and undercover operations to combat illicit trade. Parties are also encouraged to conclude bilateral or multilateral agreements to facilitate the use of these investigative techniques and strengthen cross-border cooperation.

Status

Currently, there are no specific special investigative techniques formally established in Eswatini to combat illicit trade. However, investigative authorities, such as the police, have conducted surveillance and controlled deliveries in certain cases and appear to have the operational authority to use special investigative methods in practice, even though these techniques are not explicitly regulated by law.

The Electronic Records (Evidence) Act, 2009³¹ provides for the admissibility of electronic records as evidence in legal proceedings, subject to requirements relating to authenticity and reliability. Evidence obtained through electronic means, supporting the use of electronic surveillance during investigations.

The absence of explicit legal provisions governing the use of controlled delivery, electronic surveillance, and undercover operations limits the consistency and legal certainty of these techniques. Furthermore, there are no formal bilateral or multilateral agreements in place to facilitate the use of special investigative techniques in cross-border operations, as encouraged under Article 19.2 of the Protocol.

Recommendations

It is recommended that Eswatini strengthen its legal framework to explicitly authorize the use of special investigative techniques, including controlled delivery, surveillance, and undercover operations, to enhance the detection and disruption of illicit trade activities.

PART V: INTERNATIONAL COOPERATION

Article 20: General information sharing; Article 21: Enforcement information sharing and Article 22: Information sharing: confidentiality and protection of information

Article 20.3 of the Protocol requires Parties to share general information related to illicit trade in a confidential manner, strictly for use among Parties.

Under **Article 21**, Parties must also share specific information for enforcement purposes to support the detection and investigation of illicit trade activities.

Articles 22.1 and 22.2 require each Party to designate a competent authority responsible for the confidential exchange of both general and enforcement-related information.

Status

In Eswatini, the Ministry of Health is designated as the authority responsible for sharing information related to regional and international cooperation on tobacco and tobacco products.

However, in practice, there is no evidence that the Ministry actively facilitates the exchange of sensitive information necessary for the detection, investigation, and prosecution of illicit trade in tobacco products, as required under Articles 20 and 21 of the Protocol.

³¹ Kingdom of Eswatini (2009) *Electronic Records (Evidence) Act, 2009*. Available at: <https://eswatini.leg.gov.sz/act/2009/6/eng@1998-12-01>

The Criminal Matters (Mutual Assistance) Act, 2001³²(CMMA) is Eswatini's primary law governing international cooperation in criminal matters. Its purpose is to enable Eswatini to request and provide mutual legal assistance to and from foreign states in cases involving criminal investigations, prosecutions, and related proceedings. Under the Act, Eswatini is authorized to share information spontaneously and to honour requests for confidentiality.

While this legal basis exists for mutual assistance, its application to the specific context of illicit trade in tobacco products remains unclear.

Recommendations

It is recommended that Eswatini formally designate a competent national authority responsible for the confidential exchange of both general and enforcement-related information, in accordance with Article 22.1 of the Protocol.

It is also recommended that Eswatini establish clear operational procedures and secure communication channels to facilitate the timely sharing of information, including data generated through the tracking and tracing system and through the use of the global information-sharing focal point established under Article 8, for the detection, investigation, and prosecution of illicit trade in tobacco products.

Articles 23: Assistance and cooperation: training, technical assistance and cooperation in scientific, technical and technological matters; Article 24. Assistance and cooperation: investigation and prosecution of offences; and Article 27: Law enforcement cooperation

Article 23.1 of the Protocol requires Parties to cooperate with each other and with international and regional organizations in providing training, technical assistance, and cooperation in scientific, technical, and technological fields to achieve the objectives of the Protocol.

Under **Article 24.2**, Parties are also required to cooperate and exchange relevant information at both national and international levels to support investigations and prosecutions aimed at combating illicit trade.

Finally, **Article 27.2** obliges Parties to engage in law enforcement cooperation and encourages them to enter into relevant bilateral or multilateral agreements between law enforcement agencies to facilitate such cooperation.

Status

Eswatini has demonstrated its commitment to regional cooperation by supporting the establishment of the SADC Centre of Excellence in Forensic Sciences, aimed at enhancing the use of forensic techniques and advancing forensic technologies for drug analysis, investigations, evidence gathering, prosecutions, and judicial proceedings. This contributes to strengthening

³² Kingdom of Eswatini (2001) Criminal Matters (Mutual Assistance) Act, 2001. Available at: <https://eswatinilii.org/akn/sz/act/2001/7/eng@2001-09-21>

technical, scientific, and technological cooperation as encouraged under Article 23 of the Protocol.

The Constitution of Eswatini provides that the primary objective of the Defence Force is to defend and protect the sovereignty, integrity, and people of the Kingdom. While this underscores the national commitment to security, it does not specifically address cooperation mechanisms related to combating illicit trade.

Under the Prevention of Organised Crime Act, the High Court of Eswatini holds jurisdiction over criminal offences committed both within and outside the country. However, there is currently no general provision in national legislation explicitly covering jurisdiction over criminal offences committed onboard vessels or aircraft, acts committed by or against nationals and stateless persons abroad, offences against the State, or cases where extradition is refused, and the offender remains within Eswatini's territory. These limit full alignment with the jurisdictional bases required for effective law enforcement cooperation under the Protocol.

Eswatini is actively engaged in regional and international law enforcement cooperation through a variety of frameworks. Eswatini has experience in joint operations, particularly in money-laundering cases in collaboration with South African authorities and through Interpol's initiatives with the South African Police Service and SADC. It has also established cooperation among national agencies through memoranda of understanding between the Eswatini ACC, the Central Bank, the Financial Intelligence Unit, the Police, and the ERS. Moreover, Eswatini is party to regional cooperation frameworks among SADC member states to combat illicit trade in tobacco products and participates actively in SARPCCO (Southern African Regional Police Chiefs Cooperation Organisation), which facilitates cross-border cooperation to address transnational crime, including anti-drug trafficking initiatives.

Recommendations

It is recommended that Eswatini make full use of the international cooperation mechanisms provided under the Protocol, including strengthening operational collaboration among prosecution, customs, and law enforcement agencies, both nationally and with subregional counterparts.

Eswatini is further encouraged to deepen collaboration with civil society organizations that have expertise in transparency, anti-corruption, and anti-money laundering issues, as well as in the implementation of the WHO FCTC and the Protocol, to enhance governance and oversight mechanisms.

It is also recommended that Eswatini maximize international cooperation with key organizations such as SACU, SADC, Interpol, and the WCO to support the effective implementation of Protocol provisions.

Eswatini should also consider strengthening and expanding ongoing cooperation with neighbouring countries, particularly Mozambique, in the prevention, investigation, and prosecution of offences related to illicit trade in tobacco products.

a regional law enforcement coordination mechanism to combat drug trafficking and associated organized crime along the Southern Route of the Indian Ocean, as a platform for coordinated efforts against illicit trade in tobacco products, building on existing collaboration with its security forces.

Finally, it is recommended that Eswatini explore the establishment of a cross-border network of informants with neighbouring countries to facilitate the identification of informal border crossings and improve the detection of illicit trade routes.

Articles 28: Mutual administrative assistance and Article 29: Mutual legal assistance

Article 28 requires that Parties shall provide information “to ensure proper application of customs and other relevant law” in order to address and combat illicit trade.

In terms of legal assistance, **Article 29** requires that Parties provide one another mutual legal assistance for a number of different purposes (**Article 29.3(a)-(i)**) with respect to investigations, prosecutions and judicial proceedings under relevant offences.

Status

Within the SACU region, Eswatini benefits from mutual administrative assistance frameworks that facilitate cooperation in customs matters across the subregion. The Economic Partnership Agreement (EPA) between the European Union and the SADC States fosters administrative cooperation on trade in goods. However, there are no practical examples demonstrating the application of these agreements specifically to tobacco control or mutual administrative assistance in combating illicit trade.

The CMMA, mentioned before, provides the legal framework for mutual legal assistance in Eswatini. In recent years, Eswatini has both received and sent mutual legal assistance requests, notably with South Africa, Lesotho, Zambia, and the Organization for Security and Co-operation in Europe (OSCE). The requests received have mainly concerned offences such as fraud, corruption, and money laundering. To date, per our knowledge from this needs assessment, Eswatini has not refused any incoming requests for mutual legal assistance.

While Eswatini does not have bilateral mutual legal assistance treaties, it is a party to several multilateral frameworks, including relevant treaties under the African Union, the SADC Protocol, and the Commonwealth Scheme Relating to Mutual Assistance in Criminal Matters (Harare Scheme). The Minister of Justice acts as the central authority for handling mutual legal assistance requests. However, in practice, such requests are often received through the Ministry of Foreign Affairs, reflecting a need for clearer operational procedures to streamline the process.

Recommendations

It is recommended that Eswatini strengthen its bilateral and multilateral cooperation frameworks by making full and effective use of existing agreements and regional mechanisms to combat illicit trade in tobacco products.

It is also recommended that Eswatini develop clear guidelines, regulations, operating procedures, and defined timeframes for the handling of mutual legal assistance requests. Efforts should also be made to streamline institutional arrangements for mutual legal assistance, ensuring a coordinated and efficient process between the Ministry of Justice and the Ministry of Foreign Affairs.

Articles 30: Extradition and Article 31: Measures to ensure extradition

Parties are required to apply **Article 30** to criminal offences established under Article 14 of the Protocol when the person sought for extradition is in the requested Party's territory, the offence is punishable under both Parties' laws, and the offence carries a penalty of at least four years' imprisonment. Extradition requests can be based on this Protocol if no treaty exists between Parties, and Parties should recognize these offences as extraditable. Extradition procedures should be expedited, and fair treatment guaranteed. Parties must consult before refusing extradition and seek bilateral or multilateral agreements to enhance extradition effectiveness (**Article 30**).

Parties must ensure that, subject to domestic law and treaties, individuals sought for extradition can be taken into custody or other measures to ensure their presence at extradition proceedings. These measures should be promptly notified to the requesting Party. Individuals subject to these measures have the right to communicate with their State's representative and be visited by them (**Article 31**).

Status

The primary legislation governing extradition in Eswatini is the Extradition Act, 1968 (EA)³³. Extradition is granted based on the existence of an agreement and the principle of reciprocity.

Eswatini is party to two bilateral extradition treaties, one with South Africa and one with the United States of America and also participates in multilateral extradition frameworks through SADC and the African Union. Under the London Scheme on Extradition, Eswatini can also facilitate extradition among Commonwealth countries.

Issues of dual criminality are handled according to the terms of the applicable treaties. Although dual criminality is not a formal requirement under the EA, it is required under Eswatini's treaty with South Africa. While the EA does not consider offences involving fiscal matters as a ground for refusal of extradition, some restrictions on extradition for fiscal offences exist under Eswatini's bilateral and multilateral treaties.

³³ *Kingdom of Eswatini (1968) Extradition Act (No. 67 of 1968), ss. 3–4. Available at: <https://eswatini.ii.org/akn/sz/act/1968/13/eng@1998-12-01>*

Requests for extradition are formally addressed to the Prime Minister, but in practice, they are usually processed through the Ministry of Foreign Affairs or the Ministry of Justice and forwarded to the Director of Public Prosecutions, who reviews the request considering the applicable legal and treaty requirements before court proceedings are initiated.

The EA does not include provisions for simplified extradition procedures, which could delay cooperation in urgent cases. Furthermore, while the legal framework generally supports extradition, it is not specifically adapted to address modern cross-border offences such as those related to illicit trade in tobacco products.

Recommendations

It is recommended that Eswatini adopts and implements a simplified and expedited extradition procedures, to enhance international cooperation and facilitate quicker responses in urgent cases involving cross-border offences such as illicit trade in tobacco products.

Eswatini is also recommended to update its extradition framework to explicitly cover offences related to illicit trade, including the illicit manufacture, distribution, and transport of tobacco products and manufacturing equipment.

Furthermore, it is recommended that Eswatini expand the scope and number of its bilateral extradition agreements to strengthen its ability to cooperate with a wider range of countries in addressing illicit trade.

Finally, Eswatini should actively promote the use of its participation in multilateral cooperation frameworks, such as those under SADC and the Commonwealth London Scheme, to further facilitate extradition in cases related to illicit tobacco trade.

PART VI: REPORTING

Articles 32: Reporting and exchange of information (also in reference to Article 20 of the Protocol)

Under **Article 20** of the Protocol, Parties are required to ensure – through the means of the WHO FCTC reporting instrument - the reporting of certain information regarding tobacco trade in their respective jurisdictions, including general information on the import, export and manufacturing of tobacco products, details on seized tobacco products and the modus operandi and concealment methods reportedly used in illicit tobacco trade.

Furthermore, **Article 32.1** establishes an obligation for Parties to submit periodic reports regarding the implementation of the Protocol in their respective jurisdictions, including information pursuant to **Article 20**.

Status

According to the records of the Convention Secretariat, Eswatini has never submitted a report on its implementation of the Protocol³⁴.

Recommendations

*It is recommended that Eswatini regularly submit reports to the Convention Secretariat on the implementation of the Protocol, in full accordance with its reporting obligations. This includes ensuring the timely submission of its reports starting with the 2027 reporting cycle. The Convention Secretariat provides technical assistance upon request to each reporting Party.*³⁵

³⁴ WHO Framework Convention on Tobacco Control (n.d.) Protocol implementation database: Eswatini. Available at: <https://extranet.who.int/fctcapps/fctcapps/protocol/implementation-database/parties/eswatini>

³⁵ WHO Framework Convention on Tobacco Control (n.d.) Reporting on the implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products. Available at: <https://fctc.who.int/protocol/reporting>

Annex: *List of selected government agencies, intergovernmental and non-governmental organisations that took part in the joint needs assessment exercise.*

Parliament Finance portfolio committee
Ministry of Health
Ministry of Finance
Ministry of Commerce, Industry and Trade
Royal Eswatini Police Services
Association of Students Against Drug Abuse and Trafficking (SADAT)
Ministry of Justice and Constitutional Affairs (Attorney General's office, Department of Public Prosecutor)
Eswatini Revenue Services
Anti-Corruption Commission
Umbutfo Eswatini Defence Forces