

#### 4. a) Protocol to Eliminate Illicit Trade in Tobacco Products

*Seoul, 12 November 2012*

**ENTRY INTO FORCE:** 25 September 2018, in accordance with article 45 which reads as follows: 1. This Protocol shall enter into force on the ninetieth day following the date of deposit of the fortieth instrument of ratification, acceptance, approval, formal confirmation or accession with the Depositary. 2. For each Party to the WHO Framework Convention on Tobacco Control that ratifies, accepts, approves or formally confirms this Protocol or accedes thereto after the conditions set out in paragraph 1 for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval, accession or formal confirmation. 3. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States Members of that organization.

**REGISTRATION:** 1 October 2018, No. 55487.

**STATUS:** Signatories: 54. Parties: 62.

**TEXT:** The above Protocol, which was adopted during the fifth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control by Decision [FCTC/COP5 \(1\)](#) of 12 November 2012, will be open for signature at a signing ceremony to be held in Geneva, Switzerland, from 10 to 11 January 2013 and, thereafter, at United Nations Headquarters in New York.  
In accordance with its article 43, the Protocol shall be open for signature by all Parties to the WHO Framework Convention on Tobacco Control at World Health Organization Headquarters in Geneva from 10 to 11 January 2013, and thereafter at United Nations Headquarters in New York until 9 January 2014.

<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Ratification, Formal confirmation(c)</i>	<i>Participant</i>	<i>Signature</i>	<i>Approval(AA), Acceptance(A), Accession(a), Ratification, Formal confirmation(c)</i>
Austria .....	9 Jan 2014	28 Oct 2014	Ecuador .....	25 Sep 2013	15 Oct 2015
Belgium .....	17 May 2013	22 Feb 2019	Egypt.....		10 Sep 2020 a
Benin.....	24 Sep 2013	6 Jul 2018	Eswatini .....		21 Sep 2016 a
Botswana .....	1 Oct 2013		European Union.....	20 Dec 2013	24 Jun 2016 c
Brazil .....		14 Jun 2018 a	Fiji .....	11 Jul 2013	24 Apr 2019
Burkina Faso.....	8 Mar 2013	30 Mar 2016	Finland .....	25 Sep 2013	
Cabo Verde .....		16 Oct 2019 a	France .....	10 Jan 2013	30 Nov 2015
Chad.....		13 Jun 2018 a	Gabon.....	10 Jan 2013	1 Oct 2014 A
China.....	10 Jan 2013		Gambia.....		26 Sep 2016 a
Colombia .....	21 Feb 2013		Germany .....	1 Oct 2013	31 Oct 2017
Comoros.....		14 Oct 2016 a	Ghana.....	24 Sep 2013	
Congo.....		14 May 2015 a	Greece.....	9 Jul 2013	
Costa Rica.....	21 Mar 2013	7 Mar 2017	Guinea.....		9 May 2017 a
Côte d'Ivoire .....	24 Sep 2013	25 May 2016	Guinea-Bissau.....	24 Sep 2013	
Croatia .....		10 Jun 2019 a	Hungary .....		23 Jun 2020 a
Cyprus.....	23 Oct 2013	29 Aug 2017	India.....		5 Jun 2018 a
Czech Republic.....		12 Jul 2019 a	Iran (Islamic Republic of).....	7 Jan 2014	27 Aug 2018
Democratic Republic of the Congo.....	9 Dec 2013		Iraq.....		2 Dec 2015 a
Denmark .....	7 Jan 2014		Ireland.....	20 Dec 2013	

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Israel .....	23 Dec	2013	Republic of Korea.....	10 Jan	2013
Kenya.....	29 May	2013	Samoa .....		29 Jun 2018 a
Kuwait .....	11 Nov	2013	Saudi Arabia .....		9 Oct 2015 a
Latvia.....			Senegal.....		31 Aug 2016 a
Libya.....	10 Jan	2013	Serbia.....		30 Jun 2017 a
Lithuania.....	6 Sep	2013	Seychelles .....		7 Jan 2020 a
Luxembourg.....			Slovakia .....		25 Sep 2017 a
Madagascar.....	25 Sep	2013	Slovenia .....	6 Jan	2014
Mali.....	8 Jan	2014	South Africa.....	10 Jan	2013
Malta.....			Spain .....		23 Dec 2014 a
Mauritius.....			Sri Lanka.....		8 Feb 2016 a
Mongolia.....	1 Nov	2013	Sudan .....	30 Sep	2013
Montenegro.....	1 Jul	2013	Sweden.....	6 Jan	2014
Myanmar.....	10 Jan	2013	Syrian Arab Republic ....	10 Jan	2013
Netherlands <sup>1</sup> .....	6 Jan	2014	Togo.....	9 Jan	2014
Nicaragua.....	10 Jan	2013	Tunisia .....	11 Jan	2013
Niger.....			Turkey.....	10 Jan	2013
Nigeria .....			Turkmenistan.....		30 Mar 2015 a
North Macedonia .....	8 Jan	2014	United Kingdom of Great Britain and Northern Ireland.....	17 Dec	2013
Norway .....	16 Oct	2013	United Republic of Tanzania.....	24 Sep	2013
Pakistan.....			Uruguay .....	10 Jan	2013
Panama.....	10 Jan	2013	Yemen.....	7 Jan	2014
Portugal.....	8 Jan	2014			24 Sep 2014
Qatar .....	18 Jun	2013			

### **Declarations**

***(Unless otherwise indicated, the declarations were made upon ratification, acceptance, approval, formal confirmation or accession.)***

#### **COSTA RICA**

In the case of the Republic of Costa Rica, for the purposes of the implementation of article 27 of the Protocol, the Ministries of the Treasury, Public Health, Economic Affairs, Trade and Industry, the Interior and Police, and Public Security shall be responsible for proposing any amendments to domestic laws, regulations and rules in general that might be required for compliance with this Protocol, within their competencies and powers, and without prejudice to the constitutional powers vested in the legislative and executive branches.

#### **EUROPEAN UNION**

The European Union (EU) submits, in accordance with Article 44 of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control ("FCTC Protocol"), the following Declaration of Competences specifying the categories and policy areas in respect of

which the Member States of the EU have conferred competences upon the EU in the areas covered by the FCTC Protocol.

#### **1. General Principles**

The categories and areas of Union competence are set out in Articles 2 to 6 TFEU. When the Treaties confer on the EU exclusive competence in a specific area, only the EU may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the EU or for the implementation of EU acts. When the Treaties confer on the EU a competence shared with the Member States in a specific area, the EU and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the EU has not exercised its competence. The Member States shall again exercise their competence to the extent that the EU has decided to cease exercising its competence.

As regards the conclusion of international agreements, for the policy areas listed in Article 3(1) TFEU, only the

EU has the competence to act. For the policy areas listed in Article 4(2) TFEU the EU and its Member States share competence, but only the EU has the competence to act when the envisaged action is necessary to enable the Union to exercise its internal competence, or insofar as the provisions in the agreement may affect common rules or alter their scope within the meaning of Article 3(2) TFEU; insofar as this is not the case (i.e. the conditions of Article 3(2) TFEU are not met), Member States may exercise their competence to act in these policy areas.

Competences not attributed to the EU by the Treaties fall within the competences of the Member States of the EU.

The EU will duly notify any substantial modification of the extent of its competences, in accordance with Article 44 of the Protocol, without this constituting a prerequisite for the exercise of its competence in matters covered by the FCTC Protocol.

## 2. Exclusive competence of the EU

2.1. The EU has exclusive competence to act with respect to the matters covered by the FCTC Protocol that fall under the scope of the common commercial policy of the EU (Article 207 TFEU).

2.2. In addition, the EU has exclusive competence to act with regard to matters covered by the FCTC protocol that fall under the scope of customs cooperation (Article 33 TFEU), approximation of laws in the internal market (Articles 113 and 114 TFEU), judicial cooperation in criminal matters (Article 82 TFEU) and definition of criminal offences (Article 83 TFEU), only insofar as the provisions of a Union act establish common rules that may be affected or altered in scope by provisions of the FCTC protocol.

The list of Union acts below illustrates the extent to which the Union has exercised its internal competence in these fields in accordance with the Treaty on the Functioning of the European Union. The extent of Union exclusive competence ensuing from these acts must be assessed by reference to the precise provisions of each measure, and in particular the extent to which these

provisions establish common rules that risk to be affected or altered in scope by the provisions of the FCTC Protocol or an act adopted in implementation thereof.

– Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1);

– Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15);

– Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1);

– Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12);

– Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011, p. 24);

– Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1);

– Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 48).

## 3. Competence of the Member States

For other matters covered by the FCTC Protocol not mentioned in sections 2.1 and 2.2, for which the EU has not exclusive competence to act, the Member States remain competent to act.

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### Notes:

<sup>1</sup> For the European part of the Netherlands.

