Basic information

2015/0101(NLE) NLE - Non-legislative enactments	Procedure completed
World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU See also 2003/0316(CNS) **Subject** 2.10.01 Customs union, tax and duty-free, Community transit 3.10.06.09 Industrial plants, tobacco, hops 6.20.02 Export/import control, trade defence, trade barriers 6.20.04 Union Customs Code, tariffs, preferential arrangements, rules of origin	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
INTA International Trade	SZEJNFELD Adam (PPE)	13/07/2015
	Shadow rapporteur GUTIÉRREZ PRIETO Sergio (S&D) MCCLARKIN Emma (ECR) CHARANZOVÁ Dita (ALDE) BUCHNER Klaus (Verts/ALE)	

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	

Council of the European Union

European

Commission DG	Commissioner

Commission	European Anti-Fraud Office (OLAF)	GEORGIEVA Kristalina

Key events

Date	Event	Reference	Summary
04/05/2015	Preparatory document	COM(2015)0194	Summary
09/02/2016	Legislative proposal published	14384/2015	Summary
11/04/2016	Committee referral announced in Parliament		
21/04/2016	Vote in committee		
27/04/2016	Committee report tabled for plenary, 1st reading/single reading	A8-0154/2016	Summary
07/06/2016	Decision by Parliament	T8-0238/2016	Summary
07/06/2016	Results of vote in Parliament		
17/06/2016	Act adopted by Council after consultation of Parliament		
17/06/2016	End of procedure in Parliament		
01/10/2016	Final act published in Official Journal		

Technical information

Procedure reference	2015/0101(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Amendments and repeals	See also 2003/0316(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 218-p8-a2 Treaty on the Functioning of the European Union TFEU 113 Treaty on the Functioning of the European Union TFEU 033 Treaty on the Functioning of the European Union TFEU 114 Treaty on the Functioning of the European Union TFEU 207 Treaty on the Functioning of the European Union TFEU 218-p6a
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	INTA/8/03425

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE567.603	06/04/2016	
Committee report tabled for plenary, 1st reading/single reading		A8-0154/2016	27/04/2016	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0238/2016	07/06/2016	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	15044/2013	18/11/2013	
Legislative proposal	14384/2015	09/02/2016	Summary

European Commission

Document type	Reference	Date	Summary
Preparatory document	COM(2015)0194	04/05/2015	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Decision 2016/1749
OJ L 268 01.10.2016, p. 0001 Summary

World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU

2015/0101(NLE) - 27/04/2016 - Committee report tabled for plenary, 1st reading/single reading

The Committee on International Trade adopted the report by Adam SZEJNFELD (EPP, PL) on the draft Council decision on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union.

The committee recommended that the European Parliament should **give its consent** to the conclusion of the Agreement.

To recall, the World Health Organisation's Framework Convention on Tobacco Control (FCTC) is the first global health treaty. It was developed in response to the global tobacco epidemic and aims to tackle some of its causes, including illicit trade in tobacco products. It entered into force on 27 February 2005 and there are currently 180 Parties to the Convention.

The Protocol to Eliminate Illicit Trade in Tobacco Products (FCTC Protocol) is based on Article 15 of the FCTC and was adopted by the Conference of the Parties on 12 November 2012 in Seoul. This Protocol currently constitutes the only multilateral regulatory initiative in the area. The EU signed the FCTC Protocol on 20 December 2013. The Protocol needs to be ratified by 40 parties for it to enter into force and its ratification without delay by the European Union (and its Member States) would significantly contribute to the swift entry into force and implementation of the FCTC Protocol.

In a short justification which accompanies the report, it is recalled that illicit trade in tobacco products, in particular cigarette smuggling is a criminal activity posing a serious threat to public health and causes huge losses of revenue to the EU in terms of unpaid taxes and customs duties. Estimates indicate more than EUR 10 billion losses of revenue annually to the EU and Member States.

A substantial part of the illicit tobacco products in the EU originate from the third countries. Therefore an effective global regime is the best policy option to combat this cross-border phenomenon.

The FCTC Protocol is the main global initiative in this area. It contains a complex set of measures, rules and policy in the field of fighting illicit trade in tobacco products.

The Protocol:

- aims to make the supply chain of tobacco, tobacco products and manufacturing equipment secure by establishing a global tracking and tracing system;
- contains provisions to ensure control include licencing, record keeping requirements, regulation of Internet- sales, duty-free sales and international transit;
- establishes offences, addresses liability and seizure payments as well as the disposal of confiscated products;
- aims to boost international cooperation including through mutual administrative assistance in customs matters.

With regard to these elements, Members are of the opinion that the ratification of the FCTC Protocol will benefit public health and help the international fight against illicit tobacco trade, tax evasion and organised crime.

World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU

2015/0101(NLE) - 04/05/2015 - Preparatory document

PURPOSE: to conclude, on behalf of the European Union, the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation' s Framework Convention on Tobacco Control, in so far as the provisions of the Protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the World Health Assembly adopted in 2003 the **Framework Convention on Tobacco Control (FCTC)**, which aims at reducing tobacco-related deaths and diseases around the world in a comprehensive manner. The EU concluded the FCTC by Council Decision 2004/513/EC.

The Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control was signed on 20 December 2013.

Illicit trade in tobacco products and in particular cigarette smuggling into the EU and within the EU is a **criminal activity causing huge losses in revenue** for the EU and the Member States in terms of unpaid taxes and customs duties. Estimates indicate more than €10 billion losses of revenue annually to the EU and Member States.

Most of the EU Member States are affected by the illicit tobacco trade, either as points of entry or transit or destination countries. Since the illicit products mostly originate from countries outside the EU, international cooperation, in particular also based on clear legislative procedures, is key to addressing the problem of illicit trade. The FCTC Protocol currently constitutes the **only multilateral regulatory initiative in the area**.

It is now necessary to approve the Protocol on behalf of the European Union.

CONTENT: under this proposal, the Council is invited to approve, on behalf of the European Union, the **Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control**.

This Decision applies to the provisions of the Protocol which **do not fall** within the scope of Title V of Part III of the Treaty on the Functioning of the European Union (Freedom, Security and Justice).

The Protocol contains a complex **set of measures**, rules and policy in the field of fighting illicit trade in tobacco products. The Protocol provisions fall into different areas of EU activity which may be subdivided as follows:

- the manufacture and sale of tobacco (and related) products;
- customs controls and cooperation including through mutual administrative assistance in customs matters;
- approximation of criminal offences, judicial cooperation in criminal matters and police cooperation;
- harmonised taxation and related rules.

The Protocol:

- requires the introduction of a licensing, equivalent approval or control system by a competent authority for any natural or legal person involved in the manufacturing and in the import and export of tobacco products and manufacturing equipment;

- requires all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment to conduct customer due diligence;
- also provides for the establishment of a global tracking and tracing regime, within five years of the entry into force of the Protocol, consisting of national and/or regional tracking and tracing systems controlled by the Parties for all tobacco products manufactured in or imported into their territory.

Those articles are complemented by provisions on: (i) record-keeping and security and preventive measures, including anti-money-laundering measures and reporting of suspicious transactions; (ii) sales by Internet; (iii) duty free sales of tobacco products and the obligation to implement effective controls on tobacco and tobacco products in the free zones, including not mixing tobacco products with non-tobacco products at the time of removal from a free zone.

Part IV of the Protocol defines the conduct to be established as unlawful under the Parties' legislation and obliges the Parties to ensure that natural and legal persons are held liable for such unlawful conduct, including criminal offences. Further provisions concern seizure payments, the handling of confiscated tobacco and special investigative techniques.

Part V of the Protocol contains provisions for the exchange of relevant information between the Parties, cooperation and mutual assistance (both administrative and legal in relation to criminal matters), jurisdiction and extradition.

In parallel to this proposal, the Commission presented a separate proposal for a Council Decision on the conclusion of the Protocol, on behalf of the European Union, as regards provisions which fall under Title V of Part III of the TFEU.

World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU

2015/0101(NLE) - 09/02/2016 - Legislative proposal

PURPOSE: to conclude, on behalf of the European Union, the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the conclusion of the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC) was approved on behalf of the Community by Council Decision 2004/513/EC. The Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO FCTC ("the Protocol") was signed on 20 December 2013, subject to its conclusion at a later date.

The Union has exclusive competence for a number of provisions of the Protocol which fall within the scope of the Union's common commercial policy or in areas where the Union has established common rules. Therefore, the Protocol should be approved on behalf of the Union as regards matters falling within Union's competence only insofar as the Protocol may affect these common rules or alter their scope.

CONTENT: the proposed Decision seeks the **approval, on behalf of the Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO Framework Convention on Tobacco Control**, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union (area of freedom, security and justice).

The Protocol contains a set of measures and strategies in the field of fighting illicit trade in tobacco products.

The Protocol represents a significant contribution to the international efforts to eliminate all forms of illicit trade in tobacco products, and thereby fight the circumvention of tax and customs duties obligations and reduce the supply of tobacco products.

The Protocol also contributes to the smooth functioning of the internal market for tobacco products whilst ensuring a high level of public health.

For details about the content of the Protocol, please refer to the summary of the Commission's initial legislative proposal of 4.5.2015.

World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU

2015/0101(NLE) - 04/05/2015

PURPOSE: to conclude, on behalf of the European Union, the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation' s Framework Convention on Tobacco Control, in so far as the provisions of the Protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the World Health Assembly adopted in 2003 the **Framework Convention on Tobacco Control (FCTC)**, which aims at reducing tobacco-related deaths and diseases around the world in a comprehensive manner. The EU concluded the FCTC by Council Decision 2004/513/EC.

The Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control was signed on 20 December 2013.

Illicit trade in tobacco products and in particular cigarette smuggling into the EU and within the EU is a **criminal activity causing huge losses in revenue** for the EU and the Member States in terms of unpaid taxes and customs duties. Estimates indicate more than €10 billion losses of revenue annually to the EU and Member States.

Most of the EU Member States are affected by the illicit tobacco trade, either as points of entry or transit or destination countries. Since the illicit products mostly originate from countries outside the EU, international cooperation, in particular also based on clear legislative procedures, is key to addressing the problem of illicit trade. The FCTC Protocol currently constitutes the **only multilateral regulatory initiative in the area**.

It is now necessary to approve the Protocol on behalf of the European Union.

CONTENT: under this proposal, the Council is invited to approve, on behalf of the European Union, the **Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control**.

This Decision applies to the provisions of the Protocol which **do not fall** within the scope of Title V of Part III of the Treaty on the Functioning of the European Union (Freedom, Security and Justice).

The Protocol contains a complex **set of measures**, rules and policy in the field of fighting illicit trade in tobacco products. The Protocol provisions fall into different areas of EU activity which may be subdivided as follows:

- the manufacture and sale of tobacco (and related) products;
- customs controls and cooperation including through mutual administrative assistance in customs matters;
- approximation of criminal offences, judicial cooperation in criminal matters and police cooperation;
- harmonised taxation and related rules.

The Protocol:

- requires the introduction of a licensing, equivalent approval or control system by a competent authority for any natural or legal person involved in the manufacturing and in the import and export of tobacco products and manufacturing equipment;
- requires all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment to conduct customer due diligence;
- also provides for the establishment of a global tracking and tracing regime, within five years of the entry into force of the Protocol, consisting of national and/or regional tracking and tracing systems controlled by the Parties for all tobacco products manufactured in or imported into their territory.

Those articles are complemented by provisions on: (i) record-keeping and security and preventive measures, including anti-money-laundering measures and reporting of suspicious transactions; (ii) sales by Internet; (iii) duty free sales of tobacco products and the obligation to implement effective controls on tobacco and tobacco products in the free zones, including not mixing tobacco products with non-tobacco products at the time of removal from a free zone.

Part IV of the Protocol defines the conduct to be established as unlawful under the Parties' legislation and obliges the Parties to ensure that natural and legal persons are held liable for such unlawful conduct, including criminal offences. Further provisions concern seizure payments, the handling of confiscated tobacco and special investigative techniques.

Part V of the Protocol contains provisions for the exchange of relevant information between the Parties, cooperation and mutual assistance (both administrative and legal in relation to criminal matters), jurisdiction and extradition.

In parallel to this proposal, the Commission presented a separate proposal for a Council Decision on the conclusion of the Protocol, on behalf of the European Union, as regards provisions which fall under Title V of Part III of the TFEU.

World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU

2015/0101(NLE) - 17/06/2016 - Final act

PURPOSE: to conclude, on behalf of the European Union, the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation' s Framework Convention on Tobacco Control, in so far as the provisions of the Protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union (TFEU) are concerned.

NON-LEGISLATIVE ACT: Council Decision (EU) 2016/1749 on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union.

CONTENT: the Council Decision **approves, on behalf of the Union, the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control**, in so far as the provisions of the Protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union (TFEU) are concerned (Freedom, Security and Justice).

The Protocol to Eliminate Illicit Trade in Tobacco Products to the WHO FCTC ('the Protocol') was signed on 20 December 2013, subject to its conclusion at a later date.

The Protocol represents a significant contribution to the international efforts to eliminate all forms of illicit trade in tobacco products, and thereby fight the circumvention of tax and customs duties obligations and reduce the supply of tobacco products. The Protocol also contributes to the smooth functioning of the internal market for tobacco products whilst ensuring a high level of public health.

The Protocol:

- aims to make the supply chain of tobacco, tobacco products and manufacturing equipment secure by establishing a global tracking and tracing system;
- contains provisions to ensure control include licencing, record keeping requirements, regulation of Internet- sales, duty-free sales and international transit;
- establishes offences, addresses liability and seizure payments as well as the disposal of confiscated products;
- aims to boost international cooperation including through mutual administrative assistance in customs matters.

ENTRY INTO FORCE: 1.10.2016.

World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU

2015/0101(NLE) - 07/06/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 608 votes to 11, with 14 abstentions, a legislative resolution on the draft Council decision on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union.

In line with the recommendation made by the Committee on International Trade, Parliament **gave its consent** to the conclusion of the Agreement.

The Protocol to Eliminate Illicit Trade in Tobacco Products (FCTC Protocol) was adopted by the Conference of the Parties on 12 November 2012 in Seoul and contains a complex set of measures, rules and policy in the field of fighting illicit trade in tobacco products.

The Protocol:

- aims to make the supply chain of tobacco, tobacco products and manufacturing equipment secure by establishing a global tracking and tracing system;
- contains provisions to ensure control include licencing, record keeping requirements, regulation of Internet- sales, duty-free sales and international transit;
- establishes offences, addresses liability and seizure payments as well as the disposal of confiscated products;
- aims to boost international cooperation including through mutual administrative assistance in customs matters.