



## TOBACCO LEGISLATION IN MALTA – A SHORT OVERVIEW

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### ABSTRACT

*The aim of this article is to briefly describe legislation dealing with tobacco control in Malta. Although no actual strategy on tobacco control is in place to date, Malta's tobacco control approach is mainly based on comprehensive legislation arising mostly from of the Framework Convention on Tobacco Control (FCTC). Malta's ratification of this international WHO treaty was instrumental in the passing of such legislation of which the most important features are banning of all tobacco advertising and sponsorship, and the prohibition of smoking in public and work places. EU Regulations, most importantly Directive 2014/40/EU 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, was also contributory to the introduction of stronger packaging regulations and new regulatory frameworks for the control of electronic cigarettes and new and emerging tobacco products under the classification of novel tobacco products.*

*While increases in excise tax is generally regarded as an effective tobacco control measure, tobacco control legislation also plays an important role in a comprehensive tobacco control strategy. Bans on tobacco advertising, bans on smoking in public and work places and pictorial health warnings on packaging denormalise smoking and are likely to make other tobacco control interventions more effective.*

## Introduction

'Tobacco products are not ordinary commodities and in view of the particularly harmful effects of tobacco on human health, health protection should be given high importance, in particular, to reduce smoking prevalence among young people.'[1]

This quote is an apt introduction to the necessity of strong regulation of tobacco products. Despite being legal consumer products, tobacco products have no safe level of consumption and increase mortality and morbidity when used as the manufacturer intends.

According to a 2017 Eurobarometer on the attitudes of Europeans towards tobacco and electronic cigarettes[2], 24% of the Maltese population over 15 years of age are daily smokers (cigarettes, cigars, cigarillos or a pipe) compared (EU28 26%), 22% males and 18% females (EU28 30% and 22% respectively). The annualised rates of reduction in daily smoking between 1990 and 2005 and 2005 and 2015 were 2.4 and 1.1 in males and 1.9 and 0.6 in females respectively[3] suggesting a slowing of progress in tobacco control.

In 2015, 16 percent of all deaths in adults over 30 in the European Region are attributable to smoking[4] making tobacco consumption one of the largest avoidable causes of morbidity and premature death in this region. In Malta, 434 deaths (13 % of all deaths)[5], were attributable to smoking in 2015.

## The World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC)

The World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) was adopted in 2003 to address the global burden of tobacco use. It proposes measures to address contributing factors that lead to the uptake and continued use of tobacco. Parties to this convention (181 countries[6]) are committed to implement several tobacco control measures which build on existing experiences, practices and policies. These include measures to reduce the demand and supply of tobacco through fiscal and non-fiscal measures.

One of the supply-reduction measures in the FCTC include provisions against illicit trade in tobacco products. The Protocol to Eliminate Illicit Trade in Tobacco Products (the Protocol) aims at eliminating illicit trade in tobacco products through collaborative measures between countries. Illicit trade is considered a serious threat to public health as it increases access to cheaper (therefore more affordable especially to younger and low-income persons) and non-regulated tobacco products. To date, there are 48 Parties to this protocol[7]. Malta became a Party to the WHO FCTC in 2005 and to the Protocol in 2018.

## EU Regulations

Directive 2001/37/EC of the European Parliament and of the Council[8] laid down rules at Union level concerning tobacco products. This was repealed and replaced by a new Directive 2014/40/EU[9] to reflect scientific, market and international developments made in the intervening years.

New challenges were posed by the increasing popularity of novel tobacco products and alternative nicotine delivery systems. Therefore, the scope of the new directive was adjusted to include further tobacco and related products not previously regulated including electronic cigarettes, novel tobacco products and herbal products for smoking.

Key provisions in this Directive include:

- mandatory pictorial health warnings covering 65% of both main surfaces with countries retaining the option to introduce standardised packaging nationally;
- a ban on “characterising flavours” in cigarettes, with some transitional periods;
- minimum packet dimensions to ensure greater visibility of health warnings and prohibit ‘lipstick’ style packs popular amongst young people;
- regulations for electronic cigarettes, novel tobacco products and herbal products for smoking;
- regulations for cross-border distance sales of tobacco and related products; and
- provisions for setting up a tracking and tracing system to help fight illicit trade.

The Tobacco Advertising Directive (2003/33/EC)[10] banned cross-border advertising of tobacco products in printed media, radio and on-line services. This Directive was supplemented by the Audio-visual Media Services Directives 2007/65/EC[11] and later by 2010/13/EC[12] which extends this ban to all forms of audio-visual commercial communications, sponsorships and product placement.

Council Recommendation on the Prevention of Smoking and on Initiatives to Improve Tobacco Control (2003/54/EC)[13] encourages further action against tobacco advertising within a wider comprehensive approach towards tobacco control, with a view to reducing the incidence of smoking-induced diseases especially young persons.

Council Recommendation on Smoke-free Environments (2009/C 296/02)[14] recommends several actions with regards to the protection of the public especially children from exposure to tobacco smoke in enclosed public places, workplaces and public transport.

## Maltese Legislation

### Measures Relating to the Reduction of the Supply of Tobacco - Non-fiscal measures

#### Protection from exposure to tobacco smoke

The Tobacco (Smoking Control) Act, 1986[15] (Chapter 315 of the Laws of Malta) prohibits smoking in cinemas, theatres, hospitals, clinics or other health institutions; in educational premises used by children under eighteen years of age; or in any television studios in any debate, discussion or other programme broadcast locally.

In 2010, the Smoking in Public Places Regulations, 2010 (L.N. 23 of 2010)[16] extended the ban to all enclosed areas except in individual rooms in accommodation premises used for sleeping purposes and which are occupied solely by smoking patrons. An unfortunate amendment to L.N. 23 of 2010, the Smoking in Public Places (Amendment) Regulations, 2013[17] allowed smoking in a designated smoking rooms within licensed casinos, still in force to date.

Children are further protected from exposure to tobacco smoke with the ban of smoking within the precincts of a playground or public garden containing playing equipment for children[18] and in private vehicles in the presence of a minor (16 years of age) [19].

The Products and Smoking Devices (Simulating Cigarettes or Tobacco) (Control) Regulations (L.N. 22 of 2010)[6] mandates that, in so far as advertising and smoking in public places are concerned, tobacco devices, defined as ‘any product bearing the name cigarette or tobacco which is intended as a substitute to a conventional tobacco product or smoking requisite and includes any non-nicotine device, but excludes any pharmaceutical nicotine delivery devices’, must comply with the Tobacco Act and regulations.

This means that the ban of smoking in the specified areas and advertisement apply also to electronic cigarettes and other novel tobacco products.

### **Regulation of the contents of tobacco products and tobacco product disclosures**

Manufacture, Presentation and Sale of Tobacco and Related Products Regulations, 2016 (L.N. 67 of 2016)[21], transposing the Tobacco Products Directive 40/2014/EU reconfirms previous maximum emission levels for tar, nicotine, and carbon monoxide; mandates the reporting of emissions and ingredients of tobacco and related products and notification of their ingredients by manufacturers and importers; and their laboratory verification by the competent authorities. It also sets out mechanisms for enhanced reporting obligations for cigarette and roll-your-own tobacco additives included in a priority list to assess their toxicity, addictiveness and carcinogenic, mutagenic or reprotoxic properties (CMR properties).

Information about the constituents and emissions of tobacco and related products placed on the national market are published on a website for public information.

### **Packaging and labelling of tobacco products**

L.N. 67 of 2016 deals extensively on packaging and labelling exceeding older requirements set in previous legislations. Labelling requirements call for large picture warnings on both principal display areas (covering 65% of their allocated area); health warnings with minimum dimensions to ensure their visibility and effectiveness; mandatory cessation information and strict rules on misleading information. The official languages (Maltese and English) must be used for these warnings and any other textual information.

These labelling provisions reflect evidence which suggests that large combined health warnings comprised of a text warning and a corresponding colour photograph are more effective than textual warnings alone. Also, the indication of the emission levels for tar, nicotine and carbon monoxide on unit packets of cigarettes may be misleading as it leads consumers to believe that certain cigarettes are less harmful than others. Therefore, any such information has been specifically prohibited.

Tobacco products for smoking other than cigarettes and roll-your-own tobacco products have a smaller market share being mainly consumed by older persons and are not generally popular with young persons. Therefore, as long as there is no substantial change of sales volumes or consumption patterns of young people, such products are exempt from stringent labelling requirements such as the combined health warnings. Full labelling is required in the case of waterpipe tobacco to avoid consumers being misled that such products are less harmful than traditional tobacco products.

### **Tobacco advertising, promotion and sponsorship**

The Tobacco Act lays down several provisions regarding advertising of tobacco products. Direct advertising of tobacco products on television, radio or other broadcasting medium, in cinemas; advertising by means of branding; free distribution; sponsorship of events or activities having the purpose or the direct or indirect effect of promoting such products are prohibited. Health warnings and a notice that smoking is prohibited by law in cinemas are required to be shown on screen before the beginning of every film show, immediately on the resumption of the show after the interval and before the showing of any broadcast in which smoking is shown or mentioned.

Health warnings are also to be displayed in shops selling tobacco products. Sweets, confectionery or toys in the form of cigarettes, cigars or smoker’s pipe are prohibited since these might attract children. Regulation against tobacco product advertising is strengthened by the Broadcasting Act (CAP. 350)[22].

Direct or indirect advertisement of electronic cigarettes is banned through LN67 of 2016 and the Products and Smoking Devices (Simulating Cigarettes or Tobacco) (Control) Regulations described above.

### **Measures Relating to the Reduction of the Supply of Tobacco - Fiscal measures**

#### **Tobacco products taxation**

The taxation of tobacco products (import duties, value-added tax and excise taxes) is an important policy mechanism for reducing the prevalence of smoking and for reducing the quantity consumed by those that continue to smoke[1]. The industry counteracts this evidence by suggesting that increasing tobacco product prices is accompanied by increased availability of illicit products while the reduction in demand leads to economic losses in the country. However, increased tax and prices for tobacco actually benefit governments by increasing revenues resulting in a win-win result of reducing health care costs and increasing revenues.

Directive 2011/64/EU[24] requires Member States to levy a minimum rate of excise duties on cigarettes consisting of a specific (fixed) component being a percentage of the total tax burden and an ad valorem component expressed as a percentage of the maximum retail selling price. This also sets minimum excise duty rates for manufactured tobacco other than cigarettes. Presently, there is no consensus on excise duty on electronic cigarettes in the EU, but work is being carried out to harmonise taxation on these products in line with tobacco products.

In Malta, taxation on tobacco products mainly cigarettes have increased annually up till 2017. In 2017 and 2018 no further increases in taxation were decreed in the national budget.

### **Measures Relating to the Reduction of the Supply of Tobacco Illicit trade in tobacco products**

As discussed, tobacco use generates substantial tax revenues for countries, but their illicit trade undermines tax revenues. By increasing accessibility and affordability of tobacco products, illicit tobacco products also undermine tobacco control measures aimed at reducing the smoking prevalence.



The WHO Protocol to Eliminate Illicit Trade in Tobacco Products aims at eliminating of all forms of illicit trade in tobacco products, in accordance with the terms of Article 15 of the WHO FCTC.

In particular, the Protocol seeks to secure the supply chain of tobacco products by establishing a global tracking and tracing regime. Malta, a party to this protocol, is committed to establish a track and trace regime by May 2016 for cigarettes and RYO tobacco and May 2024 for other tobacco products through regulations set down in LN67 of 2016.

### Sale of tobacco products

Reduction in supply is also enabled through restrictions of sale of tobacco products. The Tobacco (Control) Act prohibits the sale of tobacco products in all health care, educational and sport facilities. The sale, supply or distribution of tobacco to persons under the age of eighteen years is prohibited while tobacco products sold from automatic sales machines must be kept under supervision to ensure that no person under eighteen years of age has access to such products[25].

There is no legislation in Malta that requires sellers of tobacco products to place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors or a specific ban for the sale of tobacco products at accessible retail points, such as store shelves as required by the FCTC. There are also no legislation prohibiting smoking by under-age persons or prohibiting sales of tobacco products by minors.

Certain packaging and tobacco products including their size and appearance may appeal to minors. The supply of sweets, confectionery or toys in the form of cigarettes, cigars or smoker's pipe is prohibited by the Tobacco (Control) Act while LN67 of 2016 forbids tobacco products or their outside packaging to resemble food or cosmetic products. Individually sold cigarettes or cigarettes in small packets are banned through the regulation of appearance and content of unit packets since these features increase the affordability of such products to minors.

### Recommendations

Tobacco and related products are regulated through a number of legislations enacted under the Tobacco (Smoking Control) Act with overlapping or sometimes contradictory regulations or policies within the remit of other entities such as to OHS, Customs etc. There is also no national tobacco control strategy to date while the multidisciplinary Committee on Smoking and Health set up through the Tobacco (Control) Act meets very rarely and is not representative of key national players. Therefore, recommendations should strongly argue for a multisectoral strategy to provide a national policy framework aimed at creating a generation of non-smokers. The strategy should strongly support:

- the revision of the Committee on Smoking and Health as set by the Tobacco (Control) Act to include all players and also legal advisors, and which meets frequently and effectively to aid implementation of regulations and discuss emerging issues;
- setting up a framework for the management, monitoring and evaluation of both the strategy and the implementation of regulations;
- review of present legislation to update the Act, thereby reducing the number of subsidiary legislations and filling in gaps;
- encourage country-specific research, drawn from a variety of disciplines, including market trends into newly emerging tobacco and related products;

- consider further specific actions such as the introduction of standardised tobacco packaging (plain packaging); and
- ensure adequate funding for tobacco control measures especially enforcement of regulations.

Strong and consistent lobbying is required to persuade the competent authorities to develop and implement an effective tobacco control strategy.

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