Dutch Tobacco Control: Moving Towards the Right Track?

FCTC Shadow Report 2014
Colophon

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Text and Compilation
Suzanne M. Heijndijk & Marc C. Willemsen
Correspondence to sanne.heijndijk@alliantienr.nl

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FCTC Shadow Report 2014
Preface

Michael Rutgers

Worldwide 179 countries and the European Union collaborate to reduce tobacco use and its deadly consequences. The Netherlands is a Party to the global health treaty that was developed to this end: on January 27th 2015, it will be ten years since our country ratified the Framework Convention on Tobacco Control (FCTC) of the World Health Organisation (WHO). With this ratification, the Netherlands is obliged to implement measures to pursue a smokefree society. The Dutch government is committed to report on the progress to the WHO.

As non-governmental organisations we critically follow the Dutch policy on tobacco control. In March 2012 we presented a first FCTC shadow report. We concluded that internationally, the Netherlands scored badly. Moreover, the Dutch tobacco policy showed a downward tendency. Now, three years later, it appears as if the Netherlands is regaining some momentum. The age limit for tobacco sales has been increased to 18, the smoking ban in all hospitality venues has been re-established and the Netherlands voted in favour of the European Tobacco Products Directive (TPD) that requires important measures by May 2016. However, the government is still wasting too many opportunities to protect the youth against the consequences of tobacco use.

The Dutch alliance for a smokefree society is working towards a smokefree future. We consider it unacceptable that young people become addicted to nicotine for life and are enslaved by tobacco and the tobacco industry. We contribute, for example, by (mass media) campaigns on the unacceptability of smoking, encouraging schools to introduce a smokefree schoolyard, and through introducing a national month for smoking cessation: Stoptober. We appreciate the Dutch government’s current support in relation to these activities and look forward to the government joining us in our future efforts to protect our children in a healthy and smokefree society.

This report points out where there is room for improvement: for example by introducing a comprehensive tobacco policy including increasing budget. This policy should, among other things, consist of annual increases in excise duties, campaigns on the harmfulness of (passive) smoking, a display ban, and introducing generic packaging. With these measures, the government can help prevent young people from starting to smoke.

Let us join forces to create a smokefree society!

Michael Rutgers
Chairman Dutch alliance for a smokefree society
Preface

Laurent Huber

The release of this second shadow report on efforts by the Dutch government to address the continuing tobacco epidemic coincides with the tenth anniversary of the country’s adoption of the WHO Framework Convention on Tobacco Control (FCTC). The story of those ten years, at least for the Netherlands, has not all been positive, but this report’s findings demonstrate that there is hope for the near future. It is imperative that the government, civil society and the general public grasp this hope and move forward, for present and future generations, and for the Netherlands and the world.

The hope stems from several policy moves since the last report, including tightening and greater enforcement of smokefree laws, raising the minimum age for purchasing tobacco products, recognition of the problem posed by tobacco industry interference in public policy, a rise in tobacco excise taxes, and a renewed public education campaign. These are vital steps. They move the Netherlands closer to international best practices, and will no doubt have an impact on the health of Dutch citizens. The coming implementation of the EU Tobacco Products Directive promises to push policy forward further.

But it is only the beginning of what is needed to end the tobacco epidemic, and there are several areas of Dutch policy that can be improved, as this report shows. There is still no comprehensive national tobacco control policy in place. Tobacco control has been folded into a general “lifestyle” health program, increasing chances it will not get the proper level of attention. Public education, and therefore public awareness of health harms, can be improved by following the examples of countries like Australia and Norway, which have implemented media campaigns in order to warn citizens about the harms of tobacco use.

While taxes on tobacco products have increased, allocations to tobacco control programs are not adequate. More of the proceeds from tobacco taxes need to be spent on tobacco control, as is done in Thailand and Panama. Tax increases are among the most effective tools to reduce smoking. When France tripled its inflation-adjusted cigarette prices, sales fell more than 50%, and a few years later the number of young men dying from lung cancer began to decline. A year after the Philippines increased its tobacco taxes, the government collected more than the expected revenue and was able to spend about 85% of these funds on health services. For these reasons the Dutch government should consider implementing the recommendations of the recently adopted Guidelines for implementation of Article 6 of the FCTC (Tax and Price measures) which calls on governments to “establish coherent long-term policies on their tobacco taxation structure and monitor on a regular basis including targets for their tax rates, in order to achieve their public health and fiscal objectives within a certain period of time.”
The Netherlands should not only move towards the use of effective graphic warnings but it should also consider the implementation of plain packaging, as Australia has done. All of these steps will help the Dutch government in its efforts to reach targets on reducing non communicable diseases and tobacco use, which have been unanimously adopted by the World Health Assembly: a 25% reduction in deaths caused by NCDs and a 30% reduction in tobacco use by 2025.

Policy change to better address tobacco is not merely something the Netherlands should do; it has a legally-binding obligation under the FCTC. In the ten years since it adopted the FCTC, and many years before, the Dutch government seems to have valued the interests of the tobacco industry over the interests of public health. The Netherlands has a moral obligation, as well as a legal one, to implement the treaty’s measures, an obligation that it owes to the world as well as to its own citizens. Tobacco remains, by far, the leading cause of preventable death in the Netherlands and globally. In spite of the promise of the FCTC, worldwide we are still on track to see one billion deaths this century from tobacco. Society can prevent the vast majority of these deaths, but it requires concerted action from every government (and from every part of each government), civil society and the public. Recent changes are a step in the right direction. Much more needs to be done, and the knowledge necessary to move forward is readily available. Civil society will continue to support, educate, advocate, and monitor.

Laurent Huber
Director Framework Convention Alliance
Endorsements

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Samenvatting


**Artikel 5.1** vereist de ontwikkeling en uitvoering van *allesomvattende, multisectorale nationale strategieën, plannen en programma's voor tabaksontmoediging*. Een dergelijke nationale strategie, plan of programma ten aanzien van tabaksontmoediging is nog niet ontwikkeld in Nederland. Roken is wel opgenomen als (beperkt) onderdeel van meer algemene gezondheids- en preventieprogramma’s, maar er ontbreken voldoende concrete doelstellingen voor de bestrijding van tabaksgebruik. *Coördinatie* tussen de verschillende ministeries lijkt te zijn toegenomen, hoewel nog geen sprake is van een geïnstutionaliseerd *coördinatiemechanisme specifiek voor het tabaksontmoedigingsbeleid* (**Artikel 5.2**).

**Artikel 5.3** schrijft voor dat overheden maatregelen nemen om hun tabaksontmoedigingsbeleid te beschermen tegen commerciële en andere gevestigde belangen van de tabaksindustrie. Het bewustzijn ten aanzien van deze verdragsbepaling is de afgelopen jaren ogenschijnlijk gegroeid. Bewindslie- den hebben herhaaldelijk bevestigd dat alleen noodzakelijke interacties plaatsvinden met de tabaksindustrie en dat bij dergelijke interacties transparantie wordt betracht. De praktijk laat echter zien dat deze principes nog niet structureel zijn ingebed in alle overheidslagen. Er is geen protocol vastgesteld. De transparantie neemt bovendien slechts beperkte vormen aan, omdat informatie zelden proactief wordt aangeboden en omdat notulen van bijeenkomsten vaak niet beschikbaar zijn.
Vooruitgang op het gebied van prijs- en belastingmaatregelen voor tabaksproducten (**Artikel 6**) verloopt traag, hoewel in 2013 voor Nederlandse begrippen een relatief grote accijnshervorming voor sigaretten en shag is doorgevoerd. De overheid gebruikt accijnsen nog steeds primair voor financiële doeleinden in plaats van gezondheidsredenen. Accijnsvoordeeltjes tussen de diverse tabaksproducten zijn grotendeels in stand gebleven en er zijn geen nieuwe maatregelen getroffen met betrekking tot de verkoop en/of uitvoer van accijnsvrije tabaksproducten.

Op het gebied van bescherming tegen blootstelling aan tabaksrook (**Artikel 8**) is een aantal positieve ontwikkelingen zichtbaar. Vooral van belang is dat de uitzondering op het rookverbod voor kleine horecagelegenheden niet meer van kracht is en dat de handhavingscapaciteit is vergroot. Rookruimtes zijn echter nog steeds toegestaan.

In de afgelopen jaren heeft de Nederlandse overheid verschillende maatregelen genomen om de implementatie van **Artikel 10**, betreffende de informatievoorziening over tabaksproducten, te verbeteren. In het bijzonder is tegenwoordig op websites informatie beschikbaar voor het Nederlandse publiek over de additieven in alle in Nederland verkrijgbare tabaksproducten. Met betrekking tot de regulering van de inhoud van tabaksproducten (**Artikel 9**) is weinig voortuitgang geconstateerd. Indien de herziene EU Tabaksproductenrichtlijn correct zal worden omgezet in Nederlands beleid, zal dit echter belangrijke verbeteringen op dit gebied met zich meebrengen in de vorm van een verbod op een aantal ingrediënten.

Overheidsbeleid op het gebied van de etikettering en verpakking van tabaksproducten (**Artikel 11**) is beperkt geweest, waardoor Nederland nog steeds relatief slecht scoort op dit gebied. De zelf-ervaren effectiviteit van gezondheidswaarschuwingen is erg laag onder Nederlandse rokers. Nieuwe teksten zijn ingevoerd voor de bijkomende gezondheidswaarschuwingen (op de achterkant van de verpakking), maar producten met de oude waarschuwingsteksten mogen nog worden verkocht tot maart 2016. De regering heeft steun verleend aan de herziene EU Tabaksproductenrichtlijn. Omzetting hiervan zal leiden tot een aantal belangrijke veranderingen, zoals de invoering van grotere, grafische gezondheidswaarschuwingen. De regering overweegt nog niet om generieke verpakkingen (plain packaging) in te voeren.

Het overheidsbeleid op het gebied van educatie, communicatie en training (**Artikel 12**) heeft in de afgelopen jaren verschillende gezichten gehad. Terwijl aanvankelijk een stop op alle massamediale campagnes bekend werd gemaakt, zijn er sinds eind 2013 toch massamediale initiatieven uitgevoerd en aangekondigd. Educatie van kinderen en hun ouders (via scholen en de gezondheidszorg) speelt een belangrijke rol in de Nederlandse aanpak om publiek bewustzijn te creëren. Ondanks deze initiatieven, is de kennis over de gezondheidsrisico’s van (mee)roken, internationaal gezien, nog steeds erg laag en wordt roken, vergeleken met andere landen, nog steeds beschouwd als relatief normaal gedrag.

Nederland heeft nog steeds geen volledig verbod op tabaksreclame, -promotie en -sponsoring (**Artikel 13**). Nieuwe initiatieven van overheidswege om dergelijke reclame, promotie en sponsoring te voorkomen, zijn schaars geweest. Recent heeft de regering wel onderzoeken laten uitvoeren om de effecten van een uitstalverbod (display ban) en het terugdringen van het aantal verkooppunten van tabaksproducten (onder andere via een verbod op automaten) in kaart te brengen. Op grond hiervan zijn tot nu toe geen concrete maatregelen aangekondigd of uitgevoerd.
De kwaliteit van de behandeling van tabaksverslaving (Artikel 14) lijkt gewaarborgd in Nederland en recente initiatieven hebben bijgedragen tot een verdere inbedding van kwaliteitsnormen. Met betrekking tot het bevorderen van stoppen met roken, wijzen de waargenomen ontwikkelingen minder duidelijk in een bepaalde richting. Dit geldt bijvoorbeeld voor de schommelingen in de vergoeding van farmacotherapie (beschikbaar in 2011, 2013 en 2014, maar niet in 2012). Bezorgdheid is in het bijzonder op zijn plaats met betrekking tot het gebrek aan actieve communicatie over de verschillende effectieve middelen en methoden van stoppen met roken en aan een nationale strategie om stoppen met roken te stimuleren en ondersteunen.

De strijd tegen de illegale handel in tabaksproducten (Artikel 15) lijkt nog niet te worden beschouwd als een prioriteit in Nederland, hoewel onlangs een aantal maatregelen is genomen om de handhavingsinspanningen te vergroten. Recent hebben zich verschillende ontwikkelingen voorgedaan op het niveau van de WHO en de EU. Hoewel de Nederlandse regering vaak meegaat in deze ontwikkelingen, vervult zij geen voortrekkersrol. Nederland heeft het FCTC Protocol tot uitbanning van illegale handel bijvoorbeeld nog niet geratificeerd. De overheid lijkt bereid om te vertrouwen op gegevens of systemen die zijn verstrekt of ontwikkeld door de tabaksindustrie.

De overheid heeft verschillende maatregelen getroffen om de verkoop aan minderjarigen (Artikel 16) tegen te gaan. De wettelijke leeftijdsgrens is verhoogd van 16 naar 18, de handhavingscapaciteit is versterkt en er zijn strengere sancties mogelijk. Er is echter nog geen verbod op de verkoop van tabak via tabaksautomaten en er zijn geen verdere maatregelen genomen in relatie tot de verkoop door minderjarigen, waardoor een discrepantie is ontstaan tussen de wettelijke leeftijdsgrens voor het kopen van tabaksproducten (18 jaar) en het verkopen van tabaksproducten (16 jaar).

De monitoring van tabaksgebruik (Artikel 20) is een gebied waarop een duidelijke neerwaartse trend zichtbaar is sinds het vorige schaduwrapport. De regering heeft besloten om twee gerenommeerde en kwalitatief hoogwaardige nationale monitors (het Continu Onderzoek Rookgewoonten (COR) en de Roken Jeugd Monitor (RJM)) te staken. Met name de stopzetting van de RJM is opvallend in het licht van de focus van het kabinet op het terugdringen van tabaksgebruik onder jongeren. Hoewel andere monitors worden ingezet, bieden deze instrumenten niet dezelfde mate van detaillering. Geen verbeteringen zijn waargenomen met betrekking tot het bevorderen van wetenschappelijk onderzoek op het gebied van tabaksontmoediging. Als al sprake is van een ontwikkeling, lijkt het juist moeilijker te zijn geworden om overheidssubsidies te verwerven voor onderzoek naar de bestrijding van tabaksgebruik.

De dalende trend in de financiële middelen voor tabaksontmoediging (Artikel 26) die in het vorige schaduwrapport werd geïdentificeerd, lijkt zich te hebben doorgezet, hoewel een inschatting van het specifieke budget hiervoor wordt bemoeilijkt door de toenemende nadruk van de overheid op een geïntegreerde benadering van preventie. In de afgelopen jaren zijn de beleidsontwikkelingen ten aanzien van tabaksontmoediging (deels) ingegeven door budgettaire overwegingen.

Tabel 1a illustreert in hoeverre de Nederlandse overheid op dit moment handelt in overeenstemming met het Kaderverdag en de Richtlijnen. Bij het beoordelen van het overheidsverrichtingen is een onderscheid gemaakt tussen FCTC verplichtingen, aanbevelingen en suggesties. Per verdragsartikel is beoordeeld in hoeverre de overheid aan de verschillende verplichtingen, aanbevelingen en sugges-
ties voldoet. Deze scores zijn samengevoegd in Tabel 1a, waarbij de slechtste score op de bepalingen door slaggevend is geweest voor de uiteindelijke beoordeling. Een ‘rode score’ betekent daarom niet per definitie dat de overheid geen enkele maatregel treft op dit gebied. Deze score geeft echter wel aan dat de overheid niet voldoet aan ten minste één van de verdragsverplichtingen. De scoreoverzichten in de afzonderlijke hoofdstukken geven meer inzicht en nuances in de sterktes en zwaktes van het Nederlandse tabaksontmoedigingsbeleid.

**Tabel 1a**
Evaluatie van de implementatie van de belangrijkste FCTC maatregelen in Nederland in 2014

<table>
<thead>
<tr>
<th>Niet in overeenstemming met FCTC verplichtingen</th>
<th>Niet in overeenstemming met FCTC aanbevelingen, maar wel met (eventuele) verplichtingen</th>
<th>Niet in overeenstemming met FCTC suggesties, maar wel met (eventuele) verplichtingen en/of aanbevelingen</th>
<th>In overeenstemming met FCTC verplichtingen, aanbevelingen en/of suggesties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alomvattende strategie en centrale coördinatie (Art. 5.1 &amp; 5.2)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bescherming tegen belangen tabaksindustrie (Art. 5.3)</td>
<td></td>
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<td></td>
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<tr>
<td>Bescherming tegen blootstelling aan tabaksrook (Art. 8)</td>
<td></td>
<td></td>
<td>Prijs- en belasting-maatregelen (Art. 6)</td>
</tr>
<tr>
<td>Inhoud tabaksproducten en informatieverschaffing (Art. 9 &amp; 10)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Verpakking en etikettering (Art. 11)</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Educatie, communicatie en training (Art. 12)</td>
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<td></td>
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<tr>
<td>Reclame, promotie en sponsoring (Art. 13)</td>
<td></td>
<td></td>
<td>Tabaksverslaving en stoppen met roken (Art. 14)</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Illegale handel (Art. 15)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Verkoop aan en door minderjarigen (Art. 16)</td>
</tr>
<tr>
<td>Onderzoek en monitoring (Art. 20)</td>
<td></td>
<td></td>
<td>Financiële middelen (Art. 26)</td>
</tr>
</tbody>
</table>

De methodologie voor het beoordelen van het handelen van de overheid in relatie tot het FCTC is enigszins aangepast ten opzichte van het vorige rapport. Het vorige rapport stond met name in het teken van het positioneren van Nederland in een internationaal perspectief. De methodologie waarvoor toen is gekozen was dan ook grotendeels gebaseerd op een vergelijkende component. Het doel van dit tweede schaduwrapport is meer nationaal gericht. De beoordeling van het functioneren van de overheid richt zich daarom meer op de Nederlandse uitvoering van de tekst en geest van het verdrag. Door de veranderde methodologie zijn één-op-één vergelijkingen tussen de twee verschillende rapporten niet mogelijk.
Voornaamste aanbevelingen

Uitgaande van de inhoud van het FCTC – en rekening houdende met de recente ontwikkelingen en het huidige presteren van Nederland – zijn de voornaamste aanbevelingen aan de Nederlandse regering om:

• Een allesomvattende, multisectorale nationale tabaksontmoedigingsstrategie te ontwikkelen.
• Verdere maatregelen te treffen om het tabaksontmoedigingsbeleid te beschermen tegen de belangen van de tabaksindustrie, waaronder het ontwikkelen van een protocol en het vergroten van transparantie in relatie tot alle contacten met de tabaksindustrie.
• Regelmatig aanzienlijke accijnzverhogingen door te voeren en accijnzen in te zetten om het prijspannis tussen vervangbare tabaksproducten te reduceren.
• Rookruimtes niet langer toe te staan.
• De herziene EU Tabaksproductenrichtlijn juist en snel in te voeren en het Nederlandse publiek te informeren over (de gezondheidsredenen voor) deze maatregelen.
• De invoering van generieke verpakkingen (plain packaging) te overwegen.
• Verdere maatregelen, zoals massamediale campagnes, te treffen om het bewustzijn over de schadelijkheid van roken te vergroten en voorlichting te initiëren ten aanzien van andere onderwerpen, zoals de marketingstrategieën van de tabaksindustrie.
• Een algeheel of completer verbod op reclame en promotie van tabak te implementeren, waaronder de invoering van een uitstalverbod (display ban) van tabak in winkels.
• Een langetermijnstrategie te ontwikkelen om rokers te helpen om te stoppen met roken, waarin onder meer de voortzetting van vergoeding van farmacotherapie wordt vastgelegd en wordt ingezet op maatregelen die kennis onder rokers over de effectiviteit en beschikbaarheid van stopondersteuning vergroten.
• De rol van de bestrijding van de illegale handel in tabaksproducten als onderdeel van een alomvattend tabaksontmoedigingsbeleid te erkennen en het Protocol tot uitbanning van illegale handel te ratificeren.
• Tabaksautomaten te verbieden.
• Het besluit om de twee gerenommeerde en kwalitatief hoogwaardige programma’s voor de monitoring van tabaksgebruik (COR en RJM) te staken, terug te draaien.
• Wetenschappelijk onderzoek ten bate van een effectieve tabaksontmoedigingsaanpak te stimuleren.
• Het budget dat beschikbaar is voor tabaksontmoediging significant te verhogen.
In the Netherlands, every year more than 19,000 people die of the consequences of smoking and several thousands of the consequences of passive smoking. Smoking is by far the leading preventable cause of mortality and morbidity in Dutch society. In January 2005, the Netherlands ratified the WHO Framework Convention on Tobacco Control (FCTC), the first global health treaty. The Convention aims to protect present and future generations from the devastating consequences of tobacco consumption and exposure to tobacco smoke. To this end, it provides a framework for tobacco control measures to be implemented by its Parties. Countries are required to periodically report on the progress made with regard to the implementation of these measures. In April 2014, the Dutch government submitted its fourth progress report. As a counterpart to these official country reports, shadow reporting is used by non-governmental organisations to evaluate whether governments are complying with their FCTC obligations. This is the second Dutch FCTC shadow report. The first report was published in 2012 and assessed to what extent the Dutch government was acting in accordance with the FCTC the middle of 2011. This second report focuses on the developments that have occurred since then. The report contains a new assessment of the performance of the Dutch government in terms of the FCTC (in December 2014) and provides recommendations for a better implementation of the Convention. The main conclusions are summarised below.

**Article 5.1** requires the adoption and implementation of comprehensive, multisectoral national tobacco control strategies, plans and programmes. No such national tobacco control strategy, plan or programme has been developed in the Netherlands. Rather, smoking has been included as (a modest) part of more general health and prevention strategies, plans and programmes, but no sufficiently concrete targets have been established for tobacco control. It appears that coordination between different ministries has increased, although no formal coordination mechanism has been put in place (**Article 5.2**).

Under **Article 5.3**, countries are required to take measures to protect their tobacco control policies from commercial and other vested interests of the tobacco industry. Awareness of this provision has seemingly increased during the previous years. Members of government have repeatedly confirmed that only necessary interactions with the tobacco industry take place and that such interactions are conducted transparently. However, practice shows that these principles are not yet structurally embedded throughout the government. No protocol has been established. Also, transparency is very limited, as information is rarely provided pro-actively and minutes of meetings are often not available.

Progress in the field of price and tax measures for tobacco products (**Article 6**) has been slow, although a (by Dutch standards) large excise duty increase for cigarettes and smoking tobacco...
was implemented in 2013. The government currently still primarily uses excise duties on tobacco products to further financial objectives instead of public health ones, tax differences between various types of tobacco products have largely remained in place, and no new measures have been implemented with regard to sales and/or imports of duty-free tobacco products.

There have been some positive developments in the area of protection against exposure to tobacco smoke (Article 8). Most importantly, the exception to the smoking ban for small hospitality venues is no longer in place and enforcement capacity has been increased. However, designated smoking areas are still allowed.

In previous years, the Dutch government has taken various steps to improve implementation of Article 10 on tobacco product disclosures. In particular, information about the additives in all available tobacco products is now being disclosed to the Dutch public through websites. With regard to the regulation of the contents of tobacco products (Article 9), few improvements were observed. However, correct transposition of the revised EU Tobacco Products Directive will bring along major improvements in this area by providing for a ban on certain ingredients.

Government action in relation to the labelling and packaging of tobacco products (Article 11) has been limited, so that the Netherlands is still underperforming in this area. The self-perceived effectiveness of health warnings is very low among Dutch smokers. New texts for the additional health warning labels (to be placed at the back of packages) have been implemented, although products with the old health warning labels may still be marketed until March 2016. The government has also provided support for the revised EU Tobacco Products Directive, transposition of which will bring along several important changes, such as the introduction of larger, pictorial health warnings. The government does not yet consider the introduction of plain packaging.

Government policy in the area of education, communication and training (Article 12) has changed throughout the past years. For instance, whereas initially a stop on all mass media campaigns was declared, since late 2013, mass media initiatives have been implemented or announced. Education of children and their parents (through schools and health care) plays an important role in the Dutch government’s approach to raising awareness. Regardless of these initiatives, from an international perspective, awareness of the health risks of (passive) smoking is very low and smoking is still considered to be relatively normal behaviour in the Dutch society.

The Netherlands does not yet have a comprehensive ban on tobacco advertising, promotion and sponsorship (Article 13). New government initiatives to prevent such advertising, promotion and sponsorship have been scarce. Recently, studies were commissioned by the government to map the effects of a display ban and a reduction of the number of points of sale for tobacco products (including a ban on tobacco vending machines). So far, no concrete measures have been announced or implemented on the basis of these studies.

Quality of tobacco dependence treatment (Article 14) seems warranted in the Netherlands and recent initiatives have contributed to a further embedment of quality standards. With regard to the promotion of smoking cessation, less clear-cut developments were observed. This applies, for
instance, to the fluctuations in reimbursement for pharmacotherapy (available in 2011, 2013 and 2014, but not in 2012). In particular, the lack of active communication regarding the existence and availability of effective methods to quit smoking and the absence of a strategy to stimulate and support smokers to quit raises concerns.

Combatting illicit trade in tobacco products ([Article 15](#)) does not seem to be considered a priority in the Netherlands yet, although some measures have recently been taken to increase enforcement. Recently, various developments have occurred at the WHO and EU levels. Even though the Dutch government tends to go along with these measures, it does not adopt a leading role. The Netherlands has, for example, not yet ratified the FCTC Protocol on Illicit Trade. The government appears willing to rely on data or systems that have been provided or developed by the tobacco industry.

Several measures have been initiated in order to prevent sales to minors ([Article 16](#)). The legal age limit has been increased from 16 to 18, enforcement capacity has been strengthened and more stringent penalties have been introduced. However, currently there is no ban on tobacco vending machines and no further measures have been taken with regard to sales by minors, causing a discrepancy between the legal age limit for buying tobacco (18 years) and selling tobacco (16 years).

Monitoring of tobacco consumption ([Article 20](#)) is one area in which an obvious downward trend has been observed since the previous shadow report. The government has decided to discontinue two well-established and high-quality national surveillance programmes on smoking (the Continuous Survey of Smoking Habits and the Smoking Youth Monitor). Especially the discontinuation of the Smoking Youth Monitor is remarkable, given the government’s focus on prevention of smoking among youth. Although other monitoring instruments have been put in place, these instruments do not offer the same level of detail. No improvements have been observed in relation to the promotion of scientific research in the area of tobacco control. If anything, it appears to have become more difficult to obtain government subsidies for tobacco control research.

The trend of decreased financial resources for tobacco control ([Article 26](#)) that was identified in the previous shadow report seems to have continued, although a precise assessment of the available budget for tobacco control is complicated by the Dutch government’s increased reliance on an integrated approach to prevention. In the past years, the development of tobacco control policies has been negatively influenced by budgetary concerns.

Table 1b shows to what extent the Dutch government is currently acting in accordance with the Convention and its Guidelines. In assessing its performance, a distinction has been made between FCTC obligations, recommendations and suggestions. For each treaty article, it has been assessed to what extent the government acts in accordance with the various obligations, recommendations and suggestions. These scores have been combined in Table 1b, with the overall score being determined by the lowest score for the provisions. A ‘red score’, therefore, does not necessarily mean that the government takes no action in this field. It does, however, imply that the government does not meet at least one of its treaty obligations. The score listings at the end of the specific chapters give more details and insights into the weaknesses and strengths of the Dutch tobacco control policy.
The methodology for assessing the performance of the government in terms of FCTC has been slightly adjusted in comparison to the previous report. The previous report aimed primarily at positioning the Netherlands in an international perspective. The methodology used was therefore largely based on a comparative component. The purpose of this second shadow report is more nationally oriented. The assessment of the government’s performance is, therefore, based more on the Dutch application of the wording and spirit of the treaty. Due to the changed methodology, the two reports should not be compared one-on-one.

<table>
<thead>
<tr>
<th>Not in accordance with FCTC obligations</th>
<th>Not in accordance with FCTC recommendations, but corresponds to obligations (if any)</th>
<th>Not in accordance with FCTC suggestions, but corresponds to obligations and/or recommendations (if any)</th>
<th>Corresponds to FCTC obligations, recommendations and/or suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive strategy and central coordination (Art. 5.1 &amp; 5.2)</td>
<td></td>
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<tr>
<td>Protection against tobacco industry interests (Art. 5.3)</td>
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<td>Protection against exposure to tobacco smoke (Art. 8)</td>
<td></td>
<td></td>
<td>Tax and price measures (Art. 6)</td>
</tr>
<tr>
<td>Contents of tobacco products and disclosures (Art. 9 &amp; 10)</td>
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<td>Packaging and labelling (Art. 11)</td>
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<tr>
<td>Education, communication, and training (Art. 12)</td>
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<td></td>
</tr>
<tr>
<td>Advertising, promotion, and sponsorship (Art. 13)</td>
<td></td>
<td>Tobacco dependence and cessation (Art. 14)</td>
<td>Illicit trade (Art. 15)</td>
</tr>
<tr>
<td>Sales to and by minors (Art. 16)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and surveillance (Art. 20)</td>
<td></td>
<td></td>
<td>Financial resources (Art. 26)</td>
</tr>
</tbody>
</table>

The methodology for assessing the performance of the government in terms of FCTC has been slightly adjusted in comparison to the previous report. The previous report aimed primarily at positioning the Netherlands in an international perspective. The methodology used was therefore largely based on a comparative component. The purpose of this second shadow report is more nationally oriented. The assessment of the government’s performance is, therefore, based more on the Dutch application of the wording and spirit of the treaty. Due to the changed methodology, the two reports should not be compared one-on-one.
Main recommendations
Based on the contents of FCTC – and taking into account recent developments and current performance – the main recommendations to the Dutch government are to:

• Develop a comprehensive, multisectoral national tobacco control strategy.
• Take further measures to protect tobacco control policies against the interests of the tobacco industry, including the development of a protocol and increased transparency with regard to all interactions with the tobacco industry.
• Implement significant tax increases on a regular basis and use taxes to decrease the price differentials between substitutable tobacco products.
• No longer allow designated smoking rooms.
• Correctly and promptly transpose the revised EU Tobacco Products Directive and inform the public about (the health rationale for) these measures.
• Consider the implementation of plain packaging.
• Implement further measures, such as mass media campaigns, to increase awareness of the harmfulness of smoking and initiate communication on other topics, such as the marketing strategies of the tobacco industry.
• Implement a (more) comprehensive ban on tobacco advertising and promotion, including a display ban.
• Develop a long-term strategy to help smokers quit, which includes continued reimbursement of pharmacotherapy and measures to increase awareness among smokers about (the effectiveness of) the support that is available for smoking cessation.
• Acknowledge the role of the fight against illicit tobacco trade as part of a comprehensive tobacco control policy and ratify the Protocol on Illicit Trade.
• Ban tobacco vending machines.
• Reverse the decision to discontinue the two well-established and high-quality tobacco monitors on tobacco use.
• Stimulate scientific research in the area of tobacco control.
• Significantly increase the budget for tobacco control.
Introduction

Smoking is by far the leading preventable cause of mortality and morbidity in the Netherlands. Every year more than 19,000 people die of the consequences of smoking. Exposure to secondhand smoke is believed to cause another couple of thousand deaths on an annual basis. More than one-eighth of the total disease burden in the Netherlands is attributable to smoking. There has been a slow decrease in smoking prevalence since the early 2000s (see Figure 1). Between 2004 and 2010, the proportion of smokers as part of the Dutch population fluctuated between 27% and 28%. In 2011, smoking prevalence decreased to slightly below 25%. Although there was a small increase in the proportion of people smoking in 2012, the level of smoking prevalence returned to 25% in 2013. It has been suggested that the proportion of smokers as part of the Dutch population is stabilising.

Figure 1
Smoking prevalence in the Dutch population (15 years and older), from 2000 to 2013.

In 2013, the Netherlands ranked 13th among European countries with regard to the implementation of major tobacco control policies. Few improvements were observed in comparison to 2010.

The Netherlands is a Party to the Framework Convention on Tobacco Control (FCTC) since 2005. On 27 January 2015, it will be ten years since the Netherlands ratified this first global health treaty. The Convention aims to protect present and future generations from the devastating consequences of tobacco consumption and exposure to tobacco smoke. To this end, it provides a framework for tobacco control measures to be implemented by its Parties. The FCTC obliges its Parties to periodically report to the World Health Organisation (WHO) on the progress made with regard to implementing these measures (Article 21). In April 2014, the Dutch government submitted its fourth
progress report. Previous reports were submitted in 2008, 2010 and 2012. The national reports are primarily used by the Convention Secretariat to draw up global progress reports. An (independent) assessment of the implementation progress or compliance is not (currently) provided.

Since the 2014 reporting round, the FCTC reporting instrument allows the Parties to elaborate not only on the extent to which the Convention itself has been implemented, but also to comment on the implementation status of the various Guidelines, through a standardised questionnaire. The Dutch government has opted not to make use of this additional (voluntary) instrument.

As a counterpart to the official country reports, shadow reporting is an instrument used by non-governmental organisations to assess governmental implementation of the FCTC. This is the second FCTC shadow report in the Netherlands. The first report, which was presented in March 2012, described the state of Dutch tobacco control policy in the middle of 2011. Inspired by the report, a motion was tabled in the House of Representatives by members of the Christian Party (CU) and Party for the Animals (PvdD): “The House [...], noting that the Netherlands does not abide by all measures included in the WHO FCTC, which was ratified by the Netherlands; urges the government to develop a comprehensive tobacco control policy, raise tobacco excise duties, reverse the relaxation of the smoking ban, ban the use of additives in tobacco products, publicly disclose information about tobacco products ingredients, renew health warning labels on tobacco products, initiate public awareness campaigns about the health risks of smoking and passive smoking, develop a national smoking cessation strategy, ban cigarette vending machines, pay attention to the environmental impact of tobacco production and consumption, establish a fund for tobacco research and coordinate scientific research in this area.”

Although the motion was not supported by a majority of the members of parliament, the first shadow report has contributed to an increased (political) awareness of the importance of FCTC for Dutch tobacco control.

The assessments in the shadow reports are guided by the texts of the Convention and its Guidelines. Using the FCTC as a benchmark has several important implications. Firstly, although the FCTC is an evidence-based treaty, this does not imply that all effective tobacco control measures are included in optima forma in the Convention. In drawing up international treaties, political compromises often have to be made. For example, Article 6 FCTC, on price and tax measures, does not contain any obligations (‘shall’-provisions), even though tobacco taxation is often considered to be (one of) the most effective tobacco control measure(s). Therefore, if a government performs well or sufficient in terms of FCTC, this does not imply that the government has taken the best available measures. The Convention itself explicitly encourages Parties to implement measures beyond those included in the FCTC (see Article 2.1 of the Convention and the introductory remarks to various Guidelines). While the scores presented in this report are solely based on the contents of FCTC, the recommendations are, in some instances, more far-reaching or concrete (but still based on scientific evidence). Secondly, although the FCTC is not a standstill treaty (see below), it has not yet been adapted to some of the recent developments on the tobacco market, such as the emergence of the electronic cigarette. This topic will therefore not be (extensively) addressed in this report, even though the Dutch government has taken measures in this regard.
Since the previous shadow report, various developments have taken place in relation to the contents of the FCTC. During the fifth Conference of the Parties (COP) in November 2012, the partial Guidelines on Articles 9 and 10 were amended and the first Protocol to the Convention (on illicit trade) was adopted. During the sixth COP in October 2014 new Guidelines were adopted for the implementation of Article 6.

Important context-setting developments on the national level include a change of government. From October 2010 to November 2012, a minority coalition between the conservative-liberals (VVD) and the Christian democrats (CDA) was in power, supported by the populist Freedom Party (PVV). Tobacco control fell within the portfolio of the Minister of Health, Edith Schippers (VVD). Since November 2012, the Dutch government coalition is made up of the VVD and the Labour Party (PvdA). The responsibility for tobacco control has been transferred to the State Secretary for Health, Martin van Rijn (PvdA).

The research questions for this second shadow report were:

- What FCTC-related developments have taken place in the Netherlands between September 2011 and December 2014?
- What is the current status of implementation of the FCTC and its Guidelines in the Netherlands?
- What points of improvement for the Dutch tobacco control policy can be derived from the FCTC?

A selection has been made with regard to the FCTC provisions under scrutiny in this report. With the exception of Article 17 FCTC (which is less relevant, because tobacco is not grown in the Netherlands), all provisions setting out measures to reduce the demand (Articles 5, 6, and 8 to 14) and supply (Articles 15 and 16) of tobacco are included. In addition, the most important overarching and supportive provisions are considered, namely the general obligations included in Article 5, the obligations in the areas of research and surveillance (Article 20) and financial resources (Article 26). The report focuses on the development of tobacco control policies in the Netherlands. The contribution of the Dutch government to the development of tobacco control policies in other countries (for instance, through financial contributions) is not assessed. This is not to indicate that such actions are not of importance in the global fight against the tobacco epidemic. Rather, it illustrates that choices had to be made in drawing up this report and that these choices have resulted in a focus on the implementation of the FCTC in the Dutch context.

Details of the Dutch tobacco control policy that have remained (largely) unchanged since the publication of the previous shadow report will, in most instances, not be discussed again, although the lack of progress does in certain instances translate into a repetition of recommendations. For details on the situation before September 2011, the first Dutch FCTC shadow report can be consulted.
Data Collection and Methods

Data collection
Data were compiled and collected from July 2014 to December 2014. They cover the period from September 2011 to December 2014. Data were primarily retrieved from the following sources: official government documents, documents retrieved through Government Information (Public Access) Act requests, research reports, scientific publications and news articles. Experts and public servants were approached to fill remaining knowledge gaps.

Methods
This report assesses the performance of the Dutch government in terms of the FCTC at the end of 2014. The method of evaluation has been somewhat adjusted in comparison to the first Dutch FCTC shadow report. In the previous report, the Dutch government’s performance was assessed by comparing its actions to those of other countries. This suited the objective of positioning the Netherlands in an international perspective. The purpose of this second report was more nationally oriented. Evaluation was based on compliance with all relevant FCTC provisions, building on the exact wording of the Convention and its Guidelines. Such an approach provides more detailed information on the elements that still need to be improved by the government in order for it to act in accordance with the FCTC. While the report gives an extensive overview of the policy changes that have occurred since the previous report, due to this change in methodology, caution is required in drawing conclusions concerning changes in FCTC compliance by the Dutch government. In particular, the colour code schemes presented in the two reports cannot be compared one-on-one.

Selection of provisions
To evaluate the government’s performance, a distinction was made between three types of commitments, with various strengths, that can be found in the FCTC and its Guidelines. These are obligations, recommendations and suggestions. This classification derives from the verbs that are used to communicate the commitment (see also Table 2). Only provisions that represent an obligation, recommendation or suggestion for the Parties were included in the analysis. Provisions that are targeted primarily at cooperation with or assistance to other Parties or that concern procedural commitments in relation to the World Health Organisation (WHO) were excluded from the analysis.

Given the large number of commitments included in the Guidelines, some further selections were made. If the Guidelines contain an explicit reference to the term “recommendations”, followed by one or more concrete recommendations, only these recommendations were selected. This applies to the Guidelines for implementation of Article 5.3, Articles 9 and 10, and Article 13. The Guidelines for implementation of Article 12 and Article 14 also contain such explicit references to “recommendations”, but these
recommendations are further specified through “action points”. Because the Guidelines explicitly link these action points to a successful implementation of the recommendations, these action points were used to assess the government’s performance. For Article 8 and Article 11, provisions from the Guidelines were selected on the basis of the wording of provisions, as well as their topic. For Article 11, those provisions were selected that relate to the development of effective packaging and labelling requirement and restrictions, and that contain a commitment directed at the Parties (e.g., “Parties should”) or a commitment related directly to the measures to be taken (e.g., “Health warnings should”). Commitments directed at the Parties included in the Guidelines for implementation of Article 8 are scarce. Provisions were included if they are targeted at the Parties or build directly on the measures to be taken by the government (e.g., “Legislation should”).

To prevent extremely long tables, commitments were combined if appropriate. This was done for the Article 5.3, Article 12 and Article 14 Guidelines. In these cases, the overarching recommendations were provided by the Guidelines themselves. To score compliance with these commitments, the same approach was used as the approach that was employed to compute the overall scores for treaty articles (see below).

Provisions were removed in cases of a clear overlap with other provisions. This applies, for example, to the Article 14 Guidelines’ section on a stepwise approach to developing cessation support. In addition, several Guidelines’ provisions were deemed non-applicable in the Dutch context, such as the Article 5.3 Guidelines on state-owned tobacco industry.

Guidelines for implementation of Article 6 were adopted by the Conference of the Parties in October 2014. Given the short period of time between this adoption and the assessment provided in this report, the Dutch government’s performance has not yet been scored on the basis of the recommendations and suggestions included in these Guidelines.

Table 2
The colour scheme to reflect compliance with FCTC commitments

<table>
<thead>
<tr>
<th></th>
<th>Not in accordance with FCTC obligations</th>
<th>Not in accordance with FCTC recommendations</th>
<th>Not in accordance with FCTC suggestions</th>
<th>Corresponds to FCTC</th>
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<tbody>
<tr>
<td><strong>Obligations:</strong></td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
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<tr>
<td>Shall</td>
<td>No</td>
<td></td>
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<tr>
<td><strong>Recommendations:</strong></td>
<td></td>
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<td></td>
<td>Yes</td>
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<tr>
<td>Should</td>
<td>No</td>
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<tr>
<td>Shall endeavour</td>
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<td><strong>Suggestions:</strong></td>
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Scoring system
For each selected provision it was determined whether or not the government complied with the commitment (obligation, recommendation or suggestion), using December 2014 as point of reference. Compliance was assessed as a dichotomy (‘yes’ or ‘no’). Intermediate options, such as ‘partially’, were not considered. Compliance and strength of the commitment were combined into a colour score. Table 2 shows how this scoring mechanism was applied. For example, if the government was found
not to act in line with an obligation, it was provided with a ‘red score’ regarding that provision. If it was found to comply, a ‘green score’ was attributed. In case of a suggestion, which is a much weaker commitment, the government was attributed a ‘light green score’ in case of non-compliance. This is to indicate that the government cannot be held accountable for not having implemented a provision which is merely phrased as a suggestion. However, from the perspective of tobacco control and public health, it would be strongly advisable for the government to take action in this regard.

In order to establish whether or not the government complied with a specific commitment, several aspects were taken into consideration. Given that the Guidelines are often more far-reaching than the Convention itself, they were generally not used as a direct benchmark for assessment of compliance with the Convention provisions. Most sets of Guidelines have the purpose of assisting Parties in meeting their obligations under a specified FCTC provision. However, in some cases (most notably the Guidelines on Article 8), the objectives have been defined in broader terms and do set out required action under the Convention. In these limited instances, the Guidelines have been used to interpret the related treaty provisions.

Many treaty articles refer to the obligation to take “effective measures”, without specifying this notion of effectiveness. In these cases, it was considered whether the type of measure should generally be considered effective. Enforcement of and compliance with the measure were taken into account as well. Finally, it was assessed to what extent the actions taken by the government were in line with the current state of scientific knowledge as well as current practices in other countries.

Various provisions contain a conditional phrase, such as “taking into account national circumstances and priorities”. In such instances, the Dutch context was taken into consideration when assigning scores. When assessing compliance with provisions that are conditioned by legal requirements (such as “in accordance with its national law”), it was assumed that there were no legal collisions, unless there was clear evidence to the contrary (which has not been found).

Finally, in scoring the government’s performance, future actions were not taken into consideration. However, because the Netherlands is legally required to transpose the revised EU Tobacco Products Directive (TPD), which contains many predefined conditions, an attempt has been made to point out for which provisions this transposition (which has to occur by May 2016 at the latest) would likely make a difference as far as assessed compliance is concerned.

**Overall scores for entire treaty articles**

Based on the individual scores for the various provisions within a treaty article, an overall score was created for the entire treaty article. This final score was determined on the basis of the lowest score on any of the provisions (obligations, recommendations and suggestions) that were identified in relation to this treaty article. A ‘red score’ does, therefore, not necessarily imply that the government takes no action in this field. It does, however, indicate that the government does not meet at least one of its treaty obligations. The tables listing all individual scores, presented at the end of each chapter, highlight which commitments have to be implemented in order to obtain a better overall score. Not all treaty articles contain obligations. Article 6 (price and tax measures), for instance, does not include a “shall”-provision. For these articles it was thus not possible to obtain an overall ‘red score’.
FCTC Article-by-Article Review

Article 5

General Obligations

**ARTICLE 5.1**

EACH PARTY SHALL DEVELOP, IMPLEMENT, PERIODICALLY UPDATE AND REVIEW COMPREHENSIVE MULTISECTORAL NATIONAL TOBACCO CONTROL STRATEGIES, PLANS AND PROGRAMMES IN ACCORDANCE WITH THIS CONVENTION AND THE PROTOCOLS TO WHICH IT IS A PARTY.

The Dutch government has consistently reported to the World Health Organisation (WHO) that it has adopted and implemented comprehensive, multisectoral national tobacco control strategies, plans and programmes. However, there has been no national tobacco control strategy, plan or programme since the National Programme on Tobacco Control 2006-2010 (which did contain the ambition of reducing smoking prevalence to 20% in 2010, but lacked a comprehensive and workable strategic plan as well as agreements between the government and health organisations on how to achieve the target) came to an end. Rather, smoking has come to be included as part of more general health strategies, plans and programmes.

The Dutch government develops a national health policy document every four years. In May 2011, the “Health Nearby” (Gezondheid Dichtbij) policy report was presented. Although smoking was still identified as one of the priorities, the government had shifted its focus to physical activity. In the report, few references were made to specific tobacco control interventions or measures. In November 2013, the Health Nearby policy was supplemented by the National Programme on Prevention (NPP) “Everything is Health” (Alles is Gezondheid). The NPP builds upon activities that had already been initiated and takes the process of shifting responsibility for preventive health from the government to civil society and citizens one step further. Its intention is to link various governmental and non-governmental (company and civil society) initiatives in order to increase their impact. The Programme has been explicitly presented as not just a governmental programme. Rather, the central government is one of many partners. In December 2014, more than 140 organisations had signed
a pledge, committing them to contribute to the realisation of the objectives of the NPP\textsuperscript{21}. Although partners from different sectors have been included as part of these initiatives, no mention is made of the Ministry of Finance, even though this ministry is responsible for taxation of tobacco products, which is an important measure to reduce tobacco use.

The government has been cautious in formulating concrete targets for tobacco control. Although the NPP contains specific output targets with regard to policy implementation (such as healthy schoolyards in all municipalities in 2025 (see the chapter on Article 8)), regarding smoking prevalence the defined target is not concrete: a "substantial improvement" in comparison to the current trend\textsuperscript{20}, on the basis of which smoking prevalence is estimated to be at 19\% in 2030 (from 23\% in 2012)\textsuperscript{3}. At the same time, the government has indicated to aim at a reduction in the percentage of smokers by 30\% in 2025 (in line with the WHO target)\textsuperscript{22}.

Municipalities are expected to play an important role in the area of prevention. Within two years of the presentation of the national Health Nearby policy, municipalities were required to adopt their local health programmes. However, of the six national priorities, smoking was among the three topics that were least often included in the new local health programmes (67\%)\textsuperscript{23}. Less than half of the municipalities (47\%) indicated they considered themselves responsible for or in charge of tobacco control. One of the arguments for not taking control was that many national initiatives were already in place\textsuperscript{23}. Tobacco control is increasingly included as part of a broader, integrated section on substance use instead of as an independent theme\textsuperscript{24}. A set of guidelines has been developed by the Centre for Healthy Living (part of the National Institute for Public Health and the Environment (RIVM)) to support municipalities in incorporating tobacco control in their local health policies. An integral approach to tobacco control is encouraged, incorporating environmental factors (e.g. reaching agreements with school boards to implement smokefree schoolyards), regulation and enforcement (less relevant at the local level, but municipalities can stimulate compliance), education (e.g. stimulating the use of intervention at schools), signalling and support (e.g. providing financial means to encourage quit attempts among poorer segments of the population)\textsuperscript{25}. As of 2015, the Trimbos Institute (Netherlands Institute for Mental Health and Addiction, which also hosts, since 2013, the National Centre of Expertise on Tobacco Control (NET)) will support municipalities in developing and implementing local prevention and enforcement policies\textsuperscript{26}.

\textbf{ARTICLE 5.2(a)}

\textbf{EACH PARTY SHALL, IN ACCORDANCE WITH ITS CAPABILITIES, ESTABLISH OR REINFORCE AND FINANCE A NATIONAL COORDINATING MECHANISM OR FOCAL POINTS FOR TOBACCO CONTROL.}

Primary responsibility for tobacco control lies with the Ministry of Health, Welfare and Sport (hereafter the Ministry of Health). There is no separate, identifiable unit that is responsible for tobacco control, although several public servants from the Department of Nutrition, Health Protection and Prevention work full-time or part-time on issues of tobacco control.

Other ministries also deal with tobacco control issues. For example, excise duties are determined and implemented by the Ministry of Finance. However, this is generally not done on the basis of a public health perspective or as part of a wider tobacco control policy (see also the chapter on Article 6).
The 2014 government report to the WHO mentions that one of the civil servants from the Ministry of Health who works on tobacco control occasionally meets with colleagues from other ministries. The wording suggests that these meetings mostly take place on an ad hoc basis (e.g. because certain topics are discussed in international fora). There does not appear to be an institutionalised, sustainable coordinating mechanism, such as an inter-ministerial committee, through which civil servants from different ministries coordinate their tobacco control efforts on a regular and structural basis.

**ARTICLE 5.3**

IN SETTING AND IMPLEMENTING THEIR PUBLIC HEALTH POLICIES WITH RESPECT TO TOBACCO CONTROL, PARTIES SHALL ACT TO PROTECT THESE POLICIES FROM COMMERCIAL AND OTHER VESTED INTERESTS OF THE TOBACCO INDUSTRY IN ACCORDANCE WITH NATIONAL LAW.

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 5.3**

Parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products. Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public.

Article 5.3 is one of the FCTC provisions that has gained more prominence in political debates since September 2011. This increased attention was prompted by a Dutch television documentary about the regular contacts between the tobacco industry and the Minister of Health, who was therefore labelled the “Minister of Tobacco” (October 2011). The launch of the website www.tabaknee.nl (see the chapter on Article 12) further contributed to the rise of Article 5.3 on the Dutch political agenda. This increasing emphasis on Article 5.3 is also reflected in the Dutch government’s reports to the WHO. Whereas in 2010 it was reported that no official actions were taken to implement the Guidelines on Article 5.3, in 2012 and 2014, it was stressed that the government is transparent regarding tobacco industry contacts, that it only interacts with the industry to the extent strictly necessary, and that it does not endorse partnerships or other non-binding agreements with the industry. In reply to parliamentary questions, members of government repeatedly pointed out that the Convention does not state that no contacts are allowed between the government and the tobacco industry. In fact, in 2012, the Minister of Health even stated that “the Netherlands has only agreed to the Guidelines, on the condition that interactions between the central government and the tobacco industry remained possible.”

Recommendations 2.1 and 2.2 of the Guidelines for implementation of Article 5.3 set out that contacts with the tobacco industry should only be allowed when they are strictly necessary for effective regulation and when they are conducted transparently. According to the State Secretary, contacts with the tobacco industry are only sought when they are considered necessary. He has stated that contacts may be deemed necessary if they concern technical issues in relation to the implementation of legislation and regulation or if they concern the consequences of specific measures for a factory or industry. Generally, no information is provided as to why specific interactions are considered necessary by the government. Due to a lack of transparency (see below), it is very difficult to establish the contents of such meetings and hence to assess its necessity. Internal
documents that were made public based on the Dutch Government Information (Public Access) Act (WOB) showed that there are some examples of the government refusing to meet tobacco industry representatives: “In your email, you indicate that you would appreciate a meeting, because you do not agree with a couple of measures included in the new Tobacco Products Directive. We will not accept your request at this point in time. Not just because we have been informed about your views on several occasions, but also because the Dutch stance has been determined in consultation with the House of Representatives – and we are bound by Article 5.3 FCTC“ (June 2013). However, examples of situations in which the government did agree to meet the tobacco industry are much more common. In September 2014, the Youth Smoking Prevention Foundation (Stichting Rookpreventie Jeugd) initiated legal proceedings against the Dutch government for failure to comply with Article 5.3 FCTC. Their court summons includes a long list of examples of government-industry interactions, in various stages of the decision-making process, in the period from 2010 to 2013. At least some of these examples concern interactions during which legislation or policy that had yet to be presented to parliament was discussed with the industry. For instance, in April 2012, the State Secretary for Finance sent a letter to British American Tobacco (BAT): “The Tariff Policy Document for Tobacco and Alcohol Excise Duties is currently before me and I hope to be able to finalise it soon, so that I can send it to the House of Representatives. The various elements are addressed in the Tariff Policy Document. You will understand that I cannot already disclose the contents of the policy document. However, before it will be sent, I would be happy to discuss the basic ideas in a regular consultation with the tobacco industry.”

The Dutch government considers itself to be acting in line with the FCTC as far as the Guidelines on transparency are concerned. Reference has been made to information that was provided in reaction to questions raised by members of parliament and following requests under the WOB. However, transparency is generally not actively provided by the Dutch government. There are only very few examples of the government informing the members of parliament about future meetings with the tobacco industry. Moreover, minutes of meetings are often not available. The State Secretary for Health has interpreted Article 5.3 as implying that the government should be able to demonstrate that the commercial interests of the tobacco industry have had no impact on the development and implementation of policies. However, if no minutes are made available of meetings with the tobacco industry, this cannot (easily) be demonstrated.

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 5.3

Parties should formulate, adopt and implement a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.

No official policy document has been developed in which the application of Article 5.3 is specified. There is no official protocol to be followed when interaction is sought by the tobacco industry. In 2011, the Minister of Health, who was responsible for tobacco control at that time, argued that such a protocol would not be necessary: “I do not have to draw up a protocol about this. For me, my public servants are integer, whether they talk to someone from the alcohol industry, with a candy manufacturer or with someone who wants to prohibit these things. In the end, we transparently consider all options [in the parliament].” Civil servants and government officials are bound by general rules regarding integrity. They are, for instance, required to report any additional functions held, to prevent conflicts of interest.
GUIDELINES FOR IMPLEMENTATION OF ARTICLE 5.3

Parties should inform and educate all branches of government and the public about the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry and the strategies and tactics used by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.

In political debates, members of government have taken different approaches in defining the position of the tobacco industry. In March 2012, the Minister of Health stated: “The tobacco industry – let me make it clear – is a legal industry. I think contacts with legal industries should be possible” 40. When asked about the tobacco industry in relation to other industries, the State Secretary for Health noted in February 2013: “Exactly because of the nature of the tobacco industry, we have reached international agreements, which we stick to. It is thus not an industry like any other” 28. This position has not been exploited further. On the contrary, when asked by members of parliament about the ties of various people and organisations to the tobacco industry, the State Secretary has generally taken a passive approach. For instance, in relation to investments by pension funds, he emphasised that pension funds (including the pension fund for employees in the government, public and education sector (ABP)) are responsible for their own investment policy. He added that the ABP does not invest in companies that are involved in products or services that are prohibited under Dutch or international law and that such a prohibition is not in place for tobacco products 41. In addition, no public education campaigns have run about (the uniqueness of) the tobacco industry (stressing the harmful nature of its products in combination with its strategies to interfere with tobacco control policies). In September 2014, the State Secretary did send a letter to all municipalities and provinces, emphasising that these levels of government are also bound by the provisions of FCTC, including Article 5.3 (see also the chapter on Article 13). Although reference was made to the fact that the Convention was established because tobacco use is the largest preventable cause of death on a global scale, tobacco industry strategies to interfere with the adoption and implementation of tobacco control policies were not considered in the letter 42.

The central government appears to have been reluctant in entering into partnerships or agreements with the tobacco industry. For instance, in January 2013, public servants from the Ministry of Health discussed the government’s proposal to raise the legal age limit for tobacco products from 16 to 18 (see also the chapter on Article 16) with a representative from the Platform Points of Sale of Tobacco Products (PVT). This representative suggested that the PVT could support in the development of a campaign strategy. However, one of the public servants indicated that “this is a responsibility of the government. Collaboration with the tobacco industry, or its allied organisations, is difficult, also in the light of the FCTC” 43.

An important exception to this reluctance relates to the fight against illicit trade. In 2011, a Memorandum of Understanding was signed between Dutch Customs Administration and tobacco industry branch organisations 44. The contents of this agreement have not been made publicly available. In the context of the European Union, ‘similar’ agreements have been reached, between the tobacco industry and the European Commission and between the tobacco industry and other EU countries. In reaction to questions regarding the compatibility between these agreements and
the FCTC Guidelines, the responsible EU Commissioner stated that the agreements with the tobacco industry are binding and enforceable, and therefore in line with FCTC.\textsuperscript{45}

In addition, various partnerships have emerged between local governments (municipalities) and the tobacco industry, in relation to activities that are closely tied to corporate social responsibility, such as protection of the environment. Such partnerships are further discussed in the chapter on Article 13.

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 5.3**

Parties should not grant incentives, privileges or benefits to the tobacco industry to establish or run their business. Parties should not provide any preferential tax exemption to the tobacco industry.

In April 2014, Philip Morris announced that it would terminate most its production facilities in the Netherlands (Bergen op Zoom). This termination yielded a significant amount of media and political attention. One of the topics discussed concerned alleged arrangements between Philip Morris and the Tax and Customs Administration. In response to parliamentary questions, the State Secretary for Finance noted that the pledge of secrecy imposed on the Tax and Customs Administration does not allow for the publication of information regarding individual tax payers (emphasising that the Tax and Customs Administration only makes deals with tax payers that are not opposed by legislation, policy and jurisprudence).\textsuperscript{46} This secrecy makes it impossible to assess whether or not preferential treatment has occurred.

**Conclusions and recommendations**

Several general obligations included in Article 5 are not currently implemented in the Netherlands. No comprehensive, multisectoral tobacco control strategy, plan or programme has yet been put in place. An overall 'red score' has therefore been attributed to the Dutch government in relation to Articles 5.1 and 5.2 in the summary table on implementation of FCTC measures in the Netherlands in 2014 (Table 1b). With regard to Article 5.3, it appears that some actions have been initiated to eliminate or reduce tobacco industry influence on tobacco control policies. At the same time, internal documents suggest that these arrangements are not (yet) structurally imbedded within the entire government. The Dutch government was therefore found not to act in line with the obligation included in Article 5.3 and was awarded an overall 'red score' in the summary table on this treaty article as well. So far, the government fails to comply with most of the recommendations included in the Guidelines for implementation of Article 5.3. Based on these conclusions, the Dutch government is urged to:

- Develop a comprehensive tobacco control strategy, which includes a long-term perspective on tobacco control.
- Further strengthen and institutionalise coordination of tobacco control measures, to ensure that the public health perspective on tobacco control is also embedded in ministries other than the Ministry of Health.
- Develop a clear protocol for all interactions between government officials, representatives and employees, and the tobacco industry. Current practices should be formalised in a policy document and should be supplemented by additional procedures, especially in the area of transparency. Full and comprehensive information on contacts with the tobacco industry should actively be made available to the public.
• Educate all branches of government and the public about the strategies of the tobacco industry as well as the need to protect tobacco control policies from the industry’s (commercial) interests, in line with the Guidelines for implementation of Articles 5.3 and 12.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 1</td>
<td>Shall</td>
<td>Develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention and the protocols.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 2a</td>
<td>Shall</td>
<td>Establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td>5 3</td>
<td>Shall</td>
<td>In setting and implementing their public health policies with respect to tobacco control, act to protect these policies from commercial and other vested interests of the tobacco industry.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 3 GL 1</td>
<td>Should</td>
<td>Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 3 GL 2</td>
<td>Should</td>
<td>Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 3 GL 3</td>
<td>Should</td>
<td>Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 3 GL 4</td>
<td>Should</td>
<td>Avoid conflicts of interest for government officials and employees.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 3 GL 5</td>
<td>Should</td>
<td>Require that information provided by the tobacco industry be transparent and accurate.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 3 GL 6</td>
<td>Should</td>
<td>Denormalise and, to the extent possible, regulate activities described as ‘socially responsible’ by the tobacco industry, including but not limited to activities described as ‘corporate social responsibility’.</td>
<td>No</td>
<td>🟠</td>
</tr>
<tr>
<td>5 3 GL 7</td>
<td>Should</td>
<td>Do not give preferential treatment to the tobacco industry.</td>
<td>?</td>
<td>?</td>
</tr>
</tbody>
</table>
Article 6

Price and Tax Measures

Article 6 is based on the recognition “that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons”. Nevertheless, the previous shadow report established that tobacco price and tax measures usually serve financial purposes in the Netherlands. Any reduction of tobacco consumption as a consequence of such measures was considered as no more than a positive side-effect. This situation has persisted. In 2013, the State Secretary for Finance confirmed that “although excise duties undeniably play a role in discouraging tobacco use, the primary purpose, as is generally the case for all taxes, is to generate revenue. The [...] planned excise duty increase has therefore been prompted by budgetary considerations” 47. The postponement (September 2013) 48 of a previously announced tobacco excise duty increase 49 also demonstrates the sustained primacy of financial objectives. The decision to postpone was the result of tobacco tax revenues falling short of expectations 48. This setback was considered to be largely due to processes of stockpiling and substitution (issues which are further discussed below) 50. It was expected that another excise duty increase would not (or only marginally) benefit the Treasury. Any negative health consequences of the delay were barely considered, even though the government did recognise “that lower revenues due to the fact that fewer people are smoking can also be a desired result” 47.

No (long-term) taxation policy has been developed by the Dutch government. Rather, decisions are generally made on an annual basis. Although there is a legal requirement stipulating that tobacco excise taxes must account for at least 60% of the weighted average retail selling price (WAP) for factory-made cigarettes and 52% of the WAP for roll-your-own tobacco (Act on Excise Duties), no objectives have been formulated in terms of future targets for excise duty shares or tobacco consumption reductions. Such a long-term taxation policy would be in line with the newly adopted Guidelines, which state that “Parties should establish coherent long-term policies on their tobacco taxation structure and monitor on a regular basis including targets for their tax rates, in order to achieve their public health and fiscal objectives within a certain period of time”.

Excise duty revenues are currently not being earmarked for tobacco control or other health purposes. By earmarking (part of) the tobacco tax revenues, the potential of higher taxes as a means to benefit public health could be further exploited by the Dutch government. Such a decision would also be in line with paragraph 5 of the new Guidelines. As is illustrated in the chapter on Article 26 FCTC, the governmental budget for tobacco control has decreased significantly over the past decade. This complicates implementation of other tobacco control policies.
ARTICLE 6.2a

WITHOUT PREJUDICE TO THE SOVEREIGN RIGHT OF THE PARTIES TO DETERMINE AND ESTABLISH THEIR TAXATION POLICIES, EACH PARTY SHOULD TAKE ACCOUNT OF ITS NATIONAL HEALTH OBJECTIVES CONCERNING TOBACCO CONTROL AND ADOPT OR MAINTAIN, AS APPROPRIATE, MEASURES, WHICH MAY INCLUDE IMPLEMENTING TAX POLICIES AND, WHERE APPROPRIATE, PRICE POLICIES, ON TOBACCO PRODUCTS SO AS TO CONTRIBUTE TO THE HEALTH OBJECTIVES AIMED AT REDUCING TOBACCO CONSUMPTION.

The newly adopted Guidelines recommend Parties to tax all tobacco products in a comparable way, in particular in those instances where the risk of substitution exists. In the Netherlands, differential excise duty rates still apply to different tobacco products. A distinction is made between cigarettes, cigars, other smoking tobacco (including roll-your-own tobacco) and non-smoking tobacco products (snuff and chewing tobacco).

With regard to the excise duty rates for cigarettes and smoking tobacco, several developments can be distinguished. Firstly, excise duty rates are adjusted on a yearly basis (generally taking effect on April 1). These annual adjustments are based on changes to the WAP (although downward adjustments in terms of the absolute amount of excise duties levied are not allowed). Since 2013, the WAP is calculated on the basis of the retail prices in the preceding period from 1 October to 30 September instead of from 1 January to 31 December. Secondly, autonomous tax raises can and have been implemented. There has been one relatively large tax increase since the publication of the previous shadow report. In January 2013, the amount of excise duties levied on a pack of 19 cigarettes was increased by €0.35 and the amount of excise duties levied on a pack containing 40 grams smoking tobacco by €0.60. This excise duty increase, coupled with a general increase in VAT-rates in November 2012 and additional price rises implemented by the tobacco manufacturers, resulted in consumer price increases of more than 10% for both factory-made cigarettes (the WAP increasing from €264.62 to €291.91 per 1000 pieces) and smoking tobacco (the WAP increasing from €126.86 to €145.09 per 1000 grams). The total proportion of excise duties, however, still does not exceed 70% of the retail price, as has been recommended by the World Health Organisation (WHO). For example, in 2014, excise duties amounted to 56% of the retail price for a pack of premium-priced cigarettes (€6.00 per 19 pieces) and to 62% of the retail price for a pack of value-for-money-priced cigarettes (€5.40 per 19 pieces). Another small excise duty increase (€0.09 per pack containing 19 cigarettes or 40 grams of roll-your-own tobacco) will come into force on 1 January 2015.

Both cigarettes and smoking tobacco are subject to a mixed system of ad valorem and specific levels of taxation. Table 3 shows that, over the last couple of years, the share of the specific excise component as part of the total amount of excise duties has increased. An advantage of such a greater reliance on specific excise duties, is that the variability of retail prices is reduced. An important disadvantage of specific excise duties is that their real value will be eroded if they are not adjusted in line with inflation. Such an adjustment system is not currently in place in the Netherlands. In 2014, the Netherlands is one of the leading EU countries as far as the amount of specific excise as proportion of the total amount of taxes on factory-made cigarettes (excise duties and VAT) is concerned. The share of specific excise duties is smaller for smoking tobacco than it
is for factory-made cigarettes. Consequently, whereas the risk of substitution to cheaper cigarette brands can be expected to be relatively low in the Netherlands, this threat of downward substitution is more likely to play a role in the field of roll-your-own tobacco. Even more importantly, excise duty rates (and retail prices) are still (much) lower for roll-your-own tobacco than for factory-made cigarettes. Taking the WAPs in the period from 1 October 2012 to 30 September 2013 (see above) as a starting point and assuming that 0.75 gram of roll-your-own tobacco is required for one self-rolled cigarette, the retail price of one factory-made cigarette (€ 0.29) was more than two-and-a-half times as high as the retail price of the roll-your-own tobacco required for one self-rolled cigarette (€ 0.11). Substitution from cigarettes to cheaper roll-your-own tobacco, this way circumventing tax increases, thus seems a real risk in the Dutch context. The State Secretary for Finance has confirmed that this process of substitution is actually taking place.

Table 3
Excise duty levels for cigarettes and roll-your-own (RYO) tobacco in the Netherlands, from 1 July 2011 onwards

<table>
<thead>
<tr>
<th>Date of entry</th>
<th>Cigarettes</th>
<th>Smoking tobacco (incl. RYO tobacco)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Ad valorem excise (% of tax-included retail selling price)</td>
<td>Specific excise (€ per 1000 cigarettes)</td>
</tr>
<tr>
<td>1 January 2015</td>
<td>0.95</td>
<td>178.71</td>
</tr>
<tr>
<td>1 April 2014</td>
<td>0.95</td>
<td>173.97</td>
</tr>
<tr>
<td>1 April 2013</td>
<td>2.36</td>
<td>169.86</td>
</tr>
<tr>
<td>1 January 2013</td>
<td>3.13</td>
<td>167.84</td>
</tr>
<tr>
<td>1 April 2012</td>
<td>7.57</td>
<td>138.23</td>
</tr>
<tr>
<td>1 July 2011</td>
<td>8.59</td>
<td>135.66</td>
</tr>
</tbody>
</table>

The risk of substitution to cigars should also be taken into consideration. Cigars have been subject to the same ad valorem excise rate (5%) since 1997. No legal changes have been implemented in this area since the previous shadow report. However, recent applications of the definition of cigars that came into force on 1 January 2011 by Dutch Customs have yielded disputes concerning the distinction between cigarettes and cigarillos (cigars) for the purposes of taxation. Recently, new cigar-like products have been launched on the Dutch market that resemble regular cigarettes: they are packed in so-called flip-top boxes, have a similar length and diameter as factory-made cigarette and contain filters. These products are mainly being differentiated from regular cigarettes on the basis of their comparatively low pricing. In March 2014, the Amsterdam Court of Appeal ruled that these products should nevertheless be taxed as cigars, taking into consideration, among other things, that these products contain an outer wrapper of natural tobacco, have the same colour as cigars and are not explicitly presented as cigarettes (given the reference to ‘filter cigarillos’ and ‘natural wrapper’ on the pack).

As noted above, effects of excise duty increases may be initially averted if forestalling takes place. Since 2010, resellers may supply products at the old price (with the old tax stamps) until two months after the excise duty change. In July 2012, this transitional period was reduced to one month, only to be increased again to two months in January 2013. No such time limit applies to tobacco.
As of July 2013, sales of tobacco products are subject to the regular VAT-scheme. This implies that retailers only have to pay VAT after they have sold the product to consumers. Because of the lower cost price, it becomes easier for retailers to increase their stock. Therefore, this measure appears to have facilitated (in stead of hindered) forestalling by retailers.

**ARTICLE 6.2b**

*WITHOUT PREJUDICE TO THE SOVEREIGN RIGHT OF THE PARTIES TO DETERMINE AND ESTABLISH THEIR TAXATION POLICIES, EACH PARTY SHOULD TAKE ACCOUNT OF ITS NATIONAL HEALTH OBJECTIVES CONCERNING TOBACCO CONTROL AND ADOPT OR MAINTAIN, AS APPROPRIATE, MEASURES WHICH MAY INCLUDE PROHIBITING OR RESTRICTING, AS APPROPRIATE, SALES TO AND/OR IMPORTATIONS BY INTERNATIONAL TRAVELLERS OF TAX- AND DUTY-FREE TOBACCO PRODUCTS.*

In the field of tax- and duty-free tobacco products, no additional measures have been taken since September 2011. This implies that, within certain limits, travellers are exempted from paying Dutch taxes when bringing in tobacco (for personal use). Dutch Customs rarely prosecutes individuals who exceed these limits. The exemption does not apply when tobacco is imported, for instance by purchasing tobacco through the internet. Tobacco products are confiscated if they do not contain a valid tax stamp. Although Dutch Customs generally prioritises large scale seizures, intercepting illegal internet sales is also considered a focus point. The issue of internet sales is further discussed in the chapter on Article 13.

Duty-free sales in duty-free shops (air- and seaports) are also still allowed for travellers with a destination outside the EU.

**Conclusions and recommendations**

Progress in the field of the taxation of tobacco products from September 2011 to December 2014 has been slow, although one large increase in the excise duties rates for cigarettes and smoking tobacco was implemented. In particular, the government still primarily uses the excise duties on tobacco products to further financial objectives, tax differentials between various tobacco products have largely remained in place, and no progress has been made with regard to sales and/or importations of duty-free tobacco products. Article 6 does not contain any obligations and its recommendation and suggestions are carefully phrased. The Dutch government currently acts in line with these prudent provisions and has therefore received an overall ‘green score’ in the summary table on implementation of FCTC measures in the Netherlands in 2014 (Table 1b). This is not to say that the government is yet taking the most effective measures in the area of taxation. Guidelines for implementation of Article 6 were adopted by the Conference of the Parties in October 2014. Given the short period of time between this adoption and the assessment provided in this report, the Dutch government’s performance has not yet been scored on the basis of the recommendations and suggestions included in the Guidelines. However, in the upcoming years, the government will have to take measures to ensure compliance with the recommendations and suggestions included in the Guidelines. In particular, the Dutch government is urged to:

- Develop a long-term tobacco tax policy. Health objectives should play a central role in the government’s policy on tobacco excise duties. Significant excise duty increases (at least 5% plus
inflation) should be implemented on a regular (preferably annual) basis. The Dutch government should also make an effort to increase tobacco taxes on an EU-wide scale (upward harmonisation).

- Implement higher excise duty increases for roll-your-own tobacco and cigarillos bearing close resemblance to cigarettes, so that price differences between these products and factory-made cigarettes are reduced and substitution effects are limited.

- Further restrict the amount of duty-free tobacco products that can be imported by international travellers, through European cooperation. In addition, duty-free sales of tobacco products should be prohibited throughout the European Union.

- Consider earmarking (part of) the tobacco tax revenues for public health purposes.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.2</td>
<td>Should**</td>
<td>Take account of its national health objectives concerning tobacco control and adopt or maintain, as appropriate, measures.</td>
<td>Yes</td>
<td>![ stressing green ]</td>
</tr>
<tr>
<td>6.2a</td>
<td>May</td>
<td>Implement tax policies and, where appropriate, price policies, on tobacco products.</td>
<td>Yes</td>
<td>![ stressing green ]</td>
</tr>
<tr>
<td>6.2b</td>
<td>May</td>
<td>Prohibit or restrict, as appropriate, sales to and/or importations by international travellers of tax- and duty-free tobacco products.</td>
<td>Yes</td>
<td>![ stressing green ]</td>
</tr>
</tbody>
</table>

** Subject to the following condition: “without prejudice to the sovereign right of the Parties to determine and establish their taxation policies”.
Article 8 builds upon the recognition “that scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and health”. Although the Dutch Tobacco Act is founded on the consideration “that it is desirable in the interest of public health to set rules to limit the use of tobacco and, more in particular, to counter nuisances for those who not use tobacco”, protection against exposure to tobacco smoke has not always been a decisive factor in the drawing up of tobacco control policies in the Netherlands. In July 2011, for instance, by reversing part of the smoking ban, the government chose to increase freedom of choice at the expense of the health interests of visitors of small cafes. However, since the previous shadow report, some measures have been taken that do again focus on the protection of non-smokers against exposure to tobacco smoke.

ARTICLE 8.2

EACH PARTY SHALL ADOPT AND IMPLEMENT IN AREAS OF EXISTING NATIONAL JURISDICTION EFFECTIVE LEGISLATIVE, EXECUTIVE, ADMINISTRATIVE AND/OR OTHER MEASURES, PROVIDING FOR PROTECTION FROM EXPOSURE TO TOBACCO SMOKE IN INDOOR WORKPLACES, PUBLIC TRANSPORT, INDOOR PUBLIC PLACES AND, AS APPROPRIATE, OTHER PUBLIC PLACES.

Smokefree legislation for workplaces was introduced in the Netherlands in 2004. In July 2008, hospitality venues were also brought within the remit of the smoking ban. In November 2010, the newly installed government announced a partial reversal of this smoking ban for hospitality venues. As of July 6, 2011, an exception for small cafes has been anchored in regulation. Since September 2011, two procedures have been initiated to undo this exception, neither of which were, in first instance, government-driven: a judicial and a legislative trajectory.

The judicial trajectory was initiated by the non-smokers association Clean Air Netherlands (CAN) in October 2011. CAN claimed that the exception for small cafes ran contrary to Article 8.2 FCTC. In March 2013, the Court of Appeals of The Hague found that Article 8.2 FCTC is sufficiently clear and concrete with respect to the results to be achieved through national legislation. The court ruled that the mere obligation to put a sign on the door indicating that smoking is allowed does not guarantee effective protection against exposure to tobacco smoke. The Dutch State lodged an appeal in cassation against this ruling, in order to gain definitive clarity as to the direct effect of Article 8.2 FCTC. In October 2014, the Supreme Court sided with the Court of Appeals and concluded that the
exception for small cafes should be considered non-binding. Following the ruling by the Supreme Court, the State Secretary for Health announced on 21 October that the Food and Consumer Product Safety Authority (NVWA) would immediately start enforcing the smoking ban in all cafes.

Parallel to the court case, a legislative trajectory was initiated by parliament to re-establish the smoking ban in all hospitality venues. In February 2013, a majority of the members in the House of Representatives voted in favour of a motion to create a 100% smokefree hospitality sector. To implement this motion, a bill was tabled by the State Secretary for Health in November 2013. More than before, the smoking ban was presented as a measure to protect those who are visiting hospitality venues – or the public at large – rather than ‘just’ employees. The bill was adopted in the second half of 2014.

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 8

Effective measures to provide protection from exposure to tobacco smoke require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100% smokefree environment. Approaches other than 100% smoke free environments, including ventilation, air filtration and the use of designated smoking areas (whether with separate ventilation systems or not), have repeatedly been shown to be ineffective and there is conclusive evidence, scientific and otherwise, that engineering approaches do not protect against exposure to tobacco smoke.

A limitation of the new legislation is that it allows for the continued existence of designated smoking rooms. According to the State Secretary for Health, passive smoking by non-smokers does not occur in enclosed smoking rooms. The fact that leakage effects may occur was not explicitly addressed. When asked about the relationship between this exception for designated smoking rooms and the FCTC, the State Secretary for Health noted: “The FCTC requires the adoption of measures to prevent exposure to tobacco smoke. […] It should be pointed out that the Convention does not contain the provision that the environment should be 100% smokefree. […] It is up to the contracting Party to decide on which measures it takes to prevent exposure to tobacco smoke. […] I am of the opinion that the possibility that exists under the tobacco legislation for employers to set up smoking rooms, is in accordance with the FCTC.” However, this position is not in line with the Guidelines for implementation of Article 8, which emphasise that approaches other than 100% smoke free environments, including the use of designated smoking areas, do not protect against exposure to tobacco smoke. Therefore, the Dutch smoking ban still should not be considered an effective measure within the meaning of Article 8.2 FCTC.

The bill proposing a smoking ban for all hospitality venues initially also included a provision through which possible alternatives to a smoking ban could become allowed in the future. The explanatory memorandum set out that “it is not unthinkable that new developments or innovations can give rise to the consideration to allow for other measures in addition to or instead of a smoking ban.” Many questions were asked by members of parliament regarding this exception. In the end, the State Secretary for Health decided to delete this provision from the bill: “Based on the fact that new technologies with the same effect as a smoking ban are not to be expected in the foreseeable future, and on the false idea that emanates from this exception, I will drop the proposed provision.”
GUIDELINES FOR IMPLEMENTATION OF ARTICLE 8

Raising awareness among the public and opinion leaders about the risks of secondhand tobacco smoke exposure through ongoing information campaigns is an important role for government agencies. Key messages should focus on the harm caused by secondhand smoke exposure, the fact that elimination of smoke indoors is the only science-based solution to ensure complete protection from exposure, the right of all workers to be equally protected by law and the fact that there is no trade-off between health and economics, because experience in an increasing number of jurisdictions shows that smokefree environments benefit both.

No mass media campaigns on exposure to secondhand smoke have been conducted since 2007. Even the campaign that accompanied the smoking ban in the hospitality sector in 2008 did not include information on the health effects of passive smoking. The Guidelines for implementation of Article 8 suggest that "only a few prosecutions may be necessary if the [smokefree] legislation is implemented carefully and active efforts are made to educate businesses and the public". In the Netherlands, such a process of self-enforcement has not occurred and enforcement has come to play an important role (see below). Research has suggested that this lack of compliance might be partially due to the lack of an accompanying education campaign explaining the health effects of secondhand smoke exposure.

The State Secretary for Health has indicated that, in 2015, a campaign will be launched to inform the Dutch population about the changes to the smokefree legislation, confirming that both enforcement (see below) and education are important for a successful policy. He has indicated that the campaign will contain "a strong emphasis on the adverse effects of (passive) smoking". Such an approach seems highly appropriate in the Dutch context, given the low levels of knowledge regarding the harms of secondhand smoke (see also the chapter on Article 12).

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 8

Effective legislation should impose legal responsibilities for compliance on both affected business establishments and individual smokers, and should provide penalties for violations, which should apply to business and, possibly, smokers.

The first shadow report identified a trend of decreasing compliance with smokefree legislation. Since the spring of 2011, there has been a significant increase in the number of bars and clubs in which no smoking was observed (spring 2014). Compliance increased from 58% to 85%. Increases were observed both for bars that have consistently been required to implement a smoking ban (as of July 2008) (from 50% to 77%) and for bars that were (temporarily) exempted from the legal smoking ban (from July 2011 until October 2014) (from 28% to 41%). As shown in Figure 2, overall compliance levels in the spring of 2014 were similar to the compliance levels that were observed within a year after implementation of the initial legislation (spring 2009).
The State Secretary for Health has referred to compliance with the smoking ban in bars and clubs as one of two tobacco control areas in which compliance lags behind. To improve compliance, the State Secretary intensified enforcement activities and proposed to further increase monetary penalties. In September 2013, he tabled a bill to raise the maximum fine from € 4,500 to € 19,500. The Bill is still awaiting parliamentary approval. Non-monetary penalties or monetary penalties for smokers have not yet been proposed or introduced.

As of January 2014, capacity to enforce the smoking ban has been increased. A team of young enforcement officers (17 FTE) was added to the existing group responsible for the enforcement of tobacco control legislation (see also the chapter on Article 16). The State Secretary for Health has indicated that the number of inspections would increase by 2,000 to a total of 6,000 inspections per year. Although the re-introduction of the smoking ban in the all hospitality sectors leads to a larger number of venues to be inspected, the State Secretary expects that the elimination of the exception to the smoking ban will also yield significant time savings. After all, enforcement of the smoking ban with the exception for small hospitality venues was a complex and time-consuming practice, because the NVWA had to establish the size of the venue as well as whether employees were hired.

Currently, enforcement of the smoking ban takes place on the basis of sensory perceptions (vision and odour). To improve enforcement, the NVWA has commissioned a study into enhanced detection methods for enforcing the smoking ban (by sampling ambient air, to be analysed in the laboratory). Such detection methods could, for instance, assist in determining whether smoke is leaking from areas where smoking is allowed. In October 2014, the results of this study were published by the National Institute for Public Health and the Environment (RIVM). It was concluded that the developed methods and devices could probably be applied in practice shortly as a valuable addition for enforcement purposes, but that further research is necessary to determine whether the devices are sufficiently sensitive.
GUIDELINES FOR IMPLEMENTATION OF ARTICLE 8
The language of the treaty requires protective measures not only in all “indoor” public places, but also in those “other” (that is, outdoor or quasi-outdoor) public places where “appropriate”.

Outdoor smoking bans have not (yet) been implemented in the Netherlands. However, measures have been initiated to encourage the development of smokefree outdoor areas. In particular, there has been a focus on realising smokefree schoolyards. This project was initiated by the Dutch Lung Foundation and has been supported by the Ministry of Health. The Ministry has contributed through dialogues with other stakeholders, such as the Ministry of Education, and by commissioning research into the implementation and effects of smokefree schoolyards. The State Secretary for Health has indicated that a national, legal smoking ban does not (currently) appear to be a feasible option. A local assessment of whether or not to introduce a ban is preferred by stakeholders. When asked about his ambition, the State Secretary therefore stated: “I will strongly promote [smokefree schoolyards], I am a huge proponent of them. But I presume that you are not going to hold to me accountable for 100% smokefree schoolyards, since I cannot influence that. You can ask me to promote and to do everything to enable schools to set that standard. I will conduct all consultations necessary to promote this. That is what I can do. This is really a matter that schools should take up themselves.”

Smokefree schoolyards are mainly promoted through two trajectories: the Healthy School project (see the chapter on Article 12) and the Healthy Schoolyards project. Healthy schoolyards are not only smokefree, but also green and exercise-friendly. The Ministries of Health and Education have provided budget for the development of healthy schoolyards at 70 schools. These schools are expected to play an exemplary role for other schools. The government has set a target of having healthy schoolyards in all municipalities in 2025. In the autumn of 2013, 34% of secondary schools were reported to have a smokefree schoolyard, an increase in comparison with 2012 (26%).

Conclusions and recommendations
Although there have been some positive developments in the area of protection against exposure to tobacco smoke (most notably the reversal of the exception to the smoking ban for small hospitality venues), the Dutch government still does not act in line with its FCTC obligations, given the continued allowance of designated smoking rooms. The government therefore received an overall ‘red score’ in the summary table on the implementation of FCTC measures in the Netherlands in 2014 (Table 1b). Some further room for improvement derives from the Guidelines. The Dutch government is therefore urged to:

- No longer allow designated smoking rooms.
- Step up its efforts to educate the population about the harms of exposure to tobacco smoke. The health risks of exposure to secondhand smoke should play a central role in the campaign that will be run by the government to re-introduce the smoking ban in all hospitality venues.
- Continue to closely monitor compliance with the smoking ban. Enforcement efforts and/or penalties should be further increased if compliance does not improve.
### Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.2</td>
<td>Shall</td>
<td>Adopt and implement effective measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Ensure that public education campaigns also target settings for which legislation may not be feasibly or appropriate, such as private homes.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Impose legal responsibilities for compliance on both affected business establishments and individual smokers.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Provide penalties for violations, which should apply to businesses and, possibly, smokers.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Place the responsibility for compliance on the owner, manager or other person in charge of the premises, and should clearly identify the actions (s) he is required to take.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Ensure that the person in charge of the premises has a duty to post clear signs at entrances and other appropriate locations indicating that smoking is not permitted.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Ensure that the person in charge of the premises has a duty to remove ashtrays from the premises.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Ensure that the person in charge of the premises has a duty to supervise the observance of rules.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Ensure that the person in charge of the premises has a duty to take reasonable specified steps to discourage individuals from smoking on the premises.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Specify fines or other monetary penalties for violations.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>May</td>
<td>Allow for administrative sanctions in addition to monetary penalties, such as the suspension of business licenses.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Identify the authority or authorities responsible for enforcement.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Specify a system both for monitoring compliance and for prosecuting violators.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Authorise inspectors to enter premises subject to the law and to collect samples and gather evidence.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Prohibit businesses from obstructing the inspectors in their work.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Ensure that members of the public may initiate complaints.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>8 GL</td>
<td>Should</td>
<td>Authorise any person or non-governmental organisation to initiate action to compel compliance with measures regulating exposure to secondhand smoke.</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
One set of Guidelines has been adopted for the implementation of Articles 9 and 10. These provisions are therefore discussed jointly in this report. Recent Dutch government policy efforts have been targeted primarily at the implementation of Article 10. Actions relating to the implementation of Article 9 have been scarce, although the regulation of contents and emissions is an important part of the revised EU Tobacco Products Directive (TPD).

**ARTICLE 9**

**EACH PARTY SHALL ADOPT AND IMPLEMENT EFFECTIVE LEGISLATIVE, EXECUTIVE AND ADMINISTRATIVE OR OTHER MEASURES FOR TESTING AND MEASURING THE CONTENTS AND EMISSIONS OF TOBACCO PRODUCTS, AND FOR THE REGULATION THESE CONTENTS AND EMISSIONS.**

**GUIDELINES FOR IMPLEMENTATION OF ARTICLES 9 & 10 (paragraph 3.1.2.2)**

(i) Parties should regulate, by prohibiting or restricting, ingredients that may be used to increase palatability in tobacco products.

(ii) Parties should prohibit or restrict ingredients that have colouring properties in tobacco products.

(iii) Parties should prohibit ingredients in tobacco products that may create the impression that they have a health benefit.

(iv) Parties should prohibit ingredients associated with energy and vitality in tobacco products.

In relation to Article 9, so far, the government has only established maximum tar, nicotine, and carbon monoxide yields for cigarettes and a maximum tar yield for roll-your-own tobacco (last adjusted in May 2002) *(Decree on the Maximum Tar, Nicotine and Carbon Monoxide Contents of Cigarettes and Roll-Your-Own Tobacco).* On the issue of further regulation of the contents of tobacco products, the Dutch government has often taken a conservative position. However, the government’s position has shifted markedly within the course of one year, following a change in government. In February 2012, the then responsible Minister of Health stated that she did not intend to reduce or prohibit the use of additives in tobacco products 88. In January 2013, however, in response to the European Commission’s proposal for the revised TPD, the Dutch government indicated to support the idea of regulating additives. The government considered such developments to be in line with the FCTC 89.

The Guidelines for implementation of Articles 9 and 10 are still of a partial nature. Recommendations have been developed in relation to the regulation of ingredients to decrease attractiveness, but not
yet to decrease addictiveness or toxicity, although the Guidelines explicitly list these aspects as objectives of effective tobacco product regulation as well. The revised TPD largely coincides with the recommendations included in the Guidelines to decrease attractiveness. A ban on characterising flavours will, for instance, be implemented. In addition, measures will be taken to ban additives that increase addictiveness and/or toxicity. Following transposition of the revised TPD, this ban on certain additives will (initially) only apply to cigarettes and roll-your-own tobacco (and not to other tobacco products, such as waterpipe tobacco, cigars and cigarillos). An extension of the ban to other tobacco products will be considered if monitoring points at substantial changes in use patterns. The Dutch government’s position during the negotiations was to apply the ban to all tobacco products, so as to prevent the suggestion that certain tobacco products are less harmful than others90.

As a result of the revised TPD, these measures to ban certain additives will have to be accompanied by further restrictions on the use of misleading labels on tobacco packs, such as labels referring to the additive free character of tobacco products. This aligns with the FCTC Guidelines as well, which stress that reductions of attractiveness resulting from removing or reducing certain ingredients are not to suggest that these products are less harmful.

GUIDELINES FOR IMPLEMENTATION OF ARTICLES 9 & 10 (paragraph 3.3.2.1)

(i) Parties should require that cigarettes comply with an RIP standard.
(ii) When implementing recommendation (i) of this paragraph, Parties should consider setting a performance standard that corresponds at a minimum to the current international practice, regarding the percentage of cigarettes that may not burn their full length when tested according to the method described in Appendix 4.

Another European initiative that relates to the implementation of Article 9 concerns the entry into force of regulation on reduced ignition propensity (RIP) cigarettes (Commission Implementing Decision 2011/496/EU) to reduce the fire risk of cigarettes. As of 17 November 2011, all cigarettes on the European (and therefore also Dutch) market have to comply with standard EN 16156:2010 ‘Cigarettes – Assessment of the ignition propensity’ and standard EN ISO 12863:2010 ‘Standard test method for assessing the ignition propensity of cigarettes’. This latter standard is one of the standard test methods mentioned in Appendix 4 of the Guidelines for implementation of Articles 9 and 10. The Guidelines also refer to the international practice of requiring a not-burn-through rate of no less than 75 percent, the same norm that is included in standard EN 16156:2010 (albeit in combination with a larger required sample of 40 instead of ten). In 2013, the Dutch Food and Consumer Product Safety Authority (NVWA) evaluated compliance and found that of 90 sampled cigarettes, only one did not comply with the norm91.

ARTICLE 10

EACH PARTY SHALL ADOPT AND IMPLEMENT EFFECTIVE LEGISLATIVE, EXECUTIVE AND ADMINISTRATIVE OR OTHER MEASURES REQUIRING MANUFACTURERS AND IMPORTERS OF TOBACCO PRODUCTS TO DISCLOSE TO GOVERNMENTAL AUTHORITIES INFORMATION ABOUT THE CONTENTS AND EMISSIONS OF TOBACCO PRODUCTS.
The previous shadow report established that the Dutch government’s policy was already largely in line with the FCTC with respect to requiring tobacco manufacturers (or importers) to disclose information about the contents and emissions of tobacco products. As of January 2013 (with the entry into force of the Regulation on the Electronic Notification and Publication of Tobacco Ingredients 2013), manufacturers are required to report on the contents of their tobacco products through the Electronic Model Tobacco Control (EMTOC). Although his web application has been available in the Netherlands since 2010, it was initially used in addition to a less standardised (Excel) format, leaving the choice to manufacturers as to which format to use. Main advantages of EMTOC include that submitters cannot change the model, that they are forced to enter values in all mandatory fields and that they have to select from predefined answers. By limiting the number of deviating responses, subsequent analyses by the RIVM and public disclosure of the information are facilitated.

According to the State Secretary for Health, compliance with the reporting obligations is fairly high. As of 2010, 9 fines have been imposed for reasons of incomplete, untimely or a complete lack of supply of information by manufacturers or importers. The State Secretary is not allowed to make public which manufacturers have received a fine. However, the database that is accessible via www.tabakinfo.nl (see below) does contain an indication if information has not been provided in line with the Regulation.

Currently, manufacturers are required to submit, for each brand variant, emissions of tar, nicotine and carbon monoxide, a list of all ingredients used and the quantities thereof, a declaration of the reason(s) for including each particular ingredient and any available toxicological data regarding the ingredients. Some additional reporting obligations will arise based on the revised TPD. For instance, manufacturers will have to submit studies available to them on market research and preferences of various consumer groups, executive summaries of market surveys carried out when launching new products and information on sales volumes. The Dutch government considers such information to be of importance for effective product regulation and to prevent youth targeting by the tobacco industry.

ARTICLE 10

EACH PARTY SHALL ADOPT AND IMPLEMENT EFFECTIVE MEASURES FOR PUBLIC DISCLOSURE OF INFORMATION ABOUT THE TOXIC CONSTITUENTS OF THE TOBACCO PRODUCTS AND THE EMISSIONS THAT THEY MAY PRODUCE.

GUIDELINES FOR IMPLEMENTATION OF ARTICLES 9 & 10 (paragraph 3.5.2.1)

Parties should consider making information about the toxic constituents and emissions of tobacco products and other information disclosed to governmental authorities in accordance with these guidelines publicly accessible (e.g. via the internet) in a meaningful way.

In September 2011, the Dutch government had not yet arranged for any publication of information on ingredients to the general public. This lack of public disclosure was criticised in the first shadow report. Since then, the government has taken various actions to promote public access to information on ingredients. The Dutch government has repeatedly presented itself as one of the frontrunners in the European Union as far as the public disclosure of tobacco ingredients is concerned. Two websites have been launched, one targeted at the general public (www.tabakinfo.nl) and one targeted specifically at youth (www.watziterintabak.nl). These website primarily focus on the additives in tobacco products.
tobacco products and their function (e.g. making the smoke less harsh) and effects (e.g. facilitating smoking uptake). The toxic and addictive nature of tobacco products regardless of additives is only briefly touched upon, even though knowledge on the harms of smoking is still low in the Netherlands (see the chapter on Article 12).

Information on the additives in all specific tobacco products has been available since December 2012. The website www.tabakinfo.nl refers to a database in which the following information is reported for each brand variety: brand name, manufacturer, type of tobacco product, characteristics of the tobacco product (e.g. pack size), content of tar, nicotine and carbon monoxide (cigarettes only), additives, quantity of additives, function of additives and the component or material to which the additives are added. For the 14 most common additives (such as sugars, cacao and menthol), additional information on harmful health effects and consequences in terms of addiction is provided. This information has been developed by the RIVM and the German Cancer Research Center (DFKZ) and was made available in 16 European countries in September 2012.95

So far, no comprehensive evaluation of the effects of the website has been published. The Dutch government has indicated in its reporting instrument to the World Health Organisation (WHO) that such an evaluation was being executed in early 2014. The RIVM has also expressed its intention to conduct research to investigate the impact of the information provided on www.tabakinfo.nl on the public’s smoking behaviour. Some initial figures on the dissemination of the information on the website to the Dutch public have been made available. The total number of people who accessed the website in 2012 was estimated at 12,394. The number of visits peaked following media attention in March 2012 and especially following the publication of the factsheets on the 14 most common additives in September 2012 and the launch of the database in December 2012.96

The website www.watziterintabak.nl was launched in May 2014. The aim of this website is to increase awareness among youth about the ingredients that manufacturers add to tobacco products and the health effects of these additives. In an interview during the launch of the campaign, the State Secretary for Health was quoted as follows: “A key element of our tobacco control policy is to prevent young people from starting to smoke. Because if you can manage not to smoke as a teenager, the chances are much higher that you will not become addicted as an adult either. And that is of course much healthier. Our new website can help young people not to start smoking. With a few clicks, they can see exactly which ingredients are added to tobacco products by manufacturers, for example, to make smoking taste better. And they can see that these additives also harm their health, in addition to the harmfulness of tobacco itself.”97

As emphasised in the Guidelines, another goal of collecting information about ingredients (next to public disclosures) is that it enables the governmental authorities to gain valuable insights “on the composition of tobacco products, which in turn will assist authorities in developing effective, product-appropriate measures”. The RIVM is indeed using the information to assess trends in ingredients over time. So far, reports have been published on the data collected in 201098 and 201199. In 2011, additives accounted for, on average, 30% of a cigarette. Once the data from 2012 and 2013 have been analysed as well, the RIVM will conduct a multi-annual analysis. This analysis will not only focus on cigarettes and roll-your-own tobacco, but also on other product categories, such as cigarillos, that will not be covered by the ban on certain additives (as described above in relation to Article 9).
GUIDELINES FOR IMPLEMENTATION OF ARTICLES 9 & 10 (paragraph 2.8)
Civil society has an important role to play in raising public awareness and building support for the regulation of the contents and emissions of tobacco products, and for the disclosure of information on these contents and emissions. Civil society should be involved as an active partner.

GUIDELINES FOR IMPLEMENTATION OF ARTICLES 9 & 10 (paragraph 7.3)
Parties should consider including messages about constituents and emissions of tobacco products in education, communication, training and other public awareness programmes.

In addition to the youth-targeted website launched by the government (as described above), the Dutch Lung Foundation has also developed a website to inform youth about the contents of tobacco products: www.zitdaterechtin.nl (online since February 2012). The site lists six videos exposing some of the ingredients of cigarettes in order to help young people understand what is really in cigarettes. Rather than merely referring to the official (unknown) names for ingredients, the videos illustrate some other uses of these substances: nail polish remover (acetone), rat poison (hydrogen cyanide), insect poison (arsenic), paint thinner (benzene), and a chemical used to preserve bodies (formaldehyde). These videos are also used in the context of the e-learning on tobacco which forms part of the Healthy School and Drugs programme (see also the chapter on Article 12). The two websites are complementary and they both contain links to the other website.

Conclusions and recommendations
Since the previous shadow report, the government has taken various steps to improve implementation of Article 10 FCTC. In particular, information about the additives in tobacco products is now disclosed to the public and the reporting system has been tightened. However, in relation to Article 9, few improvements were observed. In the summary table on implementation of FCTC measures in the Netherlands in 2014 (Table 1b), a ‘red score’ was assigned to the Dutch government in relation to Articles 9 and 10. This score solely derives from the government’s failure to comply with the Article 9 obligation to take effective measures for the regulation of contents and emissions of tobacco products. Currently, no such measures are in place. The government has only established maximum tar, nicotine, and carbon monoxide yields for cigarettes and a maximum tar yield for roll-
your-own tobacco. Full and correct transposition of the revised EU Tobacco Products Directive in May 2016 at the latest will constitute a major improvement, both in relation to this obligation and to various recommendations included in the Guidelines. The Dutch government is therefore urged to:

- Correctly transpose the revised EU Tobacco Products Directive and ensure high levels of compliance.
- Conduct evaluations of www.tabakinfo.nl and www.watziterintabak.nl and make its results publicly available. Effectiveness of disclosure of information on ingredients to the Dutch public should be optimised.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Shall</td>
<td>Adopt and implement effective measures for testing and measuring the contents and emissions of tobacco products.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Shall</td>
<td>Adopt and implement effective measures for the regulation of the contents and emissions of tobacco products.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Shall</td>
<td>Adopt and implement effective measures requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Shall</td>
<td>Adopt and implement effective measures for public disclosure of information about the toxic constituents of the tobacco products and the emissions that they may produce.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.1</td>
<td>Should</td>
<td>Require that manufacturers and importers of tobacco products disclose to governmental authorities information on the ingredients used in the manufacture of their tobacco products at specified intervals, by product type and for each brand within a brand family.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.1</td>
<td>Should</td>
<td>Ensure that manufacturers and importers disclose to governmental authorities the ingredients used in the manufacture of each of their tobacco products and the quantities thereof per unit of each tobacco product, including those ingredients present in the product’s components, for each brand within a brand family.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.1</td>
<td>Should</td>
<td>Require that manufacturers and importers disclose further information on the characteristics of the tobacco leaves they used.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.1</td>
<td>Should</td>
<td>Require that manufacturers and importers notify governmental authorities of any changes to tobacco products when the change is made.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.1</td>
<td>Should</td>
<td>Require that manufacturers and importers provide governmental authorities with a statement setting out the purpose of the inclusion of an ingredient in the tobacco product and other relevant information.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.1</td>
<td>Should</td>
<td>Require that manufacturers disclose the name, address and other contact information of each ingredient’s supplier.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.2</td>
<td>Should</td>
<td>Regulate, by prohibiting or restricting, ingredients that may be used to improve the palatability of tobacco products.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.2</td>
<td>Should</td>
<td>Prohibit or restrict ingredients that have colouring properties in tobacco products.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.2</td>
<td>Should</td>
<td>Prohibit ingredients in tobacco products that may create the impression that they have a health benefit.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.1.2</td>
<td>Should</td>
<td>Prohibit ingredients associated with energy and vitality in tobacco products.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.3.1</td>
<td>Should</td>
<td>Require that manufacturers and importers of tobacco products disclose information on design features to governmental authorities at specified intervals, and as appropriate, including the results of tests conducted by the tobacco industry.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.3.2</td>
<td>Should**</td>
<td>Require that cigarettes comply with an RIP standard.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.3.2</td>
<td>Should consider</td>
<td>Set a performance standard that corresponds at a minimum to the current international practice, regarding the percentage of cigarettes that may not burn their full length when tested according to the method described in Appendix 4.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.3.2</td>
<td>Should</td>
<td>Not allow any claims to be made suggesting that RIP cigarettes would be unable to ignite fires.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.4.2</td>
<td>Should</td>
<td>Require that manufacturers and importers of tobacco products disclose general company information, including the name, street address and contact information of the principal place of business and of each manufacturing and importing facility.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.4.2</td>
<td>Should consider</td>
<td>Require that tobacco manufacturers and importers disclose, at specified intervals, for each brand within a brand family, sales volume information in units.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>9&amp;10 GL 3.5.2</td>
<td>Should consider</td>
<td>Make information about the toxic constituents and emissions of tobacco products and other information disclosed to governmental authorities in accordance with these Guidelines publicly accessible in a meaningful way.</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

* When the revised EU Tobacco Products Directive is correctly transposed, this assessment (Yes/No) (and the subsequent colour score) would likely change.

** Subject to the following condition: “taking into account national circumstances and priorities”.
Article 11
Packaging and Labelling of Tobacco Products

The rules regarding packaging and labelling of tobacco products are to a large extent established at the level of the European Union. The EU Tobacco Products Directive (TPD) 2001/37/EC entered into force on 18 July 2001. Although this Directive contained several harmonising provisions, in other instances only minimum standards were laid down (for example in relation to the size of health warnings). On 19 May 2014, the revised EU TPD 2014/40/EU entered into force. Its provisions have yet to be transposed into national law, and this must be done before 20 May 2016. With regard to the labelling of tobacco products, almost all provisions are of a harmonising nature (leaving very little discretion to individual member states).

ARTICLE 11.1(b)
EACH PARTY SHALL ADOPT AND IMPLEMENT EFFECTIVE MEASURES TO ENSURE THAT EACH UNIT PACKET AND PACKAGE OF TOBACCO PRODUCTS AND OUTSIDE PACKAGING AND LABELLING OF SUCH PRODUCTS ALSO CARRY HEALTH WARNINGS DESCRIBING THE HARMFUL EFFECTS OF TOBACCO USE, AND MAY INCLUDE OTHER APPROPRIATE MESSAGES. THESE WARNINGS AND MESSAGES: (I) SHALL BE APPROVED BY THE COMPETENT NATIONAL AUTHORITY, (II) SHALL BE ROTATING, (III) SHALL BE LARGE, CLEAR, VISIBLE AND LEGIBILE, (IV) SHOULD BE 50% OR MORE OF THE PRINCIPAL DISPLAY AREAS BUT SHALL BE NO LESS THAN 30% OF THE PRINCIPAL DISPLAY AREAS, (V) MAY BE IN THE FORM OF OR INCLUDE PICTURES OR PICTOGRAMS.

In the previous shadow report, it was mentioned that the Netherlands was the first EU country to introduce text health warning labels in accordance with EU Directive 2001/37/EC. However, whereas several other European countries have made further progress since, there has been a standstill in the Netherlands. The only significant change that has occurred concerns a recent adjustment to the additional health warnings used. These texts are defined at the European level. The change to the 2001 Dutch Labelling Decree for Tobacco Products follows from Directive 2012/9/EU. The new additional health warnings (see Table 4) have been in place in the Netherlands since 28 March 2014. However, manufacturers and importers are allowed to market their products with the old health warnings until 28 March 2016 (i.e. a transition period of two years, the maximum period allowed by the Directive).
### Table 4
**Texts of additional health warnings**

<table>
<thead>
<tr>
<th>Old additional health warnings (as of 1 May 2002)</th>
<th>New additional health warnings (as of 28 March 2014)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smokers die younger</td>
<td>Smoking causes 9 out of 10 lung cancers</td>
</tr>
<tr>
<td>Smoking clogs the arteries and causes heart attacks and strokes</td>
<td>Smoking causes mouth and throat cancer</td>
</tr>
<tr>
<td>Smoking causes fatal lung cancer</td>
<td>Smoking damages your lungs</td>
</tr>
<tr>
<td>Smoking when pregnant harms your baby</td>
<td>Smoking causes heart attacks</td>
</tr>
<tr>
<td>Protect children: don’t make them breathe your smoke</td>
<td>Smoking causes strokes and disability</td>
</tr>
<tr>
<td>Your doctor or your pharmacist can help you stop smoking</td>
<td>Smoking clogs your arteries</td>
</tr>
<tr>
<td>Smoking is highly addictive, don’t start</td>
<td>Smoking increases the risk of blindness</td>
</tr>
<tr>
<td>Stopping smoking reduces the risk of fatal heart and lung diseases</td>
<td>Smoking damages your teeth and gums</td>
</tr>
<tr>
<td>Smoking can cause a slow and painful death</td>
<td>Smoking can kill your unborn child</td>
</tr>
<tr>
<td>Get help to stop smoking: 0900-9390 (€ 0.10/min) or <a href="http://www.stoppen-met-roken.nl">www.stoppen-met-roken.nl</a> or consult your doctor or pharmacist</td>
<td>Your smoke harms your children, family and friends</td>
</tr>
<tr>
<td>Smoking may reduce the blood flow and causes impotence</td>
<td>Smokers’ children are more likely to start smoking</td>
</tr>
<tr>
<td>Smoking causes ageing of the skin</td>
<td>Quit smoking – stay alive for those close to you: <a href="http://www.stoppen-met-roken.nl">www.stoppen-met-roken.nl</a></td>
</tr>
<tr>
<td>Smoking can damage the sperm and decreases fertility</td>
<td>Smoking reduces fertility</td>
</tr>
<tr>
<td>Smoke contains benzene, nitrosamines, formaldehyde and hydrogen cyanide</td>
<td>Smoking increases the risk of impotence</td>
</tr>
</tbody>
</table>

In March 2012, a cross-country comparison report on health warnings on tobacco packages was published, based on data from the International Tobacco Control (ITC) surveys in 19 countries. The self-perceived effectiveness of health warnings was found to be very low in the Netherlands. The percentage of smokers who reported to have noticed the health warnings on cigarette packages ‘(very) often’ in the last month was lowest in the Netherlands. Since 2011, this percentage has significantly decreased even further to less than 14% in 2014. The percentage of smokers who reported that warning labels make them think about the health risks of smoking “a lot” or who reported that warning labels make them “a lot” more likely to quit smoking was also very low in the Netherlands in comparison to other countries. For the Netherlands, these proportions have not changed significantly from 2011 to 2014, remaining below 2%.

The 2012 Eurobarometer data (covering the then 27 EU member states) confirmed that the Netherlands lags behind in the area of health warnings. The Netherlands belongs to the group of countries in which (ex-)smokers are least likely to report that health warnings have encouraged them to quit or smoke less and/or that health warnings have increased their awareness of the health effects of tobacco.

In the near future, transposition of the revised TPD will make a major contribution to the Dutch performance in terms of FCTC. Pictorial health warnings covering 65% of the front and back will be introduced in the Netherlands. The Dutch government has taken a hesitant position towards the introduction of pictorial health warnings in the past years, focussing on a perceived lack of scientific evidence in favour of such warnings. In particular, it was found that the long-term effects of pictorial health warnings had not yet been sufficiently assessed. However, when discussing the European
Commission’s proposal for a revised TPD in the House of Representatives, the State Secretary for Health reasoned: “If it does discourage youth to smoke in the short run, why would you not take this measure”\textsuperscript{28}? This cautiously favourable stance towards pictorial health warnings appears to deviate from the position taking in 2011 by the Dutch Minister of Health, who stated that “it would be an ill-fated undertaking to have the government attempting to force people into a straitjacket through, among other things, images of damaged lungs on cigarette packages”\textsuperscript{106}.

The Guidelines encourage the Parties to consider requiring different health warnings and messages for different tobacco products, in order to better focus on the specific health effects related to each product. In the Netherlands (based on European legislation), different health warnings are required for smokeless tobacco than for smoked tobacco. The revised TPD leaves the choice to member states as to which health warnings to require for smoked tobacco products other than cigarettes, roll-your-own tobacco and waterpipe tobacco. Although no official course of action has been announced, the Dutch government has indicated that it supports the Commission’s approach of distinguishing between these different tobacco products for smoking. It is reasoned that the introduction of pictorial health warnings is targeted primarily at young people, whereas tobacco products for smoking other than cigarettes, roll-your-own tobacco and waterpipe tobacco are currently mainly used by older people\textsuperscript{90}. This approach might, however, suggest that these other products are less harmful, whilst this is not the case.

**ARTICLE 11.2**

**EACH UNIT PACKET AND PACKAGE OF TOBACCO PRODUCTS AND ANY OUTSIDE PACKAGING AND LABELLING OF SUCH PRODUCTS SHALL CONTAIN INFORMATION ON RELEVANT CONSTITUENTS AND EMISSIONS OF TOBACCO PRODUCTS.**

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 11**

The provision of advice on cessation and specific sources for cessation help on tobacco packaging, such as a web site address or a toll-free telephone ‘quit-line’ number, can be important in helping tobacco users to change their behaviour.

Currently, tobacco packages sold in the Netherlands only contain a general and additional health warning. These are placed at the bottom of the pack. Although a limited number of these additional health warnings provides some information on the composition of tobacco smoke or on smoking cessation (see Table 4), in most instances such information is lacking. Following transposition of the revised TPD, the new combined health warnings will have to be placed at the top of the package. Moreover, additional messages on the emissions of tobacco products (“Tobacco smoke contains over
70 substances known to cause cancer”) and on smoking cessation information will be required on all packages. The rules on rotation of health warnings will also be adjusted. Currently, the Dutch *Labelling Decree for Tobacco Products* only specifies that warnings should alternate in such a way that they appear regularly. In line with the FCTC Guidelines, the revised TPD introduces an additional rotation scheme by establishing three sets of health warnings that are to alternate on an annual basis.

**ARTICLE 11.1(a)**

*Each party shall adopt and implement effective measures to ensure that tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.*

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 11**

Parties should not require quantitative or qualitative statements on tobacco product packaging and labelling about tobacco constituents and emissions that might imply that one brand is less harmful than another, such as the tar, nicotine and carbon monoxide figures.

The Dutch Tobacco Act contains a prohibition on the use of misleading texts, names, trademarks and figurative or other signs about the harmfulness of a tobacco product. This prohibition covers the use of terms such as ‘light’ and ‘low-tar’. Following transposition of the revised TPD, the interpretation of this prohibition will have to be widened. Labels may, for instance, no longer suggest that a particular tobacco product has vitalising, energetic, healing, rejuvenating, natural or organic properties or other health or lifestyle benefits.

The current obligation for tobacco manufacturers to place tar, nicotine and carbon monoxide (TNCO) figures on cigarette packages is based on the 2001 TPD. This obligation runs contrary to the FCTC Guidelines for implementation of Article 11, which state that such information should not be on packaging, because of its misleading or deceptive nature. The Dutch government is bound by EU legislation and hence has not been in a position to remove the requirement to place TNCO figures on cigarette packages unilaterally. The revised 2014 TPD is in line with the FCTC Guidelines. It explicitly states that “labels shall not include any information about the nicotine, tar or carbon monoxide content of the tobacco product”, because such information might promote a tobacco product or encourage its consumption by creating erroneous impressions of relative safety.

The TPD leaves the decision on whether or not to implement plain packaging to the member states. This position of the Dutch government in relation to plain packaging is further discussed in the chapter on Article 13.
Conclusions and recommendations

With the exception of providing support for the revised Tobacco Products Directive (suggesting future developments), few actions have been taken in the area of packaging and labelling of tobacco products since September 2011. The Dutch government was found not to act in compliance with one of the obligations included in Article 11 (requiring the display of information on relevant constituents and emissions of tobacco products on tobacco packages). It was therefore awarded a ‘red score’ in the summary table on implementation of FCTC measures in the Netherlands in 2014 (Table 1b). The government has not yet implemented various recommendations and suggestions included in the Convention and its Guidelines either. Transposition of the revised TPD (which covers a large number of the requirements, recommendations and suggestions related to Article 11) will allow for a major step in the right direction with regard to the implementation of this article. Some additional measures could enhance the performance of the government even further. The Dutch government is therefore urged to:

- Correctly and promptly transpose the revised EU Tobacco Products Directive. The government should inform the public about the new health warnings (and other changes) and set out the (health) reasons for introducing these new warnings (and other changes).
- Opt to introduce combined health warnings for smoking tobacco products other than cigarettes, roll-your-own tobacco and waterpipe tobacco as well.
- Consider implementing plain packaging, in line with the Guidelines for implementation of Articles 11 and 13.
- Consider innovative ways of conveying health warnings and messages, for instance through pack inserts with information on smoking cessation or through labels on smoking accessories.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 1a</td>
<td>Shall</td>
<td>Adopt and implement effective measures to ensure that tobacco product packaging and labelling do not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.</td>
<td>Yes</td>
<td>✔</td>
</tr>
<tr>
<td>11 1b</td>
<td>Shall</td>
<td>Adopt and implement effective measures to ensure that each unit packet and package of tobacco products and outside packaging and labelling of such products carry health warnings describing the harmful effects of tobacco use.</td>
<td>Yes</td>
<td>✔</td>
</tr>
<tr>
<td>11 1b</td>
<td>May</td>
<td>Include other appropriate messages.</td>
<td>Yes</td>
<td>✔</td>
</tr>
<tr>
<td>11 1b(i)</td>
<td>Shall</td>
<td>Require that warnings and messages are approved by the competent national authority.</td>
<td>Yes</td>
<td>✔</td>
</tr>
<tr>
<td>11 1b(ii)</td>
<td>Shall</td>
<td>Require that warnings and messages be rotating.</td>
<td>Yes</td>
<td>✔</td>
</tr>
<tr>
<td>11 1b(iii)</td>
<td>Shall</td>
<td>Require that warnings and messages be large, clear, visible and legible.</td>
<td>Yes</td>
<td>✔</td>
</tr>
<tr>
<td>11 1b(iv)</td>
<td>Should</td>
<td>Require that warnings and messages be 50% or more of the principal display areas.</td>
<td>No*</td>
<td>☠</td>
</tr>
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<td></td>
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<td></td>
<td></td>
<td></td>
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<td>---</td>
<td></td>
</tr>
<tr>
<td>11 1b(iv)</td>
<td>Shall</td>
<td>Require that warnings and messages be no less than 30% of the principal display areas.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 1b(v)</td>
<td>May</td>
<td>Require warnings and messages to be in the form of or include pictures or pictograms.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 2</td>
<td>Shall</td>
<td>Require that each unit packet and package of tobacco products and any outside packaging and labelling of such products contains information on relevant constituents and emissions of tobacco products as defined by national authorities.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 3</td>
<td>Shall</td>
<td>Require that the warnings and other textual information will appear on each unit packet and package of tobacco products and any outside packaging and labelling of such products in its principle language.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Require that health warnings and messages be positioned on both the front and back (or on all main faces if there are more than two) of each unit packet and package, rather than on just one side, to ensure that health warning and messages are highly visible.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Require that health warnings and messages be positioned on principal display areas and, in particular, at the top of the principal display areas rather than at the bottom to increase visibility.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Require that health warnings and messages be positioned in such a way that normal opening of the package does not permanently damage or conceal the text or image of the health warning.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Require further health warnings and messages on all sides of a package, as well as on package inserts and onserts.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Ensure that health warnings and messages are not obstructed by other required packaging and labelling markings or by commercial inserts and onserts.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Ensure that other markings, such as tax stamps and markings as per the requirements of Article 15 of the Convention, do not obstruct any part of the health warnings and messages.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Introduce other innovate measures regarding location, including, but not limited to, requiring health warnings and messages to be printed on the filter overwrap of cigarettes and/or on other related materials such as packages of cigarette tubes, filters and papers as well as other instruments, such as those used for water pipe smoking.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Exclude the space dedicated to framing health warnings and messages from the size of the health warning or message itself when calculating the percentage of display area occupied by them.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Select contrasting colours for the background of the text in order to enhance noticeability and maximise the legibility of text-based elements of health warnings and messages.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Specify the number of health warnings and messages that are to appear concurrently.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Require that health warnings and messages in a specified series be printed so that each appears on an equal number of retail packages, not just for each brand family but also for each brand within the brand family for each package size and type.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Establish two or more sets of health warnings and messages, specified from the outset, to alternate after a specified period.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Ensure that health warnings and messages to address different issues related to tobacco use, in addition to harmful health effects and the impact of exposure to tobacco smoke, such as advice on cessation, the addictive nature of tobacco, adverse economic and social outcomes and the impact of tobacco use on significant others.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Innovative content for other messages, such as adverse environmental outcomes and tobacco industry practices.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Ensure that health warnings and messages to be presented in simple, clear and concise language that is culturally appropriate.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Require that relevant qualitative statements be displayed on each unit packet or package about the emissions of the tobacco product.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Not require quantitative or qualitative statements on tobacco product packaging and labelling about tobacco constituents and emissions that might imply that one brand is less harmful than another, such as the tar, nicotine and carbon monoxide figures.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Require different health warnings and messages for different tobacco products, in order to better focus on the specific health effects related to each product.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Have a comprehensive understanding of the many different types of tobacco product packaging found within their jurisdiction, and should indicate how the proposed health warnings and messages will apply to each type and shape of packaging.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Designing warnings that target subgroups and adapting the number of health warnings and their rotation accordingly.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Pre-marketing testing to assess the effectiveness of the health warnings and messages on the intended population.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Inform the public of proposals to introduce new health warnings and messages.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Prohibit terms such as ‘extra’, ‘ultra’ and similar terms in any language that might mislead consumers.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Prohibit the display of figures for emission yields (such as tar, nicotine and carbon monoxide) on packaging and labelling, including when used as part of a brand name or trademark.</td>
<td>No*</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should</td>
<td>Prevent the display of expiry dates on tobacco packaging and labelling where this misleads or deceives consumers into concluding that tobacco products are safe to be consumed at any time.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>11 GL</td>
<td>Should consider</td>
<td>Adopt measures to restrict or prohibit the use of logos, colours, brand images or promotional information on packaging other than brand names and product names displayed in standard colour and font style (plain packaging).</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

* When the revised EU Tobacco Products Directive is correctly transposed, this assessment (Yes/No) (and the subsequent colour score) would likely change.
The previous shadow report highlighted the fact that public awareness of harms caused by smoking to both smokers and non-smokers was significantly lower in the Netherlands compared to many other countries. For instance, only 61% of Dutch smokers reported to agree with the statement that secondhand smoke is dangerous to non-smokers (data derived in 2010)\textsuperscript{107}. Based on these results, the Minister of Health stated that, in this area, health gains could be achieved through better information\textsuperscript{108}. In 2014, however, the proportion of smokers reporting to agree with the above statement had not changed significantly\textsuperscript{104}.

**ARTICLE 12**

**EACH PARTY SHALL ADOPT AND IMPLEMENT EFFECTIVE LEGISLATIVE, EXECUTIVE, ADMINISTRATIVE OR OTHER MEASURES TO PROMOTE:**

(A) BROAD ACCESS TO EFFECTIVE AND COMPREHENSIVE EDUCATIONAL AND PUBLIC AWARENESS PROGRAMMES ON THE HEALTH RISKS INCLUDING THE ADDICTIVE CHARACTERISTICS OF TOBACCO CONSUMPTION AND EXPOSURE TO TOBACCO SMOKE;

(B) PUBLIC AWARENESS ABOUT THE HEALTH RISKS OF TOBACCO CONSUMPTION AND EXPOSURE TO TOBACCO SMOKE, AND ABOUT THE BENEFITS OF THE CESSATION OF TOBACCO USE AND TOBACCO-FREE LIFESTYLES;

(C) PUBLIC ACCESS TO A WIDE RANGE OF INFORMATION ON THE TOBACCO INDUSTRY; […] AND

(F) PUBLIC AWARENESS OF AND ACCESS TO INFORMATION REGARDING THE ADVERSE HEALTH, ECONOMIC, AND ENVIRONMENTAL CONSEQUENCES OF TOBACCO PRODUCTION AND CONSUMPTION.

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 12**

In tobacco control, communication is essential to change attitudes about tobacco production, manufacture, marketing, consumption and exposure to tobacco smoke, discourage tobacco use, curb smoking initiation, and encourage cessation, as well as being necessary for effective community mobilisation towards providing enabling environments and achieving sustainable social change.

The importance of education and communication, as part of a comprehensive tobacco control policy, has been recognised repeatedly by the State Secretary for Health\textsuperscript{80}. When discussing the introduction of an increased legal age limit for tobacco sales (see also the chapter on Article 16), the State Secretary noted: “Of course, enforcement has to improve […] but it is much more important to educate people well, to convince them of the fact that smoking is unhealthy, especially at a younger age, and to ensure that this campaign to prevent a new generation from starting to smoke, is more important than surveillance”\textsuperscript{29}.

In July 2011, the then responsible Minister of Health announced a different approach to discourage smoking. In particular, she chose to no longer use untargeted mass-media campaigns to change
unhealthy behaviour such as tobacco use, but instead to rely on educational programmes in schools and on direct communication through health professionals (such as general practitioners, obstetricians and medical specialists). Therefore, no mass media campaigns were run by the government from the end of 2011 to the end of 2013. However, following a change of government and the transfer of responsibility for tobacco control policies to the State Secretary for Health in November 2012, mass media campaigns have been initiated or supported by the government since late 2013. These mass media initiatives are the NIX18 campaign (to introduce the increased legal age limit, see below) and Stoptober (to stimulate smokers to quit smoking for 28 days in October 2014, see also the chapter on Article 14). It has also been announced that a campaign will be launched to explain the re-introduction of the smoking ban in all hospitality venues. It has been communicated that the rationale underlying such a smoking ban – the health risks associated with passive smoking – will also be addressed in the campaign. If so, it would be the first mass media campaign in about a decade that highlights the harms caused by (passive) smoking. The campaign is expected to start in early 2015.

Article 12 also contains the requirement to provide public access to a wide range of information on the tobacco industry. This has not been done by the government, with the exception of information on the ingredients of tobacco products (see the chapter on Articles 9 and 10). The topic has, however, been put on the agenda by civil society. In March 2013, the website www.tabaknee.nl was launched by the Youth Smoking Prevention Foundation (Stichting Rookpreventie Jeugd). This website unmasks tobacco industry strategies and practices, and identifies Dutch allies of the tobacco industry (including members of government and parliament).

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 12

Infrastructure to raise public awareness refers to the organisational structures and capacity needed to ensure sustained education, communication and training programmes. It provides the means and resources needed to gather knowledge, translate research results and good practices into useful and understandable messages for individual target groups, communicate the relevant messages, and then monitor the effects of these messages on knowledge, attitude and behavioural outcomes.

Parties should establish an infrastructure to support education, communication and training and ensure that they are used effectively to raise public awareness and promote social change, in order to prevent, reduce or eliminate tobacco consumption and exposure to tobacco smoke.

As of January 2013, responsibility for prevention of tobacco use (including the task of informing and educating the general public) has been transferred from STIVORO, the former Dutch expert centre on tobacco control, to the Trimbos Institute. This decision was motivated by reasons of efficiency and the government’s aim for a more integrated approach to prevention (in the field of addictive substances). This reallocation of tasks has been criticised by the international tobacco control community. In parliament, fears were expressed that (a large) part of the knowledge base on tobacco control would be lost. In 2012, a one-off subsidy was provided to the Trimbos Institute in order to prepare itself for its new task as national centre of expertise on tobacco control, by acquiring and safeguarding (existing) knowledge and expertise. The decision to transfer responsibilities was challenged by STIVORO in the Dutch courts. STIVORO claimed that the decision was not in line with various FCTC-provisions, such as Article 12. In the end, the Council of State ruled that, because of the
Minister’s discretion in relation to cutting or terminating subsidies, the Minister was allowed to end all subsidies to STIVORO. It added that a court should only marginally assess such decisions. The Council reasoned: “The fact that the Trimbos Institute will not execute all programmes that STIVORO is committed to and will, presumably, have less employees to carry out the subsidised activities, does not give rise to a different conclusion. It is not implausible that these restrictions are associated with the [...] announced cuts on tobacco control activities of 25% in 2013 and 50% in 2014. However, these cuts do not concern STIVORO but the Trimbos Institute and fall outside the scope of this proceeding”.

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 12

In tobacco control, education comprises a continuum of teaching and learning about tobacco which empowers people to make voluntary decisions, modify their behavior and change social conditions in ways that enhance health.

School education is considered an important channel for raising awareness about (the harms of) smoking and for stimulating healthy lifestyles. Various initiatives have started to encourage such education and to improve the available materials, including an increased budget. The Ministries of Health and of Education contribute financially to the “Healthy School” (Gezonde School) project. Within this project, schools can apply for a vignette, allowing them to raise their profile as a school that emphasises health and wellbeing. Since September 2014, such vignettes are available for both primary and (more recently) secondary education institutions, as well as for secondary vocational schools. To qualify for the Healthy School vignette, schools have to obtain at least one of the predefined theme certificates. One of these theme certificates focuses on smoking (and other substance uses). Requirements for the attainment of this certificate include smokefree schoolyards, structural education on tobacco use, communication with parents regarding smoking, and more. In December 2014, the theme certificate “Smoking and alcohol” had been allocated to six primary schools and the theme certificate “Smoking, alcohol and drugs prevention” to one secondary school. The government aims for all schools to be healthy in 2030. In 2016, 850 schools (out of 8,000) are supposed to have successfully applied for the Healthy School vignette.

One of the education programmes on smoking available to schools is the “Healthy School and Drugs” (DGSG) programme (developed by the Trimbos Institute). For instance, e-learning programmes have been developed for secondary schools and for secondary vocational schools. The DGSG programme encourages an integral approach that also includes parental involvement, establishing a policy on substance use and signalling substance use. Various studies have been conducted to measure the effectiveness of the DGSG programme. Recent publications suggested that the DGSG programme did not significantly impact tobacco use, causing the authors to conclude that the programme was either ineffective or implemented inadequately. These results have prompted the Trimbos Institute to update the materials. For instance, the role of parents has been incorporated more strongly. As of the school year 2014-2015, the “Prevention of Alcohol Use among Students” (PAS) intervention also covers smoking. Hence it has been renamed the “Student and Parent Intervention Alcohol and
It builds on the finding that parents should be educated simultaneously with their children, so that they can be clear about substance use at home. Previous research has established the effectiveness of the PAS intervention and has shown that these effects originate in particular from the addition of parental involvement.

Monitoring data on education on smoking in secondary education has suggested that the percentage of secondary schools paying attention to smoking in at least one grade significantly decreased between 2008 (96%) and 2011 (82%). No recent figures have been published. The share of secondary schools using the DGSG programme has remained at 70% from 2011 to 2014. It is unclear to what extent these schools (also) use the tobacco e-learning as part of the programme.

Youth and their parents are also targeted through the “Growing Up Smokefree” (Rookvrij Opgroeien) programme. This programme has been implemented through the Youth Health Care (JGZ) system. Since 2012, the Growing Up Smokefree programme is no longer solely targeted at (the parents of) children aged 0 to 3, but also at youth aged 4 years or older. This is in line with the observation that, in 2011, exposure to secondhand smoke at home was (much) higher among school children (ages 4-18), than among babies and very young children (ages 0-3). Whereas 5% of adults reported to smoke inside their homes in the presence of their youngest child aged 0-3, 18% reported to do so in the presence of their youngest child aged 4-12 and 27% in the presence of their youngest child aged 13-18. The new training for Youth Health Care workers in relation to older children also includes elements of smoking prevention among these children.

General information on smoking (cessation) is currently provided rather passively in the Netherlands. Although reliable information on smoking (cessation) can be accessed through the Trimbos Institute’s website for tobacco control public education (www.rokeninfo.nl) and/or its Smoking Information Line, these channels are not (yet) actively promoted through mass media (see also the chapter on Article 14).

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 12**

It is essential to change social, environmental and cultural norms and perceptions regarding the acceptability of the consumption of tobacco products, exposure to tobacco smoke, and aspects of the growing, manufacturing, marketing and sale of tobacco and tobacco products.

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 12**

Outreach can be increased by encouraging and supporting non-governmental organisations and other members of civil society active in the field of tobacco control, and not affiliated with the tobacco industry, to complement governmental programmes through joint and/or independent educational activities and communication campaigns.

The Netherlands is not only lagging behind internationally with regard to knowledge of the health risks of (passive) smoking, but also in relation to the (perceived) denormalisation of smoking. Comparative research has shown that, in the Netherlands, the group of smokers who agreed that society disapproves of smoking was relatively small in comparison to other countries. The percentage of smokers who agrees that society disapproves of smoking has significantly increased from 53.1% in 2011 to 62.2% in 2014, but this is still well below the levels that were previously
found in Germany (70%), France (74%)\textsuperscript{136}, the UK (77%), the USA (78%), Australia (82%), and Canada (88%)\textsuperscript{137}. The percentage of smokers whose overall opinion of smoking is (very) negative has also significantly increased from 17.4% in 2011 to 21.2% in 2014\textsuperscript{104}. Again, this still is a relatively small proportion in comparison to other countries\textsuperscript{107}. Another positive trend is that parents take an increasingly negative stance towards smoking by their children\textsuperscript{138}. In 2013, 9 out of 10 parents reported to believe that occasional smoking is harmful for children under the age of 16 and 9 out of 10 parents reported to support the norm of no smoking at all among children under the age of 16\textsuperscript{138}.

The State Secretary for Health has recognised the importance of social norms in relation to tobacco use. The NIx18 campaign was designed to play a role in this regard and help establish the norm that smoking is not normal (especially among those aged under 18)\textsuperscript{29}. Various television and radio commercials were broadcast and social media were used to target youth\textsuperscript{87}. An early evaluation showed that the NIx18 campaign contributed to higher levels of knowledge among parents, minors and the general public about the new legal age limit and to increased communication about smoking (and drinking) before children turn 18. Effects on attitude (such as perceived normality of no smoking before the age of 18) and behaviour (such as no smoking among minors) are expected by the government in the longer term\textsuperscript{139}. The State Secretary has indicated that the campaign has, so far, been associated primarily with ‘no alcohol’ and less with ‘no smoking’. In the development of new campaign materials, more emphasis will therefore be placed on tobacco\textsuperscript{87}.

The State Secretary has pointed out that the denormalisation of smoking can only be achieved through cooperation with as many social partners as possible. Examples mentioned are the promotion of smokefree schoolyards (see the chapter on Article 8) and the organisation of a national smoking cessation month (StoptoBe\textsuperscript{22}). The government does not play an active, initiating role in these initiatives, but mainly supports these campaigns financially. A denormalisation campaign (‘Smoking is sooo...’) was also run by the Dutch Cancer Society (KWF). According to the State Secretary, the NIx18 campaigns and the KWF campaign should be considered complementary. For example, whereas the KWF campaign was targeted at young adults, the governmental NIx18 campaign has been directed primarily at the social environment of youth\textsuperscript{22}.

ARTICLE 12

\textbf{Each party shall adopt and implement effective legislative, executive, administrative or other measures to promote effective and appropriate training or sensitisation and awareness programmes on tobacco control addressed to persons such as health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons.}
Training provided by the Trimbos Institute is targeted primarily at school teachers (DGSG) and at midwives, maternity assistants and JGZ professionals (Growing Up Smokefree). Training for smoking cessation service providers is delivered through a broad range of organisations. These organisations include the Netherlands School of Public and Occupational Health (NSPOH), but also several specialised smoking cessation entities. High-quality training can be accredited through the Quality Register on Smoking Cessation (see also the chapter on Article 14). In 2013, the Trimbos Institute concluded that coordination was lacking regarding the training for smoking cessation service providers. This caused uncertainties in the field and discouraged the (re)training of service providers. In order to remove these bottlenecks in the field of training, the Trimbos Institute has requested further subsidies from the Ministry of Health. These subsidies should support the Trimbos Institute in ensuring that professionals are being adequately informed, that training materials remain available and that training for professionals is guaranteed.

Conclusions and recommendations
Government policy in the area of education, communication and training has changed throughout the past years. For example, whereas initially a stop on all mass media campaigns was declared, some mass media initiatives have been implemented or announced since late 2013. However, from an international perspective, awareness of the health risks of smoking is still very low and smoking is still considered to be relatively normal behaviour in the Dutch society. The government is not acting in compliance with various of the obligations included in Article 12 (see the scoring table below). A 'red score' was therefore assigned in the summary table on the implementation of FCTC measures in the Netherlands in 2014 (Table 1b). The lack of compliance with some of the recommendations included in the Guidelines also illustrates that there still is much room for improvement. Further measures are therefore essential. Most notably, the Dutch government is urged to:

- Implement further measures, such as mass media campaigns, to increase awareness of the harmfulness of (passive) smoking. The government should also initiate communication on other topics, such as the strategies of the tobacco industry. Appropriate (financial) resources should be provided.
- Ensure that appropriate training and awareness programmes on tobacco control are not only available for health workers, but also for professionals in other relevant sectors, such as social workers, media professionals and decision-makers.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 a</td>
<td>Shall</td>
<td>Adopt and implement effective measures to promote broad access to effective and comprehensive educational and public awareness programmes on the health risks including the addictive characteristics of tobacco consumption and exposure to tobacco smoke.</td>
<td>No</td>
<td>❌</td>
</tr>
<tr>
<td>12 b</td>
<td>Shall</td>
<td>Adopt and implement effective measures to promote public awareness about the health risks of tobacco consumption and exposure to tobacco smoke, and about the benefits of the cessation of tobacco use and tobacco-free lifestyles.</td>
<td>No</td>
<td>❌</td>
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<tr>
<td></td>
<td>Shall</td>
<td>Should</td>
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<tr>
<td>12 c</td>
<td>Adopt and implement effective to promote public access to a wide range of information on the tobacco industry (as relevant to the objective of this Convention).</td>
<td>No</td>
<td></td>
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</tr>
<tr>
<td>12 d</td>
<td>Adopt and implement effective measures to promote effective and appropriate training or sensitisation and awareness programmes on tobacco control addressed to persons such as health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons.</td>
<td>Yes</td>
<td></td>
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<tr>
<td>12 e</td>
<td>Adopt and implement effective measures to promote awareness and participation of public and private agencies and nongovernmental organisations not affiliated with the tobacco industry in developing and implementing intersectoral programmes and strategies for tobacco control.</td>
<td>Yes</td>
<td></td>
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<tr>
<td>12 f</td>
<td>Adopt and implement effective measures to promote public awareness and access to information regarding the adverse health, economic, and environmental consequences of tobacco production and consumption.</td>
<td>No</td>
<td></td>
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<tr>
<td>12 GL</td>
<td>Establish an infrastructure to support education, communication and training and ensure that they are used effectively to raise public awareness and promote social change, in order to prevent, reduce or eliminate tobacco consumption and exposure to tobacco smoke.</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>12 GL</td>
<td>Use all available means to raise awareness, provide enabling environments and facilitate behavioural and social change through sustained education, communication and training.</td>
<td>No</td>
<td></td>
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</tr>
<tr>
<td>12 GL</td>
<td>Actively involve members of civil society, in different phases such as planning, developing, implementing, monitoring and evaluating education, communication and training programmes.</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>12 GL</td>
<td>Restrict their collaboration to members of civil society not affiliated with the tobacco industry</td>
<td>Yes</td>
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<tr>
<td>12 GL</td>
<td>Ensure that the public has free and universal access to accurate and truthful information on the strategies and activities of the tobacco industry and its products, as appropriate.</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 GL</td>
<td>Ensure that education, communication, training and public awareness programmes include a wide range of information on the tobacco industry.</td>
<td>No</td>
<td></td>
<td></td>
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<tr>
<td>12 GL</td>
<td>Monitor, evaluate and revise their communication, education and training measures to meet their obligations under the Convention.</td>
<td>Yes</td>
<td></td>
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</tbody>
</table>
Article 13

Tobacco Advertising, Promotion and Sponsorship

Article 13 is based on the recognition that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products. The Guidelines underline that such a ban is effective only if it has a broad scope. The effect of a partial ban is limited. The previous shadow report established that the ban on tobacco advertising, promotion and sponsorship was not comprehensive enough. Nevertheless, since 2011, few developments have been initiated by the Dutch government to improve its performance. In line with this lack of more stringent measures, the percentage of smokers that reported to have noticed the promotion of smoking (very) often in the past six months has remained at similar levels from 2011 to 2014 (around 14%)104.

ARTICLE 13.2

EACH PARTY SHALL, IN ACCORDANCE WITH ITS CONSTITUTION OR CONSTITUTIONAL PRINCIPLES, UNDERTAKE A COMPREHENSIVE BAN OF ALL TOBACCO ADVERTISING, PROMOTION AND SPONSORSHIP.

ARTICLE 13.4

AS A MINIMUM, AND IN ACCORDANCE WITH ITS CONSTITUTION AND CONSTITUTIONAL PRINCIPLES, EACH PARTY SHALL:

(a) PROHIBIT ALL FORMS OF TOBACCO ADVERTISING, PROMOTION AND SPONSORSHIP THAT PROMOTE A TOBACCO PRODUCT BY ANY MEANS THAT ARE FALSE, MISLEADING OR DECEPTIVE OR LIKELY TO CREATE AN ERRONEOUS IMPRESSION ABOUT ITS CHARACTERISTICS, HEALTH EFFECTS, HAZARDS OR EMISSIONS;

(b) REQUIRE THAT HEALTH OR OTHER APPROPRIATE WARNINGS OR MESSAGES ACCOMPANY ALL TOBACCO ADVERTISING AND, AS APPROPRIATE, PROMOTION AND SPONSORSHIP;

(c) RESTRICT THE USE OF DIRECT OR INDIRECT INCENTIVES THAT ENCOURAGE THE PURCHASE OF TOBACCO PRODUCTS BY THE PUBLIC;

(d) REQUIRE, IF IT DOES NOT HAVE A COMPREHENSIVE BAN, THE DISCLOSURE TO RELEVANT GOVERNMENTAL AUTHORITIES OF EXPENDITURES BY THE TOBACCO INDUSTRY ON ADVERTISING, PROMOTION AND SPONSORSHIP NOT PROHIBITED;

(e) UNDERTAKE A COMPREHENSIVE BAN OF TOBACCO ADVERTISING, PROMOTION AND SPONSORSHIP ON RADIO, TELEVISION, PRINT MEDIA AND, AS APPROPRIATE, OTHER MEDIA, SUCH AS THE INTERNET, WITHIN A PERIOD OF FIVE YEARS; AND

(f) PROHIBIT TOBACCO SPONSORSHIP OF INTERNATIONAL EVENTS, ACTIVITIES AND/OR PARTICIPANTS THEREIN.
There have been no legal changes in the area of tobacco advertising, promotion and sponsorship since 2011. This implies that there still is no comprehensive ban on all tobacco advertising, promotion and sponsorship. Although Article 5.1 of the Dutch Tobacco Act contains a general ban on all advertising and sponsorship of tobacco products, several exceptions are identified in the subsequent paragraphs. The Dutch government acknowledged the lack of a comprehensive ban in its FCTC progress reports to the World Health Organisation (WHO)\(^8; 10; 11\). A comprehensive ban on advertising, promotion and sponsorship is required by the FCTC, unless a Party is precluded from adopting such a ban on the basis of its Constitution or constitutional principles. The Dutch government has reported that it is not prevented from undertaking a comprehensive ban by the Dutch Constitution or constitutional principles\(^8; 10; 11\). In terms of the FCTC, it therefore has no valid reason for not having implemented a comprehensive ban on advertising, promotion and smoking. For those countries that have not yet implemented a comprehensive ban, Article 13.4 sets out a number of minimum requirements. The Dutch government still does not fulfil these minimum requirements either. In particular, it fails to demand the disclosure of expenditures on advertising, promotion and sponsorship by the tobacco industry.

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 13**

To ensure that points of sale of tobacco products do not have any promotional element, Parties should introduce a total ban on any display and on the visibility of tobacco products at points of sale.

Tobacco sales are still allowed at many venues. Only a couple of categories of institutions are excluded from selling tobacco, such as educational facilities. For the purposes of the ban on advertising, a distinction is made between specialised tobacco shops and other tobacco retailers. In specialised tobacco shops (about 1,500)\(^141\), advertising is still permitted (albeit within certain boundaries). These shops are also allowed to display advertising (of maximum 2 m\(^2\)) on the outside of their shops. The display of tobacco packages, on the other hand, is allowed at all tobacco points of sale. In October 2013, motions were tabled by members of parliament to introduce a display ban in the Netherlands and to limit the number of tobacco points of sale\(^29\). The motions were not supported by a majority in the House of Representatives\(^142\). Based on these debates, the State Secretary for Health did commission a review of the evidence on the effectiveness of restricting the number of tobacco points of sale and of introducing a display ban in terms of reducing smoking prevalence. This review was published in July 2014. It was concluded that, whereas the evidence in support of a reduction of points of sale was still relatively weak, studies on display bans did suggest that such a ban would contribute to reduced tobacco use in the population\(^143\). On request of the State Secretary, the economic effects of reducing the number of points of sale (measured by changes in revenue and employment) were also mapped\(^144\). The State Secretary has not yet announced a course of action on the basis of these publications\(^110\).
GUIDELINES FOR IMPLEMENTATION OF ARTICLE 13

Packaging and product design are important elements of advertising and promotion. Parties should consider adopting plain packaging requirements to eliminate the effects of advertising or promotion on packaging. Packaging, individual cigarettes or other tobacco products should carry no advertising or promotion, including design features that make products attractive.

The packaging of tobacco products is an important exception to the ban on advertising. When the ban was proposed by the government in 2001, it was reasoned that the packaging of tobacco products, as such, fell within the definition of advertising, but that it could not be the intention to prohibit these packages. An explicit exception was therefore formulated. This exception has remained in place. Although no legal changes occurred, some developments have taken place in the area of ‘package’ design that have prompted the authorities to further delineate the boundaries of the exception. The increased use of so-called pack inserts by the tobacco industry is an example of such developments. For the tobacco industry, such inserts are a cost-effective way of introducing new brand features or changes to the brand portfolio. The question has arisen whether or not these inserts should be seen as part of the packaging and are therefore also exempted from the ban on advertising. In August 2013, the Dutch Food and Consumer Product Safety Authority (NVWA) fined British American Tobacco (BAT) for violating the Tobacco Act by adding inserts to the packaging of several tobacco products. In February 2014, the District Court of The Hague ruled that this decision of the NVWA could not be regarded as manifestly erroneous. The fact that the inserts are added to the packaging, does not make them part of the packaging: they are not used to pack the product.

The FCTC Guidelines on the implementation of Article 13 suggest the adoption of plain packaging. The revised EU Tobacco Products Directive (TPD) leaves the choice of implementing plain packaging to individual member states. Ireland and France have already indicated that they intend to introduce plain packaging when transposing the revised TPD. Although the Dutch government has not openly objected to these plans (as some other EU member states have done), so far, it has taken a cautious position towards the implementation of plain packaging in the Netherlands. Although the State Secretary for Health closely monitors the developments in the area of plain packaging, he argues that such a measure should be extensively evaluated first, especially as far as its effects on health and intellectual property are concerned. He considers the current evidence base to be insufficient. The State Secretary is, therefore, not (yet) prepared to propose the adoption of plain packaging.

If plain packaging is not mandated, the Guidelines recommend to restrict as many design features as possible. Currently, only the use of texts, (brand) names and figures or other signs that suggest that one tobacco product is less harmful than others is prohibited (in line with Article 13.4(a) FCTC). Following transposition of the revised TPD, there will also be a ban on very small packages (such as the so-called lipstick packs) and there will be further restrictions regarding the shape and opening
mechanisms of tobacco packs. However, many other promotional elements, such as coloured cigarette papers and special edition designs, will still be allowed (if plain packaging is not introduced).

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 13
The Parties should ban contributions from tobacco companies to any other entity for ‘socially responsible clauses’, as this is a form of sponsorship. Publicity given to ‘socially responsible’ business practices of the tobacco industry should be banned, as it constitutes advertising and promotion.

In the context of corporate social responsibility, the previous shadow report pointed at a partnership between Japan Tobacco International (JTI), the Keep Holland Tidy Foundation (Stichting Nederland Schoon) and the municipality of Zandvoort. Goal of this partnership was to reduce cigarette litter on beaches. Similar partnerships were established in the subsequent years. Every year a different location is selected for launch of the project. As part of the campaign “Don’t leave your fag alone”, beach-goers are provided with disposable ashtrays. These ashtrays, as well as other campaign materials, contain the JTI-logo and hence could be considered to constitute corporate promotion. The Guidelines for implementation of Article 13 indicate that such promotion of tobacco companies themselves is a form of promotion of tobacco products or tobacco use as well. In response to questions asked by members of parliament, the State Secretary for Health stated that he had no reasons to assume that this initiative should be considered a violation of the Convention, emphasising that the campaign did not derive from local tobacco control policies150. The State Secretary sent a letter to all municipalities and provinces to emphasise that these lower levels of government are also bound by the FCTC. Although the Guidelines for implementation of the Convention were briefly mentioned, it was stressed that these Guidelines are of a non-binding nature42.

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 13
Internet sales of tobacco should be banned as they inherently involve tobacco advertising and promotion.

There is no ban on internet sales of tobacco products in the Netherlands. Although the government has acknowledged that “internet sales are practically impossible without violating the ban on advertising”89, the issue of internet sales is considered primarily as part of the discussion on compliance with the legal age limit. It is, therefore, further discussed in the chapter on Article 16.

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 13
Parties should introduce and apply effective, proportionate and dissuasive penalties. Parties should designate a competent, independent authority to monitor and enforce the law and entrust it with the necessary powers and resources.
Since 2010, 101 fines have been imposed because of a violation of the ban on tobacco advertising and sponsorship. In three instances, the maximum fine of € 450,000 has been levied. Violations have, for instance, been observed at events and festivals.

**Conclusions and recommendations**

There have been few new government initiatives to prevent tobacco advertising, promotion and sponsorship since September 2011. Although various studies were commissioned, so far no concrete measures have been implemented. The Dutch government does not act in line with the FCTC obligations in relation to Article 13. A comprehensive ban on tobacco advertising, promotion and sponsorship has not been implemented and the minimum requirements listed in Article 13.4 are currently not all fulfilled. It was therefore awarded a ‘red score’ in the summary table on the implementation of FCTC measures in the Netherlands in 2014. The recommendations and suggestions included in the Guidelines offer many possibilities for future enhancement as well. The Dutch government is particularly urged to:

- Ban advertising outside and inside all tobacco points of sale and no longer allow for any exemptions for certain points of sale. In addition, the government should ban the display and visibility of tobacco products at all point of sales.
- Ban the sale of tobacco through vending machines. A ban on internet sales should also be considered.
- Take measures to limit (the visibility of) ‘socially responsible’ business practices by the tobacco industry. As an absolute minimum, in line with the Guidelines for implementation of Article 5.3, governmental officials and public servants should not be able to endorse, support, form partnerships with or participate in corporate social responsibility initiatives of the tobacco industry.
- Consider implementing plain packaging, in line with the Guidelines for implementation of Articles 11 and 13.
- Implement a ban on more indirect forms of tobacco promotion, such as advertising for smoking accessories.

**Scores**

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 2</td>
<td>Shall</td>
<td>Undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>13 4a</td>
<td>Shall</td>
<td>Prohibit all forms of tobacco advertising, promotion and sponsorship that promote a tobacco product by any means that are false, misleading or deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 4b</td>
<td>Shall</td>
<td>Require that health or other appropriate warnings or messages accompany all tobacco advertising and, as appropriate, promotion and sponsorship.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 4c</td>
<td>Shall</td>
<td>Restrict the use of direct or indirect incentives that encourage the purchase of tobacco products by the public.</td>
<td>Yes</td>
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<tr>
<td>13 4d</td>
<td>Shall</td>
<td>Require the disclosure to relevant governmental authorities of expenditure by the tobacco industry on advertising, promotion and sponsorship not yet prohibited.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>13 4e</td>
<td>Shall</td>
<td>Undertake a comprehensive ban on tobacco advertising, promotion and sponsorship on radio, television, print media and, as appropriate, other media, such as the internet.</td>
<td>Yes</td>
<td></td>
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<tr>
<td>13 4f</td>
<td>Shall</td>
<td>Prohibit tobacco sponsorship of international events, activities and/or participants therein.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban advertising and promotion of tobacco brand names and all corporate promotion.</td>
<td>No</td>
<td></td>
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<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban display and visibility of tobacco products at points of sale.</td>
<td>No</td>
<td></td>
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<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban vending machines.</td>
<td>No</td>
<td></td>
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<tr>
<td>13 GL</td>
<td>Should consider</td>
<td>Adopt plain packaging requirements.</td>
<td>No</td>
<td></td>
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<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban internet sales.</td>
<td>No</td>
<td></td>
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<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban ‘brand stretching’ and ‘brand sharing’.</td>
<td>No</td>
<td></td>
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<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban contributions from tobacco companies to any other entity for ‘socially responsible’ business practices.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban publicity given to ‘socially responsible’ business practices of the tobacco industry.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Take measures to prevent the use of journalistic, artistic or academic expression or social or political commentary for the promotion of tobacco use or tobacco products.</td>
<td>Yes</td>
<td></td>
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<tr>
<td>13 GL</td>
<td>Should</td>
<td>Take particular measures concerning the depiction of tobacco in entertainment media products, including requiring certification that no benefits have been received for any tobacco depictions, prohibiting the use of identifiable tobacco brands or imagery, requiring anti-tobacco advertisements and implementing a ratings or classification system that takes tobacco depictions into account.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Define and apply strictly any exception to a comprehensive ban on advertising, promotion and sponsorship to allow communication with the tobacco trade.</td>
<td>Yes</td>
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<tr>
<td>13 GL</td>
<td>Should</td>
<td>Take effective actions to limit or prevent any cross-border tobacco advertising, promotion and sponsorship entering their country.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Define the entities responsible for tobacco advertising, promotion and sponsorship widely, and have the way in which they are held responsible depend on their role.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ensure that primary responsibility lies with the initiator of advertising, promotion or sponsorship, usually tobacco manufacturers, wholesale distributors, importers, retailers and their agents and associations.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban persons or entities that produce or publish media content from including tobacco advertising, promotion and sponsorship in the content they produce or publish.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td>Should</td>
<td>Ban persons or entities (such as events organisers, sportspeople and celebrities) from engaging in tobacco advertising, promotion and sponsorship.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Should</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
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<td>------------------------------------------</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>13 GL</td>
<td></td>
<td>Apply particular obligations, for example, to remove content to other entities involved in analogue or digital media after they have been made aware of the tobacco advertising, promotion and sponsorship.</td>
<td>Yes</td>
<td><img src="green.png" alt="Green" /></td>
</tr>
<tr>
<td>13 GL</td>
<td></td>
<td>Introduce and apply effective, proportionate and dissuasive penalties.</td>
<td>Yes</td>
<td><img src="green.png" alt="Green" /></td>
</tr>
<tr>
<td>13 GL</td>
<td></td>
<td>Ensure that civil society is involved in the monitoring and enforcement of the law and have access to justice.</td>
<td>Yes</td>
<td><img src="green.png" alt="Green" /></td>
</tr>
<tr>
<td>13 GL</td>
<td></td>
<td>Designate a competent, independent authority to monitor and enforce the law and entrust it with the necessary powers and resources.</td>
<td>Yes</td>
<td><img src="green.png" alt="Green" /></td>
</tr>
<tr>
<td>13 GL</td>
<td></td>
<td>Promote and strengthen, in all sectors of society, public awareness of the need to eliminate tobacco advertising, promotion and sponsorship, the laws against it, and the ways in which members of the public can act on breaches of these laws.</td>
<td>No</td>
<td><img src="orange.png" alt="Orange" /></td>
</tr>
</tbody>
</table>
ARTICLE 14

PARTIES SHALL DEVELOP AND DISSEMINATE APPROPRIATE, COMPREHENSIVE AND INTEGRATED GUIDELINES BASED ON SCIENTIFIC EVIDENCE AND BEST PRACTICES.

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 14

These guidelines should include two major components: (1) a national cessation strategy, to promote tobacco cessation and provide tobacco dependence treatment, aimed principally at those responsible for funding and implementing policies and programmes; and (2) national treatment guidelines aimed principally at those who will develop, manage and provide cessation support to tobacco users.

In the Netherlands, a clinical Guideline for the Treatment of Tobacco Dependence has been in place since 2004. This Guideline summarises scientific evidence with regard to the effectiveness of smoking cessation treatments. It has emerged from the Partnership on Smoking Cessation, a public-private platform in which various healthcare-related organisations collaborate that was initiated by the Ministry of Health in the early 2000s. The Guideline was last updated in 2009. A new update is currently being considered. The Ministry of Health will provide a small amount of financial support to this end.

In 2009, the Partnership on Smoking Cessation established the Standard of Care on Smoking Cessation, to translate the Guideline into practice. This Standard of Care describes the norms for high-quality smoking cessation care. Among other things, it is used to facilitate agreements between health insurers and service providers regarding the eligibility of smoking cessation treatments for reimbursement.

ARTICLE 14

PARTIES MAINTAIN OR CONSIDER CREATING AN UP-TO-DATE, EASILY ACCESSIBLE INFORMATION SYSTEM ON AVAILABLE TOBACCO CESSTATION SERVICES AND QUALIFIED SERVICE PROVIDERS FOR TOBACCO USERS.

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 14

Both health-care workers and those outside health-care settings who deliver intensive specialised supports should be trained to the highest possible standard and receive continuous education.

Various initiatives have been taken to disclose information on available tobacco cessation services and qualified service providers to smokers. Since September 2011, the Quality Register for Smoking Cessation has been online (www.kwaliteitsregisterstoppenmetroken.nl). This Register was developed by the Partnership on Smoking Cessation and builds upon the Standard of Care on Smoking Cessation. It lists health care professionals who have been trained to provide evidence-based, effective intensive behavioural cessation support. Professionals have to re-register every five years. To ensure that knowledge and experience remain up-to-date, re-registration is conditional upon having acquired a minimum amount of counselling hours (100) and continuing education accreditation points (15) in the past five years. The overview of all registered service providers is publicly available.
To improve accessibility of information on the availability of effective smoking cessation support to tobacco users, on request of the Ministry of Health, a so-called social map has been developed\cite{155}. Until December 2012, this map was available at the website of STIVORO. Since September 2013, this social map is included as part of www.rokeninfo.nl, the Trimbos Institute’s website for public education on smoking\cite{156} (see the chapter on Article 12). Through this map, individuals can locate smoking cessation services nearby their home address. Only organisations that offer evidence-based, effective intensive behavioural cessation support are incorporated. The website also contains some general information on the different types of effective smoking cessation therapies that are available. Additionally, in December 2011, a patient-targeted folder of the Standard of Care on Smoking Cessation was published by the Partnership on Smoking Cessation, focussing on the questions of what and who can help people quit smoking\cite{157}. This folder has been uploaded on www.stoppen-met-roken.nl, the website that is referred to in one of the additional health warning labels on tobacco packages.

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 14**

Brief advice should be integrated into all health-care systems. All health-care workers should be trained to ask about tobacco use, record it in the notes, give brief advice on stopping, and direct tobacco users to the most appropriate and effective treatment available locally. Brief advice should be implemented as an essential part of standard practice and its implementation should be monitored.

The clinical Guideline for the Treatment of Tobacco Dependence stresses the importance of having health-care workers ask (new) patients about tobacco use and advise smoking patients to quit\cite{152}. The Guideline on smoking cessation put forward by the Dutch College of General Practitioners (NHG) recommends that general practitioners (GPs) provide all smokers with the advice to stop using tobacco\cite{158}. Nevertheless, research suggests that brief advice is not yet sufficiently integrated in the Dutch health-care system. In 2010-2011, smokers in the Netherlands were less than half as likely as English smokers to report having received advice to quit from their GP during a consultation (22.6% vs. 58.9%)\cite{159}. Longitudinal data from the Dutch Continuous Survey of Smoking Habits show that, in 2013, only 21% of smokers who visited their GP in the last year had received advice to quit smoking. This proportion exceeded the percentage measured in 2001 (18%), but was lower than the level found in 2011 (25%)\cite{160}. There has been an upward trend in directing tobacco users to treatment. The percentage of smokers reporting that their GP recommended them to use behavioural support to quit smoking increased from 4% in 2005 to 10% in 2013\cite{160}.

Using the health-care system to promote smoking cessation among pregnant women has received special attention in the past few years. In 2010, the Dutch Health Inspectorate (IGZ) found that smoking cessation support was not yet structurally embedded in most midwifery practices (primary health-care facilities). In many cases, a policy on providing smoking cessation support was lacking.
Also, the evidence-based Minimum Intervention Strategy for smoking cessation counselling of pregnant women (V-MIS) was only partially implemented\textsuperscript{161}. Based on this assessment, the IGZ declared that all midwifery practices were expected to comply with professional standards as of January 2012. Following announcement of this deadline, and encouraged through increased support from the Royal Dutch Organisation of Midwives (KNOV) and STIVORO, the proportion of practices reporting to use V-MIS increased from 28\% to 80\%\textsuperscript{162}. More recently, the IGZ’s focus has shifted towards secondary health-care providers (such as gynaecologists) and the coordination between primary and secondary health services in Perinatal Care Partnerships (VSVs). A lack of coherent policies in relation to smoking cessation was detected\textsuperscript{163}. Subsequently, the IGZ has requested all VSVs to develop a comprehensive policy on smoking cessation support before January 2015\textsuperscript{164}. In November 2014, the Trimbos Institute, KNOV and the Dutch Society of Obstetrics and Gynaecology (NVOG) presented a handbook to support VSVs in formulating such a comprehensive policy. In addition, an updated version of the V-MIS manual was published, with more attention for the application of the intervention in secondary health care\textsuperscript{165}.

**GUIDELINES FOR IMPLEMENTATION OF ARTICLE 14**

Tobacco users who need cessation support should be offered intensive specialised support, delivered by specially trained practitioners. Such services should offer behavioural support, and where appropriate, medications or advice on the provision of medications. These services can be delivered in a wide variety of settings and should be easily accessible to tobacco users. Where possible they should be provided free or at an affordable cost. Medications that have been clearly shown by scientific evidence to increase the chances of tobacco cessation should be made available to tobacco users wanting to quit and where possible be provided free or at an affordable cost. Some medications can also be made available populationwide, with fewer restrictions to access.

Comparative research has shown that the use of evidence-based smoking cessation aids is lower in the Netherlands than in several other countries, such as the United Kingdom and Canada\textsuperscript{166}. These low levels of use may be (partially) explained by Dutch smokers’ limited levels of knowledge regarding the evidence base of smoking cessation aids. An analysis of data from 2010 suggested that what Dutch smokers perceive to be proven effective smoking cessation aids is unrelated to the actual evidence base for these aids\textsuperscript{167}.

There have been various changes to the health insurance coverage of smoking cessation. Since 2008, brief and intensive behavioural cessation interventions are covered by the Dutch *Health Insurance Act* (as part of the mandatory basic insurance)\textsuperscript{168}. In 2011, evidence-based pharmacotherapy for smoking cessation became reimbursable as well, but only when used in combination with behavioural counselling\textsuperscript{169}. This reimbursement of pharmacotherapy was withdrawn in 2012\textsuperscript{170}, to be re-introduced in 2013\textsuperscript{171}. It continued in 2014 and will also be available in 2015. For each smoker, one smoking cessation programme is covered per year. In practice, the treatment is only (fully) reimbursed by the health insurer if the mandatory policy excess has already been spent on healthcare costs. This mandatory policy excess has increased from € 170 in 2011\textsuperscript{172} to € 360 in 2014\textsuperscript{173}. Health insurers are allowed to exclude certain care from the mandatory policy excess. In 2014, only 2\% of insured adults (18 years or older) were subject to such an exemption for smoking cessation programmes\textsuperscript{174}. Some health insurers demand completion of the programme to qualify for exemption from the mandatory policy excess.
Although reimbursement of pharmacotherapy has now been continued for three years in a row, the government has not established a long-term view or strategy on tobacco dependence treatment. Rather, the decision to reimburse pharmacotherapy for smoking cessation is taken on an annual basis. Each year, the Dutch National Health Care Institute (previously known as the Health Care Insurance Board (CVZ)) advises the Minister of Health on the content and scope of the basic health insurance package. In the end, the Minister decides what is to be included. The government has expressed its intention to attribute a decisive role to the criterion of necessity when deciding what care should be covered by the basic health insurance. The National Health Care Institute has indicated that such a one-dimensional approach is not the most desirable approach. With regard to the health insurance coverage of smoking cessation, the Institute has argued that, although the costs of such an intervention can generally be borne by the quitter – especially considering that quitters can realise large savings because they no longer have to buy tobacco products –, coverage of the intervention may lead to a larger number of quitters. This way, health gains for society would be larger than when smoking cessation programmes are not included as part of the basic health insurance. A survey among adult insureds has found that a majority does not support the inclusion of tobacco dependence treatment as part of the basic health insurance. This position seems to be fuelled by the assumption that such care can be traced back to decisions made by patients themselves (own choice, own responsibility). Such a perspective does not seem to coincide with the FCTC Guidelines’ underlying consideration that tobacco use is highly addictive.

Dutch research highlights the importance of reimbursing a comprehensive package of smoking cessation interventions. One study illustrates that the number of enrolments for telephone counselling increased distinctively (more than 10-fold) following the change to the reimbursement scheme in January 2011. This number dramatically decreased again following reversal of the policy in 2012 (even below the 2010 levels). Another study shows that there was a steep increase in the number of (dispensed) prescriptions of stop-smoking medication in 2011, again to be followed by a significant decrease in 2012. Moreover, a statistically significant decrease in smoking prevalence was found. Further research suggests that this decrease was due to both an increase in quit attempts (among moderate-to-heavy smokers) and an increase in quit success (among all smokers). It appears that these increases can be (partly) attributed to media coverage of the policy change, most notably in the form of a mass media campaign. Such a campaign has not been aired when pharmacotherapy became reimbursable again in 2013. This aligned with the 2011 announcement of the Minister of Health that she no longer wanted to invest in mass media campaigns (see the chapter on Article 12).
smokers to quit smoking. The FCTC Guidelines for implementation of Article 14 define promotion of tobacco cessation as populationwide measures and approaches that contribute to stopping tobacco use. Three channels are distinguished: mass communication, brief advice and quitlines. In principle, all three channels are available in the Netherlands. However, their use is not (yet) optimised.

As of January 2013, the Trimbos Institute has been responsible for public information on tobacco use and cessation (see also the chapter on Article 12). From that moment onwards, the national smoking information telephone service has been operated by the Trimbos Institute as well. Whereas in 2012, STIVORO employees processed almost 5,000 calls to the quitline, in 2013, the number of contacts via the Smoking Information Line amounted to less than 1,700 (a decrease of approximately two-thirds). Contrary to the STIVORO era, there no longer is a direct link between the reactive information line (answering ad hoc questions) and proactive telephone counselling.

The transferral of tasks from STIVORO to the Trimbos Institute has not been accompanied by a large media campaign. Moreover, explicit references to the new Smoking Information Line number have been scarce. For instance, the quitline number that features on one of the additional health warning labels on cigarette packs is the old STIVORO telephone number (although callers can opt to be forwarded to the Smoking Information Line).

GUIDELINES FOR IMPLEMENTATION OF ARTICLE 14

Mass communication campaigns and education programmes are essential for encouraging tobacco cessation, promoting support for tobacco cessation, and encouraging tobacco users to draw on this support.

One nationwide smoking cessation campaign has been conducted since the previous shadow report: Stoptober 2014. This campaign was a collaboration of various health organisations, among which the Ministry of Health (see also the chapter on Article 12). It stimulated smokers to quit smoking for 28 days in October, so as to increase the odds of permanent smoking cessation. Tools made available to support the participants included an app, social media support and communities, a website (with links to smoking cessation service providers) and a phone number. Materials targeted at health-care professionals were also developed.

The concept of Stoptober originated in the United Kingdom. In the UK, the campaign has been shown to have contributed to a 50% increase in quitting in October. The results of the Dutch variant of Stoptober have not yet been properly evaluated. Based on the number of subscriptions via the website, the number of participants has been estimated at almost 40,000. In a first survey, over 70% of participants indicated to have successfully quit for 28 days. It has been announced that there will be another Stoptober campaign in 2015.
Conclusions and recommendations

There have been various changes regarding tobacco dependence and cessation since the previous shadow report. Quality of smoking cessation support seems warranted in the Netherlands. Recent initiatives have contributed to a further embedment of quality standards. With regard to the promotion of smoking cessation, various opposing developments have been observed. This applies, for instance, to the fluctuations in reimbursement for pharmacotherapy. Another example is the development of a social map to improve accessibility to effective smoke cessation aids, that is now published on a webpage that has not been widely communicated to the Dutch population. The Dutch government is currently acting in line with the obligations included in Article 14. Compliance with various recommendations is, however, still lacking (see the scoring table below). An ‘orange score’ was therefore assigned in the summary table on implementation of FCTC measures in the Netherlands in 2014 (Table 1b). To further improve its performance, the Dutch government is particularly urged to:

- Invest in the implementation of the Guideline for the Treatment of Tobacco Dependence.
- Continue to reimburse efficacious tobacco cessation treatments. This decision should no longer be made on an annual basis. Rather, reimbursement of these treatments should be included as part of a long-term strategy to help smokers quit smoking. Health insurers should be requested to maintain a balanced and clear purchasing policy.
- Increase awareness among smokers about the support that is available for tobacco cessation and about the effectiveness of using such support. All smokers should be proactively informed about where to find efficacious support to help them quit smoking and be provided with easy access to it.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 1</td>
<td>Shall**</td>
<td>Develop and disseminate appropriate, comprehensive and integrated guidelines based on scientific evidence and best practices</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td>14 1</td>
<td>Shall</td>
<td>Take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td>14 2a</td>
<td>Shall endeavour</td>
<td>Design and implement effective programmes aimed at promoting the cessation of tobacco use, in such locations as educational institutions, health care facilities, workplaces and sporting environments.</td>
<td>No</td>
<td>🟡</td>
</tr>
<tr>
<td>14 2b</td>
<td>Shall endeavour</td>
<td>Include diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use in national health and education programmes, plans and strategies, with the participation of health workers, community workers and social workers as appropriate.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td>14 2c</td>
<td>Shall endeavour</td>
<td>Establish in health care facilities and rehabilitation centres programmes for diagnosing, counselling, preventing and treating tobacco dependence.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td>14 GL</td>
<td>Should**</td>
<td>Conduct a national situation analysis.</td>
<td>No</td>
<td>🟡</td>
</tr>
<tr>
<td>14 GL</td>
<td>Should**</td>
<td>Create or strengthen national coordination.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td>14 GL</td>
<td>Should**</td>
<td>Develop and disseminate comprehensive guidelines.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td>14 GL</td>
<td>Should**</td>
<td>Address tobacco use by health-care workers and others involved in tobacco cessation.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
<tr>
<td></td>
<td>GL</td>
<td>Should**</td>
<td><strong>Subject to the following condition: “taking into account national circumstances and priorities”.</strong></td>
<td></td>
</tr>
<tr>
<td>---</td>
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<td>-------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Develop training capacity.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Use existing infrastructure and resources to ensure the greatest possible access to services.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Make the recording of tobacco use in medical notes mandatory.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Encourage collaborative working.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Establish a sustainable source of funding for cessation help.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Provide cessation support and treatment in all health-care settings and by all health-care providers.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Provide cessation support and treatment in non-health-care settings and by suitably trained non-health-care providers, especially where scientific evidence suggests that some populations of tobacco users may be better served in this way.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Establish population-level approaches.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Establish more intensive individual approaches .</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Make medications available.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Consider emerging research evidence and novel approaches and media.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>GL</td>
<td>Monitor and evaluate all tobacco cessation and tobacco treatment strategies and programmes, including process and outcome measures, to observe trends.</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>
Article 15 builds upon the recognition that the elimination of all forms of illicit trade in tobacco products is an essential component of tobacco control. To the extent that illicit trade is considered a serious problem by the Dutch government, it is primarily considered an economic problem. Combatting illicit trade in tobacco products is not explicitly recognised as an integral component of the tobacco control policy. In its 2012 report on combating alcohol and tobacco duty fraud, the Dutch Court of Audit concluded that the fight against tobacco duty fraud is not a high priority in the Netherlands. Among other things, it was found that there were no concrete targets for combatting duty fraud and that there had been a reduction in the capacity to trace illegal tobacco products. Some changes have been implemented since the publication of this report. For instance, a national Excise Fraud Team has been put in place in January 2013. Specific targets were set for this team. They have to generate a minimum number of fraud cases and risk signals. For the Fiscal Intelligence and Investigation Service (FIOD), additional capacity has been made available as well.

Cooperation with other countries is necessary to combat the problem of illicit tobacco trade. Since the previous shadow report, various international and European developments have been initiated to strengthen the fight against illicit trade in tobacco products. In November 2012, the Protocol to Eliminate Illicit Trade in Tobacco Products was adopted by the Conference of the Parties (COP) to the FCTC. This Protocol is primarily targeted at securing the supply chain of tobacco products and it sets out requirements for the development of a (global) tracking and tracing system. The Netherlands has signed (6 January 2014), but not yet ratified the Protocol. In March 2014, the Dutch parliament was informed that the government expected to table the Protocol for parliamentary approval in 2014. However, by December 2014, no progress on this matter had been made.

Two important developments at the EU level are the adoption of the revised Tobacco Products Directive (TPD), which also contains provisions on tracking and tracing, and the presentation of a comprehensive EU Strategy and Action Plan on the fight against cigarette smuggling and other forms of illicit trade in tobacco products by the European Commission in June 2013. The Dutch government has voted in favour of the TPD (as a whole) and has indicated to have a positive stance towards most of the elements in the EU Strategy and Action Plan, acknowledging the importance of an EU-wide approach in this regard.
ARTICLE 15.2

EACH PARTY SHALL ADOPT AND IMPLEMENT EFFECTIVE LEGISLATIVE, EXECUTIVE, ADMINISTRATIVE OR OTHER MEASURES TO ENSURE THAT ALL UNIT PACKETS AND PACKAGES OF TOBACCO PRODUCTS AND ANY OUTSIDE PACKAGING OF SUCH PRODUCTS ARE MARKED TO ASSIST PARTIES IN DETERMINING THE ORIGIN OF TOBACCO PRODUCTS. IN ADDITION, EACH PARTY SHALL:

(a) REQUIRE THAT UNIT PACKETS AND PACKAGES OF TOBACCO PRODUCTS FOR RETAIL AND WHOLESALE USE THAT ARE SOLD ON ITS DOMESTIC MARKET CARRY THE STATEMENT: “SALES ONLY ALLOWED IN THE NETHERLANDS” OR CARRY ANY OTHER EFFECTIVE MARKING INDICATING THE FINAL DESTINATION OR WHICH WOULD ASSIST AUTHORITIES IN DETERMINING WHETHER THE PRODUCT IS LEGALLY FOR SALE ON THE DOMESTIC MARKET; AND

(b) CONSIDER, AS APPROPRIATE, DEVELOPING A PRACTICAL TRACKING AND TRACING REGIME THAT WOULD FURTHER SECURE THE DISTRIBUTION SYSTEM AND ASSIST IN THE INVESTIGATION OF ILLICIT TRADE.

In line with European legislation (Directive 2001/37/EC), the Dutch Labelling Decree for Tobacco Products requires that all tobacco products are marked in any appropriate manner, by batch numbering or equivalent, on the unit packet enabling the place and time (i.e. origin) of manufacture to be determined, as required by Article 15.2. The European Commission has not adopted technical measures to guide the application of this requirement and it is unclear to what extent the Dutch government has taken measures to ensure effective implementation.

Tobacco products that are to be sold legally on the Dutch market have to be provided with Dutch health warnings and a tax stamp. This stamp assists authorities in determining whether the product is legally for sale on the Dutch market, as required by Article 15.2(a). It contains information on the number of tobacco products or amount of tobacco included in the package as well as the retail price of the product. The statement “Sales only allowed in the Netherlands” is not required. Tax stamps can only be acquired by permit holders. Such tax stamp permits are being awarded by the Customs Administration. A comprehensive administration regarding the tax stamps is an important prerequisite that has to be fulfilled in order to qualify for the permit. To decrease illicit trade incentives, the permit holder is, as of June 2012, financially liable for all lost tax revenues (both excise duties and VAT) if the tax stamps go missing.

Based on the revised TPD, all tobacco packs will have to “carry a tamper proof security feature, composed of visible and invisible elements [... and which is] irremovably printed or affixed, indelible and not hidden or interrupted in any form” (Article 16). The Dutch government has stated not to be convinced by the added value of such an additional security feature, in comparison with the current tax stamps.

There is no national tracking and tracing regime currently in place in the Netherlands. The European Commission has stressed that, regardless of the settlement agreements that have been reached with some of the tobacco manufacturers, in the EU countries, “there is [...] no general legal obligation in place for producers or importers to monitor the movement of cigarettes and other tobacco products through their supply chain (tracking). In the absence
of such measures, it is very difficult (even impossible) for the authorities to determine at which point a product was diverted into the illicit trade (tracing)’’. Thus, the revised TPD contains several requirements regarding the traceability of tobacco products. For cigarettes and roll-your-own tobacco, the tracking and tracing system will have to be implemented by May 2019.

In October 2013, the European Parliament voted in favour of adding the following condition to the TPD’s provisions on tracking and tracing: “The technology used for tracking and tracing should belong to and be operated by economic entities without any legal or commercial link to the tobacco industry’’. The Dutch government expressed its concerns regarding this additional requirement, because “this would imply that we cannot build on existing systems’’. In drawing up a compromise agreement between the European Parliament and the Council of Ministers, this requirement has been removed from the Directive. One of the existing systems that the Dutch government might have been referring to is the Codentify system which is developed by Philip Morris. This system has been criticised for various technical reasons and for the fact that it would bring about “the very real danger of regulatory capture by the tobacco industry in the area of illicit trade’’.

**ARTICLE 15.4(a)**

**EACH PARTY SHALL MONITOR AND COLLECT DATA ON CROSS-BORDER TRADE IN TOBACCO PRODUCTS, INCLUDING ILICIT TRADE.**

In its reporting instrument to the World Health Organisation (WHO), the government indicated that it monitors and collects data on cross-border trade in tobacco products, including illicit trade. One of the sources relied upon by the Dutch authorities in their reporting instrument to the WHO, is the KPMG Star report, which was commissioned by Philip Morris. This report has been heavily criticised for several reasons, including the lack of transparency regarding the methodologies that were used. The WHO FCTC Indicator Compendium also stresses that such tobacco industry “information needs to be viewed with caution, because the aim of the tobacco industry is to promote its interests and agenda, and there is a fundamental and irreconcilable conflict between the tobacco industry’s interests and public health policy interests. The industry promotes such information with a view to interfering with the development of public health policies with respect to tobacco control’’. The Dutch authorities have conducted several empty pack surveys themselves as well, although the results have not been distributed widely. The latest pack survey (2011) found that approximately 1 in 10 cigarette packs had not been taxed according to the Dutch tobacco excise duty scheme. However, these packs should not necessarily be considered illegal. The State Secretary for Finance has argued that it is difficult, if not impossible, to determine whether foreign cigarettes have been imported legally. Such claims can only be made in relation to counterfeit cigarettes. Based on the 2011 pack survey, this category was estimated at less than 1%.

In addition, the Dutch government monitors the number of tobacco products that are confiscated by the Tax and Customs Administration each year. The quantity of cigarettes and amount of fine-cut tobacco seized, as well as the total number of seizures, vary significantly between years (see Figure 3) and no clear trends can be detected. Because the quantity of cigarettes and amount of fine-cut tobacco seized are generally derived on the basis of a very small number of seizures (about 10 to 20), these data may be skewed and should be interpreted with caution.
Over the past few years there has been a shift from seaside to inland seizures (from 35% in 2011 to 70% in 2013)\(^{200}\) and an increased share of cheap ‘whites’ as part of the total number of cigarettes seized (from 60% in 2011\(^{186}\) to 83% in 2013\(^{65}\)). The Netherlands is still primarily considered a so-called transit country\(^{65}\). Both the presumed origin and destination of a large majority of seized tobacco products is located outside the Netherlands. In 2013, 6% of seized cigarettes was destined for the Dutch market\(^{200}\).

**Conclusions and recommendations**

Recently, various measures have been initiated at the international and European level in an attempt to combat the illicit trade in tobacco products. Although the Dutch government seems to intend to act in line with these measures, few new concrete actions have yet been taken at the national level to tackle the problem of illicit trade. Such actions are, however, highly desirable, especially in relation to
the establishment of a well-functioning tracking and tracing system. Currently, the Dutch government is acting in compliance with most of the obligations, recommendations and suggestions included in Article 15. Because a tracking and tracing has not yet been broadly implemented by the government, it was awarded a ‘light green score’ in the summary table on implementation of FCTC measures in the Netherlands in 2014 (Table 1b). To further improve its performance, the Dutch government is urged to:

- Acknowledge that the fight against illicit trade in tobacco products is part of a comprehensive tobacco control policy. By taking action to prevent illegal tobacco products from being marketed, the effectiveness of other tobacco control measures can be optimised.
- Ratify the Protocol to eliminate illicit trade in tobacco products as soon as possible and adjust national legislation, regulation and policies accordingly, including the implementation of an independent tracking and tracing system for tobacco products.
- Limit its relations with the tobacco industry, in accordance with Article 5.3 FCTC, in relation to the fight against illicit trade as well. The government should not rely on data or systems provided or developed by the industry (or its contractors), because these systems are most likely to be in the interest of the industry itself rather than in the interest of public health.
- Improve monitoring of illicit trade. The government should consider using additional methods of monitoring, such as consumer surveys. It should map the position of the Netherlands in relation to illicit trade, as a transit or destination country.

### Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 2</td>
<td>Shall</td>
<td>Adopt and implement effective measures to ensure that all unit packets and packages of tobacco products and any outside packaging of such products are marked to assist Parties in determining the origin of tobacco products.</td>
<td>Yes</td>
<td>☒</td>
</tr>
<tr>
<td>15 2a</td>
<td>Shall</td>
<td>Require that unit packets and packages of tobacco products for retail and wholesale use that are sold on its domestic market carry the statement: “Sales only allowed in [the Netherlands]” or carry any other effective marking indicating the final destination or which would assist authorities in determining whether the product is legally for sale on the domestic market.</td>
<td>Yes</td>
<td>☒</td>
</tr>
<tr>
<td>15 2b</td>
<td>Shall consider</td>
<td>Develop, as appropriate, a practical tracking and tracing regime that would further secure the distribution system and assist in the investigation of illicit trade.</td>
<td>No*</td>
<td>☒</td>
</tr>
<tr>
<td>15 3</td>
<td>Shall</td>
<td>Require that the packaging information or marking specified in paragraph 2 shall be presented in legible form and/or appear in its principal language.</td>
<td>Yes</td>
<td>☒</td>
</tr>
<tr>
<td>15 4a</td>
<td>Shall</td>
<td>Monitor and collect data on cross-border trade in tobacco products, including illicit trade.</td>
<td>Yes</td>
<td>☒</td>
</tr>
<tr>
<td>15 4b</td>
<td>Shall</td>
<td>Enact or strengthen legislation, with appropriate penalties and remedies, against illicit trade in tobacco products, including counterfeit and contraband cigarettes.</td>
<td>Yes</td>
<td>☒</td>
</tr>
<tr>
<td>15 4c</td>
<td>Shall</td>
<td>Take appropriate steps to ensure that all confiscated manufacturing equipment, counterfeit and contraband cigarettes and other tobacco products are destroyed, using environmentally-friendly methods where feasible, or disposed of.</td>
<td>Yes</td>
<td>☒</td>
</tr>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>15 4d</strong> Shall</td>
<td>Adopt and implement measures to monitor, document and control the storage and distribution of tobacco products held or moving under suspension of taxes or duties within its jurisdiction.</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>15 4e</strong> Shall</td>
<td>Adopt measures as appropriate to enable the confiscation of proceeds derived from the illicit trade in tobacco products.</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>15 7</strong> Shall endeavour</td>
<td>Adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* TPD: When the revised EU Tobacco Products Directive is correctly transposed, this assessment (Yes/No) (and the subsequent colour score) might/will change.
The protection of youth against the risks of smoking plays a central part in the current approach to tobacco control by the Dutch government. Since September 2011, various measures have been taken to discourage tobacco sales to minors.

On 1 January 2014, the minimum age for purchasing tobacco products in the Netherlands was raised to 18 years. A multiannual campaign (NIx18) was developed by the government to inform the public about this legal change. The NIx18 campaign is targeted at the denormalisation of tobacco (and alcohol) use. In particular, its aim is to encourage parents to reach an agreement with their children about the use of tobacco (and alcohol): "The agreement is nothing. No smoking, no drinking under the age 18" (see also the chapter on Article 12).

The requirement that all tobacco retail outlets provide a clear and legible sign indicating that tobacco is not sold to underage minors, has remained in place. Previously, no national sign existed for these purposes. Branch organisations therefore designed their own indicators. In the framework of the NIx18 campaign, various standardised resources (such as door stickers) have been developed to support retailers in complying with their obligations regarding legal age limit. Although retailers are not obliged to use these materials, most tobacco retailers (such as those represented by the branch organisations for tobacco retailers (NSO) and food retailers (CBL)) have opted to use the NIx18 resources. It is encouraged that retailers ask for proof of age from all youngsters under the age of 25. Retailers can be sanctioned if they are caught selling tobacco to people who have reached the age of 18, but who could not (objectively) have been considered a person who has clearly reached the age of 18.
ARTICLE 16.6

EACH PARTY SHALL ADOPT AND IMPLEMENT EFFECTIVE LEGISLATIVE, EXECUTIVE, ADMINISTRATIVE OR OTHER MEASURES, INCLUDING PENALTIES AGAINST SELLERS AND DISTRIBUTORS, IN ORDER TO ENSURE COMPLIANCE WITH THE OBLIGATIONS.

Enforcement of the legal age limit still falls under the responsibility of the Dutch Food and Consumer Product Safety Authority (NVWA). In the past years, a relatively limited number of inspections has been carried out to check compliance. Whereas in 2010, 8,746 inspections were completed, in 2012 this number was reduced to 900, following prioritisation of the enforcement of smokefree legislation, increased levels of aggression with which enforcement officers were confronted and preparations for the decentralisation of the enforcement of the legal age limit for tobacco sales. The number of fines that were given out for a violation of provisions on the legal age limit for selling tobacco seems very low as well. In 2012, for instance, only 13 measures (including fines) were imposed on retailers. This does not align with reports by minors. In 2013, 50% of cigarette purchasing youth aged under 16 reported that they were (almost) never asked for proof of age when purchasing cigarettes.

In the previous shadow report, reference was made to the results from a 2009 survey on compliance with the legal age limit for sales of tobacco products. Underage minors (13-15) reported very high levels (93-100%) of success when trying to purchase tobacco. Similar studies have not been published since then. However, the State Secretary for Health has indicated that research based on mystery shopping to measure compliance with the new legal age limit would take place at the end of 2014. Budget for this purpose has also been made available for 2015/2016.

The legal age limit for purchasing tobacco has been referred to by the State Secretary for Health as one of two tobacco control areas in which compliance is still insufficient. Several measures have been taken and/or proposed to increase compliance, both with regard to enforcement capacity and the range of penalties available. As of January 2014, retailers selling tobacco to minors can no longer only be sanctioned through monetary fines but also by having their right to sell tobacco products temporarily revoked (up to a period of 12 weeks). Tobacco sales may only be closed down when a retailer is found to have acted contrary to the legal age limit at least three times within a period of 12 months (the three-strikes-and-you’re-out principle). The length of the suspension is dependent on the number of violations and the type of company. Additionally, in May 2014 a bill was tabled by the State Secretary for Health to allow for increased monetary fines (up to € 19,500).

Enforcement efforts have been intensified as of January 1, 2014. A team of young enforcement officers (17 FTE) was added to the existing group responsible for the enforcement of tobacco control legislation (see also the chapter on Article 8). The State Secretary has indicated that this additional capacity should allow for a doubling of the number of inspections in relation to the legal age limit (which ranged from 2,000 to 4,000 in the preceding years). The young enforcement officers fulfil an important signalling task, being unobtrusive observers. They are not employed as mystery shoppers. In the Netherlands, mystery shoppers are only being used for research purposes and not for enforcement, as this would constitute a criminal offence (provocation). Enforcement is complicated by the fact that no license or registration is required for selling tobacco in the Netherlands. The exact number of retailers is, therefore, unknown. Estimates of the number of tobacco retailers vary from 30,000 to 60,000.
In addition to mass media interventions and enforcement, other methods of increasing compliance are being considered, such as systems of remote age verification. So far, the government has been hesitant to create specific obligations in this regard, stating that decisions on the age verification system should be left to the retailers. At the same time, some local franchisees are being prevented from using more advanced systems of age verification by their franchisers. Following requests by members of parliament, the government has commissioned research to set out the current practices on preventing sales of tobacco products to minors and to assess the effectiveness of various systems of age verification. Two studies were published in July 2014. The State Secretary for Health has not yet announced what measures he intends to take on the basis of these results.

**ARTICLE 16.7**

_EACH PARTY SHOULD, AS APPROPRIATE, ADOPT AND IMPLEMENT EFFECTIVE LEGISLATIVE, EXECUTIVE, ADMINISTRATIVE OR OTHER MEASURES TO PROHIBIT THE SALES OF TOBACCO PRODUCTS BY PERSONS UNDER THE AGE SET BY DOMESTIC LAW, NATIONAL LAW OR 18._

There are no specific age restrictions for those who sell tobacco, although those aged under 16 are not allowed to operate the cash register regardless of the product on sale (Working Hours Act and Specific Child Labour Regulation). This implies that there has been a discrepancy between the age required for purchasing and selling tobacco products since entry into force of the increased legal age limit for purchasing tobacco on 1 January 2014.

**ARTICLE 16.1(b)(c)(d)**

_MEASURES MAY INCLUDE: BANNING THE SALE OF TOBACCO PRODUCTS IN ANY MANNER BY WHICH THEY ARE DIRECTLY ACCESSIBLE, SUCH AS STORE SHELVES; PROHIBITING THE MANUFACTURE AND SALE OF SWEETS, SNACKS, TOYS OR ANY OTHER OBJECTS IN THE FORM OF TOBACCO PRODUCTS WHICH APPEAL TO MINORS; AND ENSURING THAT TOBACCO VENDING MACHINES DO NOT PROMOTE THE SALE OF TOBACCO PRODUCTS TO MINORS._

The Convention contains several suggestions for preventing sales to minors. No legal prohibition on the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors has been implemented in the Netherlands. However, the topic has gained prominence in recent political discussions, following the appearance on the market of the so-called shisha pens (and reports on their use by young children) and subsequent discussions in relation to the contents of the revised EU Tobacco Products Directive (TPD). The Dutch government has indicated not to be in favour of such a general (Europeanwide) prohibition, but it did express an intention to implement a minimum age limit for purchasing electronic cigarettes, similar to the age limit that applies to tobacco products. The State Secretary for Health has also stressed the importance of closely monitoring the use of such products among minors as well as its relation to uptake of smoking.

As has been noted in the chapter on Article 13, currently there is no ban on the sale of tobacco products through vending machines either. However, some restrictions are in place. It is legally required that these machines are placed in the line of sight of the personnel or owner and can only be unlocked by those aged 18 or older. Despite these restrictions, in 2013 almost 10% of smokers under the legal age limit (16 years) indicated to (sometimes) get their tobacco products through vending machines. In
October 2013, a motion to enact a full ban on sales through vending machines was rejected by a large majority of the House of Representatives. The State Secretary for Health did, however, pledge to include vending machines in his research application for studying the effectiveness of limiting the number of points of sale for tobacco products. Reports on the current state of scientific evidence on the effectiveness of such measures as well as their economic consequences were published in July 2014. The State Secretary has not yet announced a course of action based on these publications.

Although the issue of internet sales is not explicitly mentioned in Article 16, the Guidelines for implementation of Article 13 do stress that internet sales are also problematic from the perspective of sales to minors. It appears that only few Dutch smokers purchase their tobacco products through the internet. Nevertheless, research in the area of alcohol has shown that compliance with the legal age limit has been extremely low in cases of home delivery (0% in 2013).

The State Secretary for Health has acknowledged that internet sales can potentially undermine many policies. Concrete measures have not yet been implemented. However, the government is working on the development of a system of electronic identification (eID). This system should also contribute to higher levels of compliance with age verification when tobacco is sold through the internet. Based on the revised TPD, cross-border internet sales will have to be regulated more tightly. Member states may either prohibit these cross-border internet sales or implement a registration scheme, coupled with an obligation to provide a description of the details and functioning of the age verification system used. During the negotiations, the Dutch government has questioned the enforceability of a complete ban. It has advocated the inclusion of an effective system of age verification.

ARTICLE 16.2

EACH PARTY SHALL PROHIBIT OR PROMOTE THE PROHIBITION OF THE DISTRIBUTION OF FREE TOBACCO PRODUCTS TO THE PUBLIC AND ESPECIALLY MINORS.

ARTICLE 16.3

EACH PARTY SHALL ENDEAVOUR TO PROHIBIT THE SALE OF CIGARETTES INDIVIDUALLY OR IN SMALL PACKETS WHICH INCREASE THE AFFORDABILITY OF SUCH PRODUCTS TO MINORS.

The Dutch Tobacco Act contains a prohibition on the distribution of free tobacco. In addition, tobacco products can only be sold at the price that is printed on the tax stamps (Excise Duty Act). This implies that price promotion (for instance, through coupons) is not allowed. The ban on sales of packs containing fewer than 19 cigarettes (Tobacco Act) or less than 10 grams of roll-your-own tobacco (Excise Duty Implementing Regulation) has also remained. Transposition of the revised TPD will further decrease affordability of tobacco products. Cigarette packs will be required to contain at least 20 cigarettes and a minimum of 30 grams will be set for roll-your-own tobacco.
Conclusions and recommendations

The prevention of smoking uptake among youth is a key objective guiding current actions by the government in the field of tobacco control. Measures have been taken to increase the legal age limit, to strengthen enforcement efforts and to allow for more stringent penalties. The Dutch government currently acts in line with all FCTC obligations (“shall”-provisions) in relation to Article 16. Because it does not comply with the recommendation on prohibiting sales by minors (Article 16.7), it was awarded an overall ‘orange score’ in the summary table on the implementation of FCTC measures in the Netherlands in 2014 (Table 1b). The suggestions included in the treaty article offer further room for improvement. In particular, the Dutch government is urged to:

• Monitor compliance with the legal age limit more closely. Enforcement efforts should be intensified as long as unsatisfactory levels of compliance are reported. The government should also consider establishing additional requirements with regard to age verification systems.
• Ban the sale of tobacco through vending machines (in line with the Guidelines for implementation of Article 13 FCTC). Tighter regulation or bans of other types of distance sales (such as internet sales) should also be considered.
• Take measures to prohibit the sales of tobacco products by persons under the age of 18.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 1</td>
<td>Shall</td>
<td>Adopt and implement effective measures to prohibit the sales of tobacco products to persons under the age set by national law or 18.</td>
<td>Yes</td>
<td>Green</td>
</tr>
<tr>
<td>16 1a</td>
<td>May</td>
<td>Require that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors.</td>
<td>Yes</td>
<td>Green</td>
</tr>
<tr>
<td>16 1a</td>
<td>May</td>
<td>Require that all sellers of tobacco products, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age.</td>
<td>Yes</td>
<td>Green</td>
</tr>
<tr>
<td>16 1b</td>
<td>May</td>
<td>Ban the sale of tobacco products in any manner by which they are directly accessible, such as store shelves.</td>
<td>No</td>
<td>Orange</td>
</tr>
<tr>
<td>16 1c</td>
<td>May</td>
<td>Prohibit the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors.</td>
<td>No</td>
<td>Orange</td>
</tr>
<tr>
<td>16 1d</td>
<td>May</td>
<td>Ensure that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.</td>
<td>No</td>
<td>Orange</td>
</tr>
<tr>
<td>16 2</td>
<td>Shall</td>
<td>Prohibit or promote the prohibition of the distribution of free tobacco products to the public and especially minors.</td>
<td>Yes</td>
<td>Green</td>
</tr>
<tr>
<td>16 3</td>
<td>Shall</td>
<td>Endeavour to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.</td>
<td>Yes</td>
<td>Green</td>
</tr>
<tr>
<td>16 6</td>
<td>Shall</td>
<td>Adopt and implement effective measures, including penalties against sellers and distributors, in order to ensure compliance with the obligations.</td>
<td>Yes</td>
<td>Green</td>
</tr>
<tr>
<td>16 7</td>
<td>Should</td>
<td>Adopt and implement effective measures to prohibit the sales of tobacco products by persons under the age set by national law or 18.</td>
<td>No</td>
<td>Orange</td>
</tr>
</tbody>
</table>
 ARTICLE 20.1

THE PARTIES UNDERTAKE TO DEVELOP AND PROMOTE NATIONAL RESEARCH IN THE FIELD OF TOBACCO CONTROL. TOWARDS THIS END, EACH PARTY SHALL: (A) INITIATE AND COOPERATE IN THE CONDUCT OF RESEARCH AND SCIENTIFIC ASSESSMENTS, AND IN SO DOING PROMOTE AND ENCOURAGE RESEARCH THAT ADDRESSES THE DETERMINANTS AND CONSEQUENCES OF TOBACCO CONSUMPTION AND EXPOSURE TO TOBACCO SMOKE; AND (B) PROMOTE AND STRENGTHEN TRAINING AND SUPPORT FOR ALL THOSE ENGAGED IN TOBACCO CONTROL ACTIVITIES, INCLUDING RESEARCH, IMPLEMENTATION AND EVALUATION.

In relation to Article 20.1, which requires the Parties to develop and coordinate a research programme in the field of tobacco control, no major changes have taken place since the first shadow report. There is no separate fund for tobacco control-related research. The coordination of government-sponsored scientific research in the area of prevention is allocated to the Netherlands Organisation for Health Research and Development (ZonMw), which receives targets and guidelines from the Ministry of Health. In ZonMw’s Fourth Prevention Programme, covering the period 2010-2014 and a total budget of € 47.8 million, few explicit references to tobacco research were included. It was possible to submit research applications in the area of tobacco control, especially when the research would contribute to the development or implementation of evidence-based educational interventions (for use in local settings), or address the social and physical determinants of smoking behaviour. Research on the cost-effectiveness of existing tobacco prevention interventions was also eligible for subsidies. However, research addressing the determinants or consequences of (passive) smoking was not. The Ministry does regularly commission the National Institute for Public Health and the Environment (RIVM) to conduct research regarding the health consequences of smoking.

In June 2014, ZonMw published the Fifth Prevention Programme. This new research programme, which will run until 2018, supports the Ministry of Health’s new national prevention policy “Everything is Health” (Alles is Gezondheid) (see also the chapter on Article 5). Although tobacco use is one of the policy’s priorities, no tobacco-specific research priorities have been identified in the new programme and the possibilities to submit applications for tobacco control research have been severely restricted. The focus is on youth and only research that addresses interventions that can be implemented at the local level is eligible for subsidy. These restrictions are detrimental to research aimed at national measures and the adult population of smokers, an important target group of FCTC measures. The previous shadow report recommended that the government should set out a new study to identify and establish priorities for tobacco control research. The previous priority assessment, which was drawn up in 2007, is now outdated. However, such an initiative has not yet been considered or realised by the government.
ARTICLE 20.2
THE PARTIES SHALL ESTABLISH, AS APPROPRIATE, PROGRAMMES FOR NATIONAL, REGIONAL AND GLOBAL SURVEILLANCE OF THE MAGNITUDE, PATTERNS, DETERMINANTS AND CONSEQUENCES OF TOBACCO CONSUMPTION AND EXPOSURE TO TOBACCO SMOKE.

ARTICLE 20.3
EACH PARTY SHALL ENDEAVOUR TO ESTABLISH PROGRESSIVELY A NATIONAL SYSTEM FOR THE EPIDEMIOLOGICAL SURVEILLANCE OF TOBACCO CONSUMPTION AND RELATED SOCIAL, ECONOMIC AND HEALTH INDICATORS

The previous shadow report applauded the Dutch government for its surveillance programmes in the area of tobacco control. In particular, the Continuous Survey of Smoking Habits (COR) and the Smoking Youth Monitor (RJM) were considered to be of a very high quality. However, by now the government has decided to discontinue both monitors. This decision does not fit well with the Convention’s encouragement to progressively establish a national system for the epidemiological surveillance of tobacco consumption. ‘Progressively’ implies that Parties work to improve their surveillance and monitoring systems. In the Netherlands we see a deterioration. The ramifications of the decision to discontinue these monitors are profound. With regard to the surveillance of tobacco consumption among adults, there will be much less flexibility and a lower number of respondents. As part of the Statistics Netherlands (CBS) Health Survey, a limited number of key variables will be measured once every year (instead of once every quarter), and additional questions will be asked only once every two years. Consequently, there will be less data available to monitor important topics such as exposure to secondhand smoke at home, the use of smoking cessation aids by smokers, and the smoking cessation advice and support given by health professionals to smokers. Moreover, given the smaller number of respondents, it will be much harder to draw conclusions in terms of annual trends in smoking prevalence. A 1% decrease in observed smoking prevalence will no longer suffice to conclude that there has been a (significant) decrease in smoking prevalence in the population. This way, the surveillance data can no longer be used to assess the consequences of policies and, if necessary, adjust policies accordingly.

The changes also have substantial consequences for the surveillance of tobacco use among youth. The smoking behaviour of youth will no longer be measured on an annual basis. There will be a youth-targeted survey every two years: once every four years the Health Behaviour of School aged Children (HSBC) Study and once every four years the Dutch National School Survey on Substance Use (Peilstationsonderzoek). Whereas the former only includes children up to the age of 16, the latter only collects data from (secondary) schoolchildren. Although the State Secretary for Health has announced that he intends to add school drop-outs to the sample, the lack of coverage in comparison to the now defunct Smoking Youth Monitor (in time, and across age groups and education levels) remains remarkable, especially given the government’s focus on prevention of smoking among youth (see also the chapter on Article 16).
Conclusions and recommendations
The first Dutch FCTC shadow report established that only in the area of surveillance the Netherlands was performing in excess of its FCTC commitments. In December 2014, surveillance of tobacco consumption is the sole area in which an obvious backward trend has been observed since the previous shadow report. With regard to the promotion of scientific research, no improvements have been observed either. If anything, it appears to have become more difficult to obtain government subsidies for tobacco control research. In the summary table on implementation of the FCTC measures in the Netherlands in 2014 (Table 1b), the Dutch government received an overall ‘red score’ in relation to Article 20, because of its failure to comply with one of the obligations regarding research (see the scoring table below). Room for improvement also stems from the lack of compliance with one of the recommendations in relation to surveillance, which encourages progressive rather than regressive developments. The Dutch government is therefore urged to:

- Prioritise tobacco control research and take on a more pro-active role, by promoting and strengthening the training of people working in tobacco control and stimulating tobacco control research that supports the implementation of the FCTC measures in the Netherlands. A new study should be initiated to identify research priorities in the field of tobacco control.
- Re-consider its position to discontinue the COR and RJM.

Scores

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 1a</td>
<td>Shall</td>
<td>Initiate and cooperate in the conduct of research and scientific assessments, and in so doing promote and encourage research that addresses the determinants and consequences of tobacco consumption and exposure to tobacco smoke.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>20 1b</td>
<td>Shall</td>
<td>Promote and strengthen training and support for all those engaged in tobacco control activities, including research, implementation and evaluation.</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>20 2</td>
<td>Shall</td>
<td>Establish, as appropriate, programmes for national, regional and global surveillance of the magnitude, patterns, determinants and consequences of tobacco consumption and exposure to tobacco smoke.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>20 2</td>
<td>Should</td>
<td>Integrate tobacco surveillance programmes into national, regional and global health surveillance programmes so that data are comparable and can be analysed at the regional and international levels, as appropriate.</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>20 3a</td>
<td>Shall endeavour</td>
<td>Establish progressively a national system for the epidemiological surveillance of tobacco consumption and related social, economic and health indicators.</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>
Article 26

Financial Resources

Article 26 builds upon the recognition that financial resources play an important role in achieving the Convention’s objective. Budgetary concerns seem to have been guiding the Dutch government’s decisions regarding the adoption of tobacco control policies, rather than that the government has committed itself to finding appropriate financial resources to support implementation of all substantive measures required by the FCTC. In 2011, when the Health Nearby policy was introduced (see the chapter on Article 5), the authorities spoke of a “period of thorough reprioritisation in public tasks and expenditure”\textsuperscript{227}. Prevention of tobacco use was not considered a priority in this context. Rather, a reduction of tasks and increased levels of efficiency were deemed necessary, resulting, for instance, in the (temporary) halt of subsidies for (mass media) public education campaigns (see the chapter on Article 12).

\textbf{ARTICLE 26.2}

\textit{Each Party shall provide financial support in respect of its national activities intended to achieve the objective of the Convention, in accordance with its national plans, priorities and programmes.}

The previous shadow report identified a decreasing budget for tobacco control from 2003 to 2009. This trend has continued (see Table 5). In 2012, the Netherlands already scored low on the Tobacco Control Scale with regard to public funding. Since then, the available budget appears to have been cut even further. The budget available to the Trimbos Institute for tobacco control was estimated at € 1.77 million for 2013 and € 1.36 for 2014. The Chairman of the Board of Director of the Trimbos Institute referred to a “significantly lower budget for tobacco control” for 2013 and 2014\textsuperscript{228}.

\textbf{Table 5}

\textit{Tobacco control budget per capita over the years in the Netherlands}\textsuperscript{5; 6; 229-231}

<table>
<thead>
<tr>
<th>Year</th>
<th>Population (x 1,000)</th>
<th>Tobacco control budget (€)</th>
<th>Tobacco control budget per capita (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>16,193</td>
<td>15,000,000</td>
<td>0.93</td>
</tr>
<tr>
<td>2004</td>
<td>16,258</td>
<td>8,500,000</td>
<td>0.52</td>
</tr>
<tr>
<td>2006</td>
<td>16,334</td>
<td>8,800,000</td>
<td>0.54</td>
</tr>
<tr>
<td>2009</td>
<td>16,485</td>
<td>4,050,000</td>
<td>0.25</td>
</tr>
<tr>
<td>2012</td>
<td>16,730</td>
<td>2,076,000</td>
<td>0.12</td>
</tr>
</tbody>
</table>

These figures include national government funding for mass communication campaigns, tobacco control projects, educational programmes and support for nongovernmental organisations.
The assessment of the available budget is complicated by the Dutch government’s increased reliance on an integrated approach to prevention. The government has repeatedly confirmed that this process of integration makes it impossible to identify a specific tobacco control budget\(^{87, 232}\). The NIX18 campaign (with a budget of approximately € 0.5 to 1 million in 2014 and subsequent years)\(^{233}\) and the programmes on healthy schools and healthy schoolyards (on which more than € 2 million is spent on an annual basis\(^{20}\)) are examples of this integrated approach.

Not included in the budget as reported in the framework of the Tobacco Control Scale, are those resources related to the enforcement of tobacco control policies and reimbursement of smoking cessation interventions. The estimated annual costs for the reimbursement of pharmacotherapy for smoking cessation, used in combination with behavioural counselling, amount to € 20 million\(^{171}\). In 2011, 2013, and 2014, the government allocated this budget to smoking cessation reimbursement. With regard to enforcement of tobacco control legislation, there have also been some issues that complicate comparisons of the budget over time. In 2011, € 8.2 million was provided to the Dutch Food and Consumer Product Safety Authority (NVWA) for enforcing provisions on tobacco and alcohol. The government has not been able to report an exact breakdown of the amount of money allocated to tobacco and to alcohol\(^{234}\). As of January 2013, enforcement of the legal age limit for alcohol has been decentralised, alleviating the NVWA of most of its enforcement activities in relation to alcohol. Nevertheless, the budget available for tobacco and alcohol has decreased only slightly. The budget for 2014 is estimated at € 7.1 million\(^{235}\).

**Conclusions and recommendations**

FCTC obligations with regard to financial resources for national purposes are rather limited, as the Convention merely states that the Parties should provide financial means supporting national tobacco control activities. Because the Dutch government acts in line with the sole obligation included in Article 26, an overall ‘green score’ was assigned in the summary table on the implementation of FCTC measures in the Netherlands in 2014 (Table 1b). However, concluding that the government is technically acting in line with the budgetary obligations does not imply that it is acting desirably from the perspective of public health. Two issues are of particular concern: (a) the decreasing trend with regard to the amount of financial resources allocated specifically to tobacco control and (b) the tendency that the implementation of tobacco control policies appears to be driven by budgetary concerns. The Dutch governments is therefore urged to:

- Reverse the trend of decreased tobacco control spending and increase the annual budget. The budget should be supportive of a comprehensive tobacco control policy.
- Consider earmarking tobacco tax revenues as a means to obtain and increase a dedicated budget for tobacco control (in line with the newly adopted Guidelines for implementation of Article 6).

**Scores**

<table>
<thead>
<tr>
<th>FCTC provision</th>
<th>Type of commitment</th>
<th>Content</th>
<th>Yes/ No</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>26 2</td>
<td>Shall</td>
<td>Provide financial support in respect of its national activities intended to achieve the objective of the Convention, in accordance with its national plans, priorities and programmes.</td>
<td>Yes</td>
<td>🟢</td>
</tr>
</tbody>
</table>
Conclusions

‘Moving towards the right track?’ is the title of this second FCTC shadow report. In the research period covered by the previous shadow report, the government clearly went astray by dismantling tobacco control in various ways that were meticulously recorded in that report. Since then, the proportion of smokers in the population did not decline and it is clear that more needs to be done to bring down smoking rates. In the current shadow report we conclude that no major improvements have been made, although a few positive signs were detected. The downward movement that was apparent from the previous report seems to have come to a halt, but it is yet unclear if the government is indeed moving towards the right track that will lead to a full implementation of the Framework Convention on Tobacco Control (FCTC). For this reason, we added a question mark to the title of the report.

Being a Party to an international agreement such as the FCTC cannot be considered an open-ended commitment. By signing the FCTC, the government has dedicated itself to implementing the tobacco control measures included in the Convention in order to continually and substantially reduce smoking prevalence and exposure to tobacco smoke. The mandatory character of the Convention has also been stressed by the Dutch government: “The [FCTC] is a treaty with legally binding framework provisions that has been ratified by the Dutch government. This implies that the Netherlands commits itself to compliance with the treaty in its entirety”234.

The report assesses the performance of the Dutch government with regard to its implementation of the FCTC. It is not an assessment of how effective the government’s tobacco policy currently is, nor is it an assessment of what the government does and could do more to reduce the death toll from smoking. Compliance with FCTC obligations is the central focus. FCTC constitutes an evidence-based set of measures, which – when implemented properly – will substantially drive down smoking rates. The conclusions and recommendations in this report relate to the FCTC obligations. When the FCTC measures were developed, electronic cigarettes were not yet on the market, and measures to reduce the appeal of these novel products are therefore not included. However, this does not imply that this is not an important topic for the government and it is imperative that policy measures are developed and implemented to assure that these products are not marketed at young people and that they do not renormalise smoking.

Some caution is required in drawing conclusions concerning changes in compliance with FCTC between the first and the second report. The results from the two reports cannot be compared one-on-one. In the previous report we summarised the main results in a table, where we assigned colour codes to each FCTC Article. In the new shadow report, we again use a colour code system to summarise our findings. However, we extended the scoring system, now using four colours instead of three. This allows for a more detailed assessment and more precise recommendations for
improvement. Further, we improved the criteria for assigning a colour. In the present report we strictly look at the wording of the Convention Articles and associated Guidelines, with some measures being phrased as obligations (indicated by a “shall”), while other measures are recommendations or merely suggestions. Only when the national tobacco policy did not fully oblige to a “shall”-provision, the colour ‘red’ was assigned. This was the case for Articles 5.1 and 5.2, 5.3, 8, 9 and 10, 11, 12, 13, and 20.

With the change of government in November 2012, responsibility for tobacco control was handed over from the Minister of Health Edith Schippers to the State Secretary for Health Martin van Rijn. Since then several positive developments occurred, which are noted in our report. First, the extension of smokefree environments by implementing a ban on smoking in small bars. However, this constitutes a relative small improvement, and leaves open the major omission of still allowing smoking rooms in hospitality settings, and in workplaces in general. For this reason, the Dutch government is still not fully acting in accordance with the obligation in Article 8 FCTC to protect its citizens from exposure to secondhand smoke. A second positive development was that State Secretary for Health has increased the age limit for the sale of tobacco products from 16 to 18 (Article 16). Some further measures were taken to improve enforcement of the age limit, and additional measures are currently being considered as the level of compliance is still not optimal. Additional small signs of improvement include initiatives taken by the government to conduct campaigns, where there was a full stop on mass media campaigning some years ago, and the reinstatement of financial reimbursement for efficacious smoking cessation support through the national health care insurance system.

Based on the findings in this report, we identify three main areas for improvement for the government that, when implemented, will make the largest improvement in complying with FCTC.

First, the government has to develop a clear comprehensive tobacco policy (Article 5.1) and allocate sufficient dedicated budget. The report shows that the government continues to dilute its focus on tobacco by integrating tobacco control within a broader lifestyle prevention approach so that tobacco does not get the attention it deserves. The amount of money that is spent on tobacco control has consistently been reduced over the past decade, instead of dedicating more budget and resources. The government should develop a comprehensive integrated tobacco control strategy, with clear quantitative and measurable targets, and with sufficient budget for health education and communication.

Related to the need for a national tobacco control strategy is the concern over industry interference. The tobacco industry continues, through many ways, to influence tobacco policy. It is therefore good that the awareness of the obligation of the government to take measures to protect their tobacco policy from the tobacco industry (as stated in relation to Article 5.3) has increased. However, this has not yet resulted in a concrete protocol on how to deal with tobacco industry interference. Such a protocol should be structurally implemented at all levels and sectors of government.

Second, it is particularly worrisome that the government is reluctant to conduct public awareness campaigns of the health risks of smoking in the general population (Article 12), resulting in the very low level of awareness in the adult population regarding the harms from tobacco use and subsequent low general support for further tobacco control measures. Further steps in tobacco control policy should
go hand in hand with targeted efforts to educate the general public about the devastating effects of tobacco smoking for individuals and society. This will denormalise smoking in society and will help to generate public support for further restrictions on tobacco. In order to better comply with Article 12, the government should thus implement comprehensive public awareness programmes on the health risks of smoking including the addictive characteristics of tobacco use and exposure to tobacco smoke. Currently, there are no signs that the government is prepared to take this necessary step.

Third, Article 13 requires governments to have a comprehensive ban of all tobacco advertising, promotion and sponsorship. Such a comprehensive ban is currently not in place in the Netherlands. Although the government commissioned studies to examine the effects of a tobacco display ban and a reduction of the number of points of sale for tobacco products including a ban on tobacco vending machines, these measures have not yet been taken, resulting in a negative evaluation of the implementation of Article 13. Promotion of tobacco products in shops, supermarkets and in petrol stations is still present everywhere in the Netherlands. An increasing number of European countries has already banned point-of-sale promotion or is in the process of doing so.

In many instances, the Guidelines to the FCTC are more far-reaching than the treaty articles themselves. In such cases, it is possible for the government to fulfil its obligations under the Convention, while failing to comply with recommendations and suggestions in the Guidelines. For example, by transposing the new revised Tobacco Products Directive (TPD), the government will fulfil its obligations under Article 11, while ignoring the recommendations from the Guidelines to Articles 11 and 13, to implement plain packaging. These recommendations are based on a strong rationale and an increasing body of scientific knowledge regarding the appeal of tobacco products to youth. The Dutch government is therefore urged to continue to explore the option of plain packaging, by examining emerging research data, for example from Australia, which introduced plain packaging in December 2012, and closely monitor developments in European countries, notably France and Ireland. The implementation of the TPD regarding pictorial health warnings in 2016, is a good opportunity to introduce plain packaging.

Another area in which the government formally complies with FCTC, but which has substantial room for improvement is taxation of tobacco products. The Dutch government should develop a long-term tobacco tax policy based on public health considerations, as recommended by the newly adopted Guidelines. The government is recommended to significantly increase tax levels yearly, reduce the tax difference between factory-made cigarettes and roll-your-owns and dedicate part of the revenues to tobacco control. This will both reduce tobacco consumption and support increased spending on effective tobacco control measures.

The Dutch government supported the adoption of a strong revised EU TPD. When this Directive is implemented in the Netherlands in 2016, this will mean that the government will by then comply with important obligations on the regulation of additives in tobacco products as required in Article 9, and Article 11 on packaging and labelling. But this is not yet the case, and therefore in the present report the government is still assigned the colour ‘red’ for Articles 9 and 10, and 11. It is important that civil society closely monitors the correct and prompt transposition of the revised EU TPD into national law, and assures that this process is not disturbed by the tobacco industry.
To summarise, several positive improvements in tobacco control policy have occurred since the previous shadow report, and the government seems to be moving towards the right track. However, it still has a long distance to cover before a full implementation of the FCTC is realised and, as a consequence, a significant reduction of the devastating effects of smoking to public health.
References


