



WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

Combating the illicit trade in tobacco products from a European perspective

Acknowledgements

The Secretariat of the WHO Framework Convention on Tobacco Control would like to acknowledge Luk Joossens for the preparation of this paper. The first draft of this report was prepared to support discussions on combatting illicit trade in tobacco products at the regional meeting on implementation of the Convention in the European Region (Budapest, Hungary, 18-21 March 2014). The author updated the document based on the discussions at the meeting.

Table of content

| | |
|--|-----------|
| Executive Summary | 3 |
| Terms | 3 |
| The changing nature of illicit tobacco trade in Europe | 4 |
| The smuggling of well-known cigarette brands..... | 4 |
| The emergence of illegal manufacturing, mainly counterfeit production..... | 5 |
| New cigarette brands destined for the illicit market in other countries | 7 |
| Overproduction of regular cigarette brands..... | 7 |
| The extent of the illicit cigarette trade in Europe | 8 |
| Why combating illicit tobacco trade should be a priority for the European Region..... | 12 |
| The effect of eliminating illicit trade in tobacco products | 14 |
| Lives saved with the elimination of illicit tobacco trade in Europe | 14 |
| The gains of additional revenue for governments | 15 |
| The tobacco industry and illicit tobacco trade..... | 15 |
| Protocol to Eliminate Illicit Trade in Tobacco Products | 18 |

Executive Summary

Twenty countries from the European Region and the European Union (EU) have signed the Protocol to Eliminate Illicit Trade in Tobacco Products – the first protocol to the WHO Framework Convention on Tobacco Control (WHO FCTC). Several factors justify combating illicit trade as a priority in the European Region. Compared to other WHO regions, the European Region has the highest smoking prevalence, the highest proportion of deaths attributed to tobacco, the highest cigarette tax levels and the highest number of seized cigarettes in the world. Therefore, the impact of eliminating illicit trade in Europe would be significant. The availability of cheap illicit cigarettes increases consumption and thus tobacco related deaths in the future. Eliminating or reducing this illicit trade will therefore reduce consumption by increasing price and reducing premature deaths. An estimate for the illicit cigarette market in Europe varies between 6% and 10%. If the illicit trade were eliminated there would be an overall fall in European cigarette consumption of 1.9%.

If illicit trade were eliminated in Europe, governments would gain additional revenue. An estimate of the gain in revenue for the whole European Region is 9 to 11 billion Euros, taking into account the fall of consumption. To address these crucial issues, it is, therefore, of highest priority that all governments in the Region ratify the Protocol to Eliminate the Illicit Trade in Tobacco Products as an important means for countries to reduce tobacco-related mortality and morbidity as well as to increase revenue..

Terms

Contraband refers to products diverted into illicit trade, not respecting the legal requirements in the jurisdiction of destination.

Illicit trade means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase, including any practice or conduct intended to facilitate such activity.

Smuggling is one type of illicit trade and refers to products illegally traded across borders; the illegal crossing of borders between jurisdictions being a key characteristic.

Illicit manufacturing is another type of illicit trade and refers to the production of tobacco products contrary to law. One form of illegal manufacturing is **counterfeit tobacco production** in which the manufactured products bear a trademark without the consent of the owner of the trademark. Illegally manufactured products can be sold on the domestic market or smuggled into another jurisdiction.

Tracking and tracing means systematic monitoring and re-creation by competent authorities or any other person acting on their behalf of the route or movement taken by items through the supply chain

The changing nature of illicit tobacco trade in Europe

Twenty years ago, the main type of illicit trade in Europe was large-scale cigarette smuggling of well-known cigarette brands exported, legally and duty unpaid, to countries where they had no market, and where they then disappeared into the contraband market. A change occurred after some major tobacco companies in Europe and the Americas reviewed their export practices due to investigations and lawsuits by the authorities. Other types of illicit trade emerged such as illegal manufacturing, including counterfeiting and the emergence of new cigarette brands, produced in a rather open manner at well-known locations, which were only or mainly intended for the illegal market of another country.

The smuggling of well-known cigarette brands

In the nineties and the beginning of this millennium, the main type of illicit trade was large-scale cigarette smuggling: containers of cigarettes were exported, legally and duty unpaid, to countries where these products had no market, and where the cigarettes disappeared into the contraband market. During the period 1996-2012, cigarette seizures in the European Union were highest in 1999-2000 (around 6 billion a year), when the international tobacco companies were accused of being involved in the smuggling operations.

Table 1. Cigarette seizure data in the EU-15 (1996-2003), EU-25 (2004-2006) and EU-27 (2007-2012). Source: European Anti-Fraud Office (OLAF)

| | EU-15 | | | EU-25 | | | EU-27 |
|------|--------------------|--|------|--------------------|--|------|--------------------|
| Year | Billion cigarettes | | Year | Billion cigarettes | | Year | Billion cigarettes |
| 1996 | 3 .1 | | 2004 | 4 .1 | | 2007 | 4 .8 |
| 1997 | 2 .6 | | 2005 | 4 .4 | | 2008 | 4 .6 |
| 1998 | 4 .7 | | 2006 | 4 .6 | | 2009 | 4 .7 |
| 1999 | 5 .7 | | | | | 2010 | 4 .7 |
| 2000 | 6 .2 | | | | | 2011 | 4 .4 |
| 2001 | 4 .8 | | | | | 2012 | 3 .8 |
| 2002 | 3 .6 | | | | | | |
| 2003 | 3 .3 | | | | | | |

By 1998, European governments and the European Anti-Fraud Office (OLAF) officials believed that the major cigarette manufacturers were selling American cigarettes to traders who resold them into markets within the EU set up to evade taxes. This belief led to investigations. In November 2000, in New York, the EC filed a civil action against Philip Morris International (PMI), RJ Reynolds, and Japan Tobacco International (JTI) accusing the companies of “an ongoing global scheme to smuggle cigarettes, launder the proceeds of narcotics trafficking, obstruct government oversight of the tobacco industry, fix prices, bribe foreign public officials, and conduct illegal trade with terrorist groups and state sponsors of terrorism”.¹

The investigations, which started in 1998, and the lawsuits, filed in 2000 against the tobacco companies, were effective. Cigarette smuggling in Spain and Italy decreased from around 15% of consumption in the 1990s to 1–2% of consumption in 2006. In both countries, cutting off supply from the major tobacco companies to the illicit market was a key factor in reducing smuggling.²

The emergence of illegal manufacturing, mainly counterfeit production

While in Europe, large-scale smuggling of well-known brands decreased, other types of illicit trade such as counterfeiting emerged. In the United Kingdom (UK), for instance, 46% of all large cigarette seizures in 2007-8 were counterfeit. The bulk of counterfeit cigarettes are manufactured in China and, to a lesser extent, Eastern Europe.³ China continues to be the source country for counterfeit cigarettes in the EU, according to a recent EU report. Illicit consignments seized were shipped either directly to European seaports or transshipped via Singapore and Malaysia, where the illicit trade is aggravated by the insufficient control in the free zones.⁴

Illegal factories also exist in EU Member States, especially in Poland and some Baltic States, and are a significant source of counterfeit cigarettes.⁵ The number of known illegal factories in the EU has increased rapidly from only five in 2010 to nine illegal factories in 2011.⁶ Europol also expects that illicit manufacturing will increase, since it is more difficult to detect imports of raw tobacco and materials than imports of manufactured cigarettes.⁷

Since the end of tobacco subsidies in the EU, there is no more control over the production of raw tobacco and without duties on raw tobacco, it is now a product without registration,

¹ US District Court. European Community complaint against Philip Morris, RJ Reynolds and Japan Tobacco [Internet]. New York: United States District Court, Eastern District of New York; 2000 Nov.

² Joossens L, Raw M. Progress in combating cigarette smuggling: controlling the supply chain. *Tob Control*. 2008 Dec 1;17(6):399–404.

³ HM Revenue & Customs, *Tackling Tobacco Smuggling Together*, London, November 2008.

⁴ European Commission. *Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A Comprehensive EU Strategy*. Brussels; 2013 Jun.

⁵ Europol, *EU organised crime threat assessment, OCTA 2010*, The Hague, 2011.

⁶ European Commission. *Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A Comprehensive EU Strategy*. Brussels; 2013 Jun.

⁷ Europol. *EU organised crime threat assessment, OCTA 2010*. The Hague; 2011.

New cigarette brands destined for the illicit market in other countries

Besides illegal manufacturing, another change in the illicit trade was the emergence of the so-called 'cheap whites'. 'Cheap whites' is the tobacco industry term that often leads to confusion, because these are defined each time in different ways. Europol describes 'cheap whites' in the following way: “**Cheap whites**’ are the tobacco industry’s term for cigarettes produced entirely independently of the traditional tobacco manufacturers. They are cheap cigarette brands, often of reasonable and consistent quality, and provide a good alternative to counterfeits, whose quality can vary significantly.”¹⁰ In Project Star (financed by PMI), illicit whites are defined differently, without making reference to the independent production of the traditional tobacco manufacturers. Project Star, for instance, defines Classic, a cigarette brand produced by one of the major international companies (Imperial Tobacco) in Ukraine as an illicit white.¹¹ Generally speaking, 'cheap whites' refer to new cigarette brands, produced in an open and non-clandestine manner, which are only or mainly intended for the illegal market of another country. As manufacturing is apparently in accordance with national legislation and subject to minimal or no controls, the manufacturers can buy sophisticated machinery without risk of confiscation. Under these conditions, a certain standard of quality in the production process can be achieved. Not copying international brands gives the advantage of avoiding legal action by the international cigarette companies. The best known 'cheap white' in Europe is 'Jin Ling', a cigarette brand with a Chinese name, manufactured in Russia, apparently in accordance with Russian domestic law, with the look and the taste of an American blend (Camel), but destined for the illegal market in the EU. Jin Ling rapidly became one of the most seized cigarette brands in the EU.¹² Other cheap white brands are 'Raquel', produced in Cyprus, 'Karelia' produced in Greece, 'Ducal' and 'Austin' produced in Luxembourg, 'Richman' 'Marble' and 'Capital', produced in UAE or 'Palace', 'Gold Classic', 'American Legend' which are produced in several countries.^{13 14}

Overproduction of regular cigarette brands

In 2012, 1,952 million cigarettes were seized in Europe, of which 1,362 million were regular brand cigarettes, 504 million were cheap white cigarettes and 86 million were counterfeit cigarettes.¹⁵ Despite the focus of the tobacco industry and the media on counterfeits and illicit whites, the illicit trade of the regular brand cigarettes remains at high levels in Europe due to overproduction and the low tax levels in some countries. The modus operandi of the smuggling operations for those regular brands has changed: consignments of smuggled

¹⁰ Europol. EU organised crime threat assessment, OCTA 2010. The Hague; 2011

¹¹ KPMG, Project Star results 2012, April 2013 Available from:

http://www.pmi.com/eng/media_center/media_kit/Documents/Project_Star_2012_Final_Report.pdf

¹² Roman Shleynov, Stefan Candea, Duncan Campbell, Vlad Lavrov. Made To Be Smuggled. Russian contraband cigarettes 'flooding' EU. Center of Public Integrity: Washington, 2008 Available at: <http://www.publicintegrity.org/investigations/tobacco/articles/entry/763/>.

¹³ KPMG, Project Star results 2011, 2012. Page 52 Available at

http://www.pmi.com/eng/tobacco_regulation/illicit_trade/documents/project%20star%202011%20results.pdf

¹⁴ World Customs Organization, The illicit trade Report 2012, Brussels 2013.

¹⁵ World Customs Organization, *ibid*.

cigarettes have become smaller and ant smuggling more frequent. Ant smuggling refers to the organized and frequent crossing of borders by a large number of individuals with relatively small amounts of low taxed or untaxed tobacco products. The main countries of origin for illicit cigarettes from the Eastern border in the EU are Russia, Ukraine and, increasingly, Belarus. In the case of Russia, most of the products seized are genuine. This means that they are produced legally, but in quantities greatly exceeding local demand in source countries.¹⁶ Another resource country for illicit cigarettes is Ukraine. Already in 2008, the big international tobacco companies manufactured and imported nearly 130 billion cigarettes into Ukraine – 30% in excess of what the local market can consume. These "extra" cigarettes disappear in Ukraine and fuel the black market in the rest of Europe.¹⁷ Customs officials in the Baltic countries and Poland have recently noticed that more illicit cigarettes are originating from Belarus.¹⁸ In Belarus, sales of cigarettes have increased by 59% in 2005-2010, while smoking prevalence was rather stable. A recent study indicates that a probable cause of the sales increase is smuggling of large amounts of Belarus-produced cigarettes to other countries.¹⁹ The import of acetate tow (from which cigarette filters are made) provides additional information on this trade. 30,715 tons of acetate tow were imported into Belarus in 2012-13, nearly 10 times the amount required for the domestic cigarette production.²⁰

The extent of the illicit cigarette trade in Europe

Measuring illicit cigarette trade is methodologically challenging for many reasons. It is an illegal activity and illegal traders are unlikely to record their activities. For security reasons, data on illicit trade is usually difficult to collect, as law enforcement agencies often prefer not to publicize the scope of their activity. All methods to estimate illicit trade have their limitations and not all studies clearly describe their methodology nor these limitations. Transparent and public data on illicit tobacco trade are missing in many European countries. In their reports on implementation of the WHO FCTC, 15 Parties to the Convention have provided percentages of the national cigarette market constituted by illicit cigarettes. This is based primarily on data from 2010 (See **Table 2**).

¹⁶ European Commission. Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A Comprehensive EU Strategy. Brussels; 2013 Jun.

¹⁷ Lavrov V. Ukraine's 'lost' cigarettes flood Europe. Washington, The Center for Public Integrity, 2009. <http://www.publicintegrity.org/investigations/tobacco/articles/entry/1438/>

¹⁸ Czyzowicz W. The nature of illicit trade in Tobacco and Alcohol products on the Eastern border, Customs book Library. Warsaw; 2013.

¹⁹ Krasovsky, K, Dynamics of smoking prevalence and tobacco products market in Belarus. Tobacco control and public Health in Eastern Europe, 2012: 5(1), 9-16.

²⁰ The Law enforcement alliance of America, Controlling key inputs to starve illicit trade, January 2014. <http://leaa.org/Resources/ControllingInputs.pdf>

Table 2. Percentage of the national cigarette market constituted by illicit cigarettes.
(Source: WHO FCTC Implementation Database)

| | | | | | |
|----------|--------|-------------|--------|---------------------|-------|
| Austria: | 9 % | Italy: | 3.5 % | Russian Federation: | 7 % |
| Belarus: | 3.30 % | Latvia: | 41 % | Slovenia: | 33 % |
| Estonia: | 29 % | Montenegro: | 8 % | Sweden: | 20 % |
| EU: | 10.4 % | Poland: | 10.6 % | Ukraine: | 1.5 % |
| Hungary: | 4% | Romania: | 9 % | UK: | 10 % |

Estimates in the European Parties' implementation reports vary between 20% in Sweden to 41% in Latvia and are based on independent or tobacco industry-sponsored research. Growing evidence suggests that the tobacco industry tends to overstate the illicit cigarette trade problem. For example, researchers from Germany found that the sampling method used in a tobacco industry-funded study was not nationally representative, with systematic overrepresentation of geographic regions along the country's eastern border, where more illicit cigarettes can be expected.²¹ Illicit trade estimates from tobacco industry-commissioned studies were found to be significantly higher than those from academic studies in the UK²² and Poland.²³ Also, Project Star, a pan-European study conducted by a consulting firm, KPMG LLP and paid for by the tobacco industry, exaggerates the size of illicit cigarette trade.

A recent and detailed analysis of Project Star comes to the following conclusion: "Project Star overestimates illicit cigarette levels in some European countries and suggests PMI's supply chain control is inadequate. Its publication serves the interests of PMI over those of the EU and its member states. Project Star requires greater transparency, external scrutiny and use of independent data."²⁴ KPMG Project Star data cannot be used to estimate the illicit cigarette market in the EU because the report was commissioned to meet specific terms of reference which are only known to PMI and KPMG. Page 1 of the 2012 KPMG report says: "KPMG wishes all parties to be aware that KPMG 's work for Philip Morris International was performed to meet specific terms of reference agreed between PMI and KPMG and that there were particular features determined for the purposes of the engagement. The Report should not therefore be regarded as suitable to be used or relied on by any other person or for any other purpose."²⁵

²¹ Adams M, Effertz T. Tabaksteuern, Schmuggel und unversteuerte Zigaretten – Zur Glaubwürdigkeit der „Entsorgungsstudie“ der Tabakindustrie [Excise Taxes on Tobacco and the Problem of Smuggling – Concerning the Credibility of the Tobacco Industry's "Discarded-Cigarette Packages-Study"]. Gesundheitswesen. 2011;73:705–12.

²² Eriksen M, Mackay J, Ross H. The Tobacco Atlas, Fourth Edition. Atlanta, GA: The American Cancer Society, Inc.; 2012.

²³ Stoklosa M, Ross H. Contrasting academic and tobacco industry estimates of illicit cigarette trade: evidence from Warsaw, Poland. Tob Control. 2013 Aug 13;tobacco control–2013–051099.

²⁴ Gilmore AB, Rowell A, Gallus S, Lugo A, Joossens L, Sims M. Towards a greater understanding of the illicit tobacco trade in Europe: a review of the PMI funded "Project Star" report. Tob Control. 2013 Dec 11; tobacco control–2013–051240.

²⁵ KPMG. Project Star 2012 Results [Internet]. 2013 Apr. Available from: http://www.pmi.com/eng/media_center/media_kit/Documents/Project_Star_2012_Final_Report.pdf.

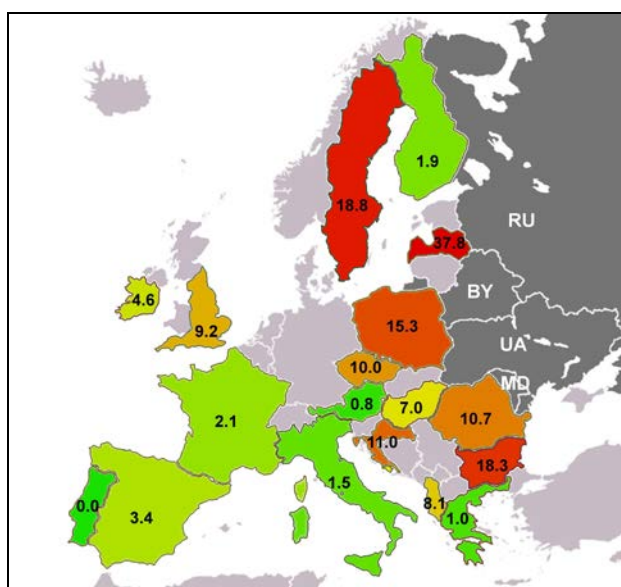
Independent research was undertaken also in 2010 within the Pricing Policies and Control of Tobacco in Europe (PPACTE) project. Joossens et al. collected data in 18 European countries in order to estimate the size of illicit trade in those countries, validating self-reported information on illicit trade with observational pack data.²⁶ Data was derived from a face-to-face survey conducted between January and July 2010 in 18 European countries using standardized methods. The survey included a total of 18,056 subjects (8653 men and 9403 women), representative, for each of the 18 European countries, of the general population aged 15 years and older in terms of age, sex, habitat, and socio-economic characteristics (working status, occupation and income). The sample size was around 1000 participants for each country.

Current smokers were asked to show to the interviewer their latest purchased pack of manufactured cigarettes, hand-rolled tobacco or other types of cigarette pack, providing information on its origin, health warnings, tax stamp (banderole) and price.

A comprehensive measure called Identification of an Illicit Pack (IIP) was used to study the extent of illicit trade, defining a pack as illicit if it had at least one of the following tax evasion indicators: 1) it was bought from illicit sources, as reported by smokers, 2) it had an inappropriate tax stamp, 3) it had an inappropriate health warning, 4) its price was substantially below the known price in their market.

Overall, the proportion of illicit packs in the 18 countries was 6.5%. The highest prevalence of IIP was observed in Latvia (37.8%). Illicit packs were more frequent among those living in a country, which shared a land or sea border with Ukraine, Russia, Republic of Moldova or Belarus, countries where the major influx of cheap and illicit cigarettes come from.

Figure 2. Percentage of illicit tobacco products in 18 European countries in 2010. (Source: PPACTE)



²⁶ Joossens L, Lugo A, Vecchia CL, Gilmore AB, Clancy L, Gallus S. Illicit cigarettes and hand-rolled tobacco in 18 European countries: a cross-sectional survey. *Tob Control* [Internet]. 2012 Dec 10 [cited 2013 May 18]; Available from: <http://tobaccocontrol.bmj.com/content/early/2012/11/14/tobaccocontrol-2012-050644>.

Table 3. Distribution of 5114 European current smokers according to its components, overall and by country and other selected characteristics. (Source: PPACTE, 2010)

| | N of smokers | Self-reported purchase from illicit sources (%) | Inappropriate health warning (%) | Inappropriate tax stamp (%) | Extremely low price (%) | Identification of an Illicit Pack (IIP) (%) |
|----------------------|--------------|---|----------------------------------|-----------------------------|-------------------------|---|
| Total* | 5114 | 4.1 | 4.5 | 3.4 | 1.5 | 6.5 |
| Pack shown* | | | | | | |
| Yes | 4022 | 3.9 | 4.2 | 3.4 | 1.4 | 6.3 |
| No | 1092 | 4.5 | 5.2 | 3.1 | 1.8 | 7.2 |
| Type of pack* | | | | | | |
| Manufactured | 4728 | 4.0 | 3.8 | 3.1 | 1.5 | 5.9 |
| Hand-rolled | 381 | 4.6 | 9.6 | 5.4 | 0.0 | 11.7 |
| Country | | | | | | |
| Albania (AL) | 261 | 2.3 | 6.5 | 2.8 | 1.3 | 8.1 |
| Austria (AT) | 319 | 0.4 | 0.6 | 0.7 | 0.0 | 0.8 |
| Bulgaria (BG) | 420 | 14.5 | 13.1 | 7.0 | 2.3 | 18.3 |
| Croatia (HR) | 262 | 6.4 | 9.1 | 7.0 | 0.0 | 11.0 |
| Czech | 290 | 8.6 | 1.4 | 0.7 | 0.0 | 10.0 |
| England (UK) | 251 | 4.5 | 7.4 | 3.3 | 1.0 | 9.2 |
| Finland (FI) | 217 | 1.8 | 1.9 | 1.2 | 1.3 | 1.9 |
| France (FR) | 248 | 0.5 | 1.9 | 1.8 | 1.8 | 2.1 |
| Greece (GR) | 327 | 0.6 | 1.0 | 0.7 | 0.8 | 1.0 |
| Hungary (HU) | 356 | 0.0 | 3.4 | 5.3 | 0.0 | 7.0 |
| Ireland (IE) | 369 | 1.8 | 3.8 | 3.0 | 1.6 | 4.6 |
| Italy (IT) | 214 | 0.3 | 0.8 | 1.3 | 0.4 | 1.5 |
| Latvia (LV) | 297 | 30.7 | 31.2 | 26.9 | 19.9 | 37.8 |
| Poland (PL) | 250 | 12.3 | 12.0 | 9.2 | 5.3 | 15.3 |
| Portugal (PT) | 321 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Romania (RO) | 265 | 9.8 | 7.0 | 6.1 | 2.3 | 10.7 |
| Spain (ES) | 287 | 1.3 | 1.8 | 1.2 | 0.4 | 3.4 |
| Sweden (SE) | 160 | 10.0 | 5.0 | 7.6 | 0.0 | 18.8 |

*Computed weighting each country in proportion to the country specific population aged 15 years or over.

According to a Eurobarometer survey among 26,500 Europeans (EU27 plus Norway) in December 2008, just over one tenth of EU citizens (12%) have seen tobacco products being sold in the past six months, which they think might have been smuggled into the country. The proportion of respondents who have seen potentially smuggled tobacco products being sold in this period is the highest in Lithuania (36%), followed by Greece (25%), then Poland, Hungary and Latvia (22%-24%). In Belgium, the Netherlands, Italy, Portugal, Luxembourg and Denmark, on the other hand, only 5% of respondents have seen potentially smuggled tobacco products in the past six months.²⁷ The Eurobarometer survey does not measure illicit trade in the EU countries, but provides an indication of the size of illicit trade in those countries.

An estimate for the illicit cigarette trade in the European region is difficult to make. In Baltic countries illicit cigarettes constitute high levels of the national cigarette market, while other countries, such as Ukraine, have low levels. Based on all available resources, we estimate that the illicit cigarettes represent between 6 to 10% of the cigarette market in the European Region.

Why combating illicit tobacco trade should be a priority for the European Region

According to the WHO European Tobacco Control Status Report 2013, tobacco kills 1.6 million people in the European region each year. More than 25% of global deaths are attributed to tobacco. Yet the region accounts for only 14% of the world population. Among all the WHO Regions, the European Region has the highest smoking prevalence (28% compared to 15% in the WHO African region) and the highest proportion of deaths attributed to tobacco (16%). However, the European region has taken stronger action than all other WHO regions regarding tax measures. In 2012, 47% of countries in the Region had tax shares representing more than 75% of the retail price of the most popular brand of cigarettes.

Table 4. Countries with tax shares representing more than 75% of the retail price of the most popular brand of cigarettes in the WHO Regions 2012.²⁸

| WHO region | Number of Countries | % Countries |
|-----------------------|---------------------|-------------|
| European | 25 | 47 |
| Eastern Mediterranean | 3 | 13 |
| Americas | 2 | 6 |
| Western Pacific | 1 | 4 |
| African | 1 | 2 |
| South-East Asia | 0 | 0 |

²⁷ European Commission. Flash Eurobarometer number 253, survey on tobacco. Brussels, European Commission, March 2009.

²⁸ World Health Organization, European Tobacco Control Status Report 2013, Copenhagen, 2013;

The European region is also by far the region where the most cigarette seizures take place. The World Customs Organization collects data on cigarette seizures around the world. Although the information from several countries is missing, the importance of cigarette seizures in Europe is overwhelming compared to other regions of the world. In 2012 1,952 million cigarettes were seized in Europe or 95% of all seized cigarettes globally (63% of the counterfeit cigarettes, 99% of the cheap white cigarettes and 96% of the regular brand cigarettes are seized in Europe).²⁹

Tax policy is considered the most effective strategy to reduce tobacco consumption and prevalence.³⁰ Illicit trade undermines the effectiveness of tobacco control policies and results in less revenue for governments, cheaper prices for smokers and increased tobacco use. Eliminating or reducing the illicit cigarette trade will reduce consumption (by increasing price), save lives, and increase revenue. The European region would benefit greatly from such policies.

Table 5. Cigarette seizures in 2012³¹ (Source: World Customs Organization)

| Seizures of cigarettes in 2012 (quantities). | |
|---|---------------|
| Europe: | 1,952,106,391 |
| Americas: | 55,491,3013 |
| Africa: | 8,095,420 |
| Middle East: | 8,940,000 |
| Asia: | 27,040,380 |
| Seizures of counterfeit cigarettes in 2012. | |
| Europe: | 85,548, 648 |
| Americas: | 40,423,739 |
| Middle East: | 8,940,000 |
| Seizures of cheap white cigarettes in 2012 (quantities). | |
| Europe: | 504,178,888 |
| Americas: | 5,667,400 |
| Africa: | 1,120,000 |
| Seizures of regular cigarettes in 2012 (quantities). | |
| Europe: | 1,362,378,855 |
| Americas: | 9,400,174 |
| Africa: | 6,975,420 |
| Asia: | 27,040,380 |

²⁹ World Customs Organization, The illicit trade report 2012, Brussels, 2013

³⁰ Chaloupka FJ, Straif K, Leon MJ. Effectiveness of tax and prices policies in tobacco control. Tob Control 2011; 20:235-8

³¹ Reporting of seizure data to the World Customs Organization is voluntary.

The effect of eliminating illicit trade in tobacco products

The availability of cheap, illicit cigarettes increases consumption and thus tobacco related deaths in the future. Eliminating or reducing this illicit trade will therefore reduce consumption by increasing price and reducing premature deaths. Consumption would fall if illicit trade were eliminated because, in most countries, illicit cigarettes are much cheaper than their legal, fully taxed equivalent. As the illicit trade is reduced, the overall average price of cigarettes goes up, and consumption consequently goes down.

As demonstrated by West et al.,³² the illicit market for hand rolled tobacco and cigarettes in the UK was 21% of the total market in 2005-6. The price of smuggled products is about half of the duty paid equivalent. The elimination of smuggling would mean that the price of the smuggled products would double. The demand curve for an elasticity of -0.4 predicts that a 100% increase would result in a 24% fall in consumption. The reduction in consumption under this assumption would be expected to be about $21 \times 0.24 = 5\%$ in the UK. If we assume that 8% of the cigarette market in Europe is illicit and that illicit cigarettes are sold at 50% of the legal price, the elimination of the illicit market would mean that the price doubles for the 8% cigarettes in the illicit market share or an overall price increase of 4.2%. The reduction in consumption under this assumption would be expected to be about $8 \times 0.24 = 1.9\%$ in Europe. It will be higher in the countries where the share of illicit trade is higher than the above average.

Lives saved with the elimination of illicit tobacco trade in Europe

Based on the study by West et al., we assume that the decline in tobacco related deaths is proportional to the decline in tobacco consumption. Mathers and Loncar estimate that in 2030 there will be 8.3 million tobacco related deaths globally.³³ We use the overall percentage decline in consumption as a result of eliminating the illicit trade to estimate the decline in tobacco related deaths in low- and middle-income countries, high income countries, and in both combined. Basic calculations show that if the illicit trade were eliminated, there would be an overall fall in European cigarette consumption of 1.9% which would result in a 1.9% reduction in deaths twenty years from now. If we assume that there will be around 2 million tobacco related deaths in the European Region in 2035, a 1.9% decline of consumption which would save over 38,000 lives a year in the Region from 2035 onwards.

³² West R, Townsend J, Joossens L, Arnott D, Lewis S. Why combatting smuggling is a priority. *BMJ* 2008, 337:1028-1029.

³³ Mathers CD, Loncar D. Projections of Global Mortality and Burden of Disease from 2002 to 2030. *PLoS Med* 2006;3(11): e442 doi:10.1371/journal.pmed.0030442

The gains of additional revenue for governments

If illicit trade were eliminated in Europe, governments would gain significant additional revenue. The EU alone estimates the losses due to the illicit tobacco trade at 10 billion euro.³⁴ The total losses for the whole European region will be automatically higher. The revenue in the Russian Federation from excise duties on tobacco products, without the revenue from VAT, was 141 billion RUB or 3,400 billion EURO in 2011.³⁵ The losses due to illicit trade in the Russian Federation alone can be estimated at several hundreds of millions of Euros, based on the estimate that 7% of the cigarette market is illicit. (Source: WHO FCTC Implementation database). The revenue from excise duties, VAT and import duties on tobacco products in Turkey was 24 641 million TRY or 10 850 million Euros in 2012.³⁶ The losses due to illicit trade in the Turkey can be estimated at 1 700 million Euros based on the estimate that 15.7% of the cigarette market is illicit.³⁷

The losses due to illicit trade are not the same as the financial gains for governments, as one must take into account that eliminating the illicit market would increase the overall price of cigarettes, and thus cause consumption to fall. In 2010 we estimated that the total revenue lost to governments globally was \$40.5 billion, but that the immediate gain in revenue, when illicit trade was eliminated, was only \$31.3 billion (or 23% less).³⁸

The losses due to the illicit trade in the EU, Russian Federation and Turkey are estimated at 12 billion Euros. The total losses in the European Region will be even higher, but are difficult to calculate in the absence of reliable data. An estimate of the gains in revenue for the whole European Region might be around 9 to 11 billion Euros, taking into account the fall of consumption.

The tobacco industry and illicit tobacco trade

The tobacco companies are using the illicit trade argument to counter new tobacco regulations and claim that product legislation will lead to increased illicit trade. The world's leading tobacco company, PMI, has stated that plain packages create "significant incentives to counterfeiters and smugglers"³⁹ and BAT outlined their case in more detail.

"We believe a policy designed to make tobacco less accessible to youth could actually end up having the opposite effect — by increasing the black market and making the products cheaper and more accessible. Generic packaging would make it harder to prevent smuggled and counterfeit products entering a market, eroding government tax revenue and disrupting

³⁴ European Commission. Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products – A Comprehensive EU Strategy. Brussels; 2013 Jun.

³⁵ World Health Organization, Tobacco Control Country Profiles, Russian Federation, 2012.

³⁶ World Health Organization, Tobacco Control Country Profiles, Turkey, 2013.

³⁷ American Cancer Society, Tobacco Atlas, Atlanta, 2012. Available at: <http://www.tobaccoatlas.org/>

³⁸ Joossens L, Merriman D, Ross H, Raw M. The impact of eliminating the global illicit cigarette trade. *Addiction* 2010;105:1640-9.

³⁹ http://www.pmi.com/eng/tobacco_regulation/regulating_tobacco/pages/generic_packaging.aspx

efforts to tackle the illegal trade in tobacco products that plays a significant role in funding international crime and terrorism.”⁴⁰

The tobacco companies' concern about illicit trade is questionable, since it comes from an industry with a proven long history of involvement in smuggling operations. Since 2004, the four major international tobacco companies have paid billions of dollars in fines and payments to settle cigarette smuggling litigation in Europe and Canada.

Evidence of the direct and indirect involvement of the tobacco industry in this large-scale fraud is well documented, through the industry's internal documents,⁴¹ their own admissions⁴² and court judgements.⁴³ In 2012, a major tobacco company, JTI, was accused of smuggling activities in the Middle East and under official investigation of OLAF, the European Anti-Fraud Office.⁴⁴

It is an established practice for the tobacco industry to use illicit trade as the main argument against higher taxes and product regulations as part of a public relations campaign with a focus on the following ten elements:

1. We don't condone cigarette smuggling, but are rather a victim of it.
2. Illicit cigarettes contain many toxic ingredients and harm our reputation.
3. High taxes are the main cause of smuggling.
4. Product regulation, such as plain packaging or a ban of menthol cigarettes, will further increase illegal trade.
5. We are willing to combat illicit trade and to collaborate with governments.
6. Joint action of the tobacco industry and governments is best consolidated in agreements.
7. We commission research to know the scope of illicit trade.
8. Increasing and high levels of smuggling are convincing arguments to combat higher taxes or product regulation.

⁴⁰ http://www.bat.com/group/sites/uk_3mnfen.nsf/vwPagesWebLive/DO7J7DCZ?opendocument&SKN=1 accessed 12 October 2012.

⁴¹ Collin J, LeGresley E, MacKenzie R, Lawrence S, Lee K. Complicity in Contraband: British American Tobacco and Cigarette Smuggling in Asia. *Tobacco Control* 2004;13 (Supplement II):ii96-ii111. Lee K, Collin J. 'Key to the future': British American Tobacco and cigarette smuggling in China. *PLoS Medicine* 2006;3 (7):228-37. LeGresley E, Lee K, Muggli M, Patel P, Collin J, Hurt R. British American Tobacco and the "insidious impact of illicit trade" in cigarettes across Africa. *Tobacco Control* 2008;doi:10.1136/tc.2008.025999.

⁴² Clarke K. Dilemma of a cigarette exporter. *Guardian*, 3 February 2000.

⁴³ Canada Revenue Agency. Federal and provincial governments reach landmark settlement with tobacco companies. Québec, Canada Revenue Agency, Press release, July 31 2008, <http://www.cra-arc.gc.ca/nwsrm/rllss/2008/m07/nr080731-eng.html>, accessed October 2012.

⁴⁴ Solomon J, EU probes cigarette deal that may have aided Syria, *The Wall Street Journal*, August 21, 2012. <http://online.wsj.com/article/SB10000872396390444233104577595221203321922.html>.

9. Traceability should be the responsibility for the industry.
10. The real concern are counterfeited cigarettes and 'illicit whites', not the smuggling of genuine products

Most of the reports on illicit trade levels are commissioned by cigarette manufacturers. Growing evidence suggests that the industry tends to overstate the illicit cigarette trade problem.⁴⁵ The aim of the illicit trade strategy of the tobacco companies is to prevent legislation, to collaborate with governments and to provide anti-smuggling solutions which remain under their control. The four major transnational tobacco companies developed an agreement in 2010 to collectively promote Codentify (a visible and unique code printed onto tobacco packaging to identify each package) as a technological solution for track and trace and digital tax verification. The Codentify system was developed and patented by PMI, who licensed Codentify free of charge to its three major competitors.

While the limited information available to us on the Codentify project makes it difficult to be certain of the industry's real objectives, we believe the evidence indicates that the following elements underpin the industry's strategy:

1. To establish alliances and partnerships with authorities at national and international level to position the tobacco industry as part of the solution to the illicit tobacco trade and increase its ability to influence developments in this area⁴⁶;
2. To concentrate the debate on counterfeit instead of other elements of the illicit tobacco trade, notably the smuggling of TTC cigarettes;
3. To keep tracking and tracing, authentication, volume control and tax verification under industry control;
4. To ensure intelligence on the illicit tobacco trade remains under tobacco industry control so that such data can be used as part of the industry's efforts to undermine tobacco control policies, such as plain packaging or tax increases;
5. To avoid potentially superior and more expensive solutions for tracking and tracing systems provided by the security marking companies.⁴⁷

⁴⁵ Rowell A, Evans-Reeves K, Gilmore A. Tobacco industry manipulation of data on and press coverage of the illicit tobacco trade in the UK. *Tob Control*, online 10 March 2014; <http://tobaccocontrol.bmj.com/content/early/2014/03/10/tobaccocontrol-2013-051397.full.pdf+html>.

⁴⁶ This was confirmed during the meeting by several Parties.

⁴⁷ Joossens L, Gilmore AB. The transnational tobacco companies' strategy to promote Codentify, their inadequate tracking and tracing standard. *Tob Control*. 2013 Mar 12;tobaccocontrol-2012-050796.

Protocol to Eliminate Illicit Trade in Tobacco Products

The global scope and multifaceted nature of the illicit tobacco trade requires a coordinated international response and improved global regulation of the legal tobacco trade.

Illicit tobacco trade is addressed in Article 15 of the WHO FCTC and by the Protocol to Eliminate Illicit Trade in Tobacco Products (ITP). In the preamble of the WHO FCTC it was recognized that “cooperative action is necessary to eliminate all forms of illicit trade in cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting.” Article 15 of the WHO FCTC addresses illicit trade in tobacco products and stipulates in its first paragraph that “the elimination of all forms of illicit trade in tobacco products (...) are essential components of tobacco control.” The ITP has been negotiated as a supplementary treaty to the WHO FCTC. The ITP, adopted at the fifth session of the Conference of the Parties in November 2012, will enter into force on the 90th day following the 40th ratification of the Protocol. Only Parties to the Protocol will be bound by its obligations. By 9 January 2014, the date on which the signing period closed, 54 Parties to the WHO FCTC (including 20 States from the European Region and the EU) had signed, and one State (Nicaragua) has ratified the Protocol. Enforceable measures to control the supply chain and international cooperative measures, including information sharing and cooperation in the investigation and prosecution of offences, are at the heart of the Protocol to Eliminate Illicit Trade in Tobacco Products.

One of the core measures of the Protocol is a global tracking and tracing regime (Article 8). According to this article, each Party shall require that unique, secure and non-removable identification markings, such as codes or stamps, are affixed to or form part of all unit packets, packages and any outside packaging of cigarettes within a period of five years, and of other tobacco products within a period of ten years of entry into force of the Protocol. The ITP also contains detailed provisions on licensing, record keeping, due diligence requirements, control of free zones, traceable methods of payment, international cooperation and monitoring.

Article 8 of the Protocol specifically notes that Parties should not delegate tracking and tracing obligations to the tobacco industry:

“12. Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry.

13. Each Party shall ensure that its competent authorities, in participating in the tracking and tracing regime, interact with the tobacco industry and those representing the interests of the tobacco industry only to the extent strictly necessary in the implementation of this Article.”

The aim of the tracking and tracing system is to assist in the investigation of illicit trade of tobacco products. Europe is a region with a high number of cigarette seizures and it would therefore profit significantly from such a system. However, many Parties, also in the European Region, lack expertise in the technical matters of the tracking and tracing provisions and would need technical assistance. At the EU level, an important recent development is that an EU tracking and tracing system of tobacco products and for security features is foreseen in Article 15 and 16 of the Tobacco Products Directive adopted in the

European Parliament on 26th February 2014. The traceability system for all 28 EU countries should come into force for cigarettes and hand rolled tobacco in 2019. It is expected that the Meeting of the Parties to the Protocol will, at an early stage after the entry into force of the Protocol, take a decision on the establishment and design of the global tracking and tracing regime as envisaged in the Protocol.