

ILLICIT TOBACCO TRADE IN THE EUROPEAN UNION 2017-2019

Report on study visits of academic researchers to
national customs authorities



1. Introduction

This document provides a compilation of the key conclusions of the study visits conducted at national customs authorities in the context of the implementation

of illicit tobacco trade in the European Union 2017–2019 by the Secretariat of the WHO FCTC (Convention Secretariat) with the financial assistance of the European Union.

2. Context

In line with the requirements of the project, study visits to national customs administrations were organized in 10 of the project target countries. The study visits contribute to the general objectives of the project as well as the specific objective of increasing the academic researchers' understanding of the threat posed by illicit tobacco trade and the practical challenges faced by law enforcement authorities in combatting it.

Study visits were organized at the seat of the customs authority of the following countries, which were engaged with and agreed to host a visit: Bulgaria, Czechia, Estonia, Finland, Hungary, Latvia, Lithuania, Poland, Romania and Sweden.

The academic researchers selected to participate in the project conducted the study visits, where possible, in their country of origin, to facilitate communication and exchange of information with local officers.

3. Main findings

3.1. Scale of the illicit tobacco market

Illicit tobacco trade is seen as an area of concern for all customs authorities, but with some differences in the scale of the problem across countries. The scale and size of the problem seem to be a direct consequence of two main factors:

- i. the location, geography and border region of the country;
- ii. the level of cooperation with neighbouring countries and with non-European Union (EU) countries.

Based on the outcome of the study visits, the following general trends can be observed:

- Illicit tobacco products manufactured in third countries enter the territory of the EU through either the Baltic or south-eastern European border and continue to western and northern Europe as points of sale.
- Organized crime groups are the mayor actors in the illicit tobacco supply chain. These groups are mostly international and operate cross border.
- In general, low levels of bootlegging activities are reported, with some exceptions. Contraband and cheap whites are the typologies of illicit tobacco

most frequently reported in the jurisdictions visited. Counterfeiting is reported less frequently.

- New categories of tobacco products on the illicit market represent an emerging concern for authorities.

3.2. Measurement of illicit tobacco trade

Measurement of illicit trade in tobacco products emerged as an issue across all jurisdictions analysed during the visits. A few countries provide internal, independent estimates, but these appear to be an exception as most countries in the region still rely on private sector and/or tobacco-funded research and data.

Official data on seizures tends to be available across jurisdictions, but the monitoring and sharing of this information depends on the level of internal cooperation among the different agencies involved (e.g. tax, customs, police, border control authority, ministry of finance, ministry of interior).

The importance of establishing bodies for internal cooperation (e.g. an interministerial or interdepartmental task force) to ensure effective sharing of information among domestic agencies was reported as a key element in obtaining a clearer understanding of the size of the illicit

market. Furthermore, existing institutional knowledge and expertise should be preserved: as an example, a considerable shift of competences was reported in one case, resulting in a gap in monitoring and analyses of existing trends due to the inaccessibility of more recent data.

Only two countries among the ones visited in the context of the project provide official estimates on illicit tobacco trade, produced by public authorities. In the rest of the countries, estimates on the size of the illicit tobacco market are directly provided by the tobacco industry or by private sector actors, in some cases directly funded by the tobacco industry. Data on loss of revenue, when available, is provided on the basis of the same estimates and/or on the total volume of seizures.

Estimates on the size of the illicit market differ considerably among countries, but on average these values appear to be in line with globally observed indicators on the total volumes of illicit tobacco products as a percentage of total tobacco markets.

Based on a comparative overview of experiences across jurisdictions, it can be concluded that measurement represents an area for further research and improvement, with particular regard to the development of common methodologies in the measurement of illicit tobacco flows to permit effective comparisons between jurisdictions. The tendency to rely on private sector and tobacco industry-funded research for the provision of data on illicit tobacco should also be noted.

Estimates on loss of revenue derived from illicit tobacco trade depend on the rate of excise and other taxes applicable to tobacco products in each country, therefore no general trend can be identified. As an indication, reported loss of revenue fluctuates in the range of €6–60million at national level.

3.3. Challenges

The set of challenges encountered by law enforcement agencies in combatting illicit tobacco and reported by the lead experts during the study visits is of a varied nature and can be categorized as (i) legal, (ii) administrative, and (iii) practical. Cooperation is also cited as a challenging aspect of law enforcement activities in combatting illicit tobacco, mostly regarding cooperation with authorities in non-EU countries. Levels of cooperation vary and seem to be influenced by the status of bilateral relations between countries. A more detailed discussion of

cooperation-related challenges is provided in Section 4. International cooperation.

3.3.1. Legal

Legal challenges relate to the legislative framework under which law enforcement authorities operate, including criminal legislation applicable to illicit trade in tobacco products.

In more than one instance, the existing domestic legal framework for the prosecution of bootlegging and smuggling of illicit tobacco products in small quantities was noted as a challenge to the effective combat of illicit tobacco trade. In particular, the low deterrent effect of sentences and penalties for illicit tobacco trade offences, as well as lengthy procedures for sentencing, were highlighted as an area for improvement.

In some instances, authorities reported the need to update the existing legislative framework to ensure their mandate extends to cover all types of goods, including emerging types of tobacco products distributed on the illicit market.

A specific challenge reported relates to the lack of harmonization in data protection regulations applicable to the use of specific technological tools. For example, with regards to automatic license plate recognition systems, differences in data protection requirements represent a potential obstacle in the effective sharing of information between authorities from different countries.

3.3.2. Administrative

Administrative challenges include (a) issues identified as a source of concern by authorities which are a direct reflection of internal organizational decisions (particularly on resources) and (b) problems issuing from international cooperation arrangements, but that are not directly caused by gaps in the legal framework.

The key administrative challenges identified by authorities in the context of the study visits include:

- low human and financial resources to combat bootlegging
- low levels of cooperation between domestic agencies involved in combatting illicit tobacco
- policy priority shifts to counter other illicit goods apart from tobacco.

Seizure and disposal procedure for manufacturing equipment

A particular challenge raised by more than one authority relates to the procedure for disposal of equipment used in the manufacturing process of tobacco products. Current disposal procedures in some countries permit the re-sale of seized equipment, in apparent lack of appropriate know-your-customer requirements and/or post-sale monitoring procedures.

3.3.3. Practical

Practical challenges mainly relate to aspects that are not influenced by either legislation or policy decisions, and include the following:

i. Geography and border control

The main challenge faced by law enforcement authorities in most of the countries targeted by the project is a direct consequence of their geography and location, in that they share borders with countries outside of the EU. Most frequently, authorities reported challenges in ensuring control of illicit goods coming through these borders.

In some cases, however, authorities also reported difficulties in ensuring control of goods inside EU territory. In these cases, illicit goods enter a jurisdiction after having arrived in the EU territory through a neighbouring country, taking advantage of the internal customs union rules.

In some cases, geography is the reason for lower levels of illicit tobacco detected in a jurisdiction. Coastline areas and peninsular countries – in the absence of long stretches of land border – encounter fewer challenges in patrolling borders, therefore creating a disincentive for organized groups to use their territories for smuggling activities.

ii. Modus operandi of criminal groups

The modus operandi of criminal actors involved in the illicit trade of tobacco products represents a major challenge to law enforcement authorities. Some of the key aspects noted by authorities relate to (i) the secretive nature of the phenomenon, (ii) the transnational reach of the groups involved, (iii) the reliance of such groups on individuals with military background and expertise, (iv) the use of unconventional transit routes and (v) the use of advanced surveillance techniques to prevent detection of shipment.

iii. Price differentials

Price difference was reported as a rationale for illicit trade – and thus a challenge to activities aimed at combating it – by authorities in the context of some visits; however, no indication was provided as to whether this information was retrieved from private sector data or other sources.

iv. Other challenges

Other practical challenges encountered in combatting illicit trade in tobacco products, as reported by authorities, include (i) public perception and high tolerance of illicit tobacco, and (ii) low purchasing power of the local population to buy (legal) tobacco products.

3.4. International cooperation

International cooperation is recognized as a fundamental tool in the fight against illicit tobacco across jurisdictions. Experience in international cooperation, however, differs widely between countries, based on the level of cooperation established with other EU and non-EU countries.

Cooperation with other EU Member States is generally perceived as positive and fruitful, whereas the level of cooperation with external countries varies considerably among countries participating in the project. In some cases, national authorities report “active and structured” levels of cooperation, whereas in others, lack of cooperation is reported. The divergence in levels of cooperation relates to the more general bilateral relations between the countries involved.

The existence of formal bilateral and multilateral cooperation agreements is a significant factor in international cooperation. Most countries have bilateral or multilateral cooperation agreements with selected countries, focused on enforcement in customs matters and under the umbrella of which liaison officers are deployed across the region. Some authorities also pointed to the necessity of developing formal cooperation with EU-neighbouring countries, including by promoting ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products, to ensure effectiveness in the sharing of information between authorities.

Another issue relates to the different categorization of illicit trade in tobacco products as an offense or a misdemeanour in non-EU countries, which affects the ability of law enforcement agencies to seek support via established channels for cooperation on criminal matters.

Finally, a general concern relates to the time required to receive information from authorities in both EU and non-EU countries, which negatively affects investigation and prosecution of illicit tobacco trade.

3.5. Availability of resources

Authorities consulted in the context of the project did not express particular concern over the level of resources at their disposal and no agency reported a lack of resources or underfunding, with the exception of one authority, that reported insufficient staffing and funding to combat bootleggers.

In one case, concerns were raised in relation to the availability of resources to ensure that effectively independent and centralized systems for monitoring of illicit tobacco are established.

This issue also relates to the distribution of roles and functions across different agencies, for which, however, there is no identifiable trend across jurisdictions. In some instances, a dedicated team is working on illicit tobacco, whereas in others the distribution of responsibilities follows the priorities set by the authority at the given moment. In some instances, the focus is more on tax issues, whereas in at least one instance all analysis and intelligence activities are conducted by a single ministerial office, on the basis of information on seizures provided by all agencies involved in combatting illicit tobacco (police, customs, border control agency).

It is difficult to determine whether sufficient resources are dedicated to combatting illicit tobacco in all jurisdictions, as in most cases staff and resources are directed to various areas of intervention, without distinguishing between typology of goods monitored. Where the policy focus shifts depending on the priority of different goods, this can

have a detrimental effect on the resources available to combat illicit tobacco.

With regard to technological resources, most authorities have access to modern technologies for detection of illicit goods (including X-rays and sniffer dogs). Other tools used by some authorities include automatic licence plate recognition systems and monitoring control systems, based on algorithms that randomly select vehicles for inspection. Full implementation of these systems and exchange of information acquired through their use could possibly support authorities in effectively allocating resources by providing statistically relevant information on flows of illicit tobacco goods.

3.6. Free zones

Free zones represent a key area of intervention for policies aimed at countering illicit trade in general and even illicit tobacco in particular. Nevertheless, authorities consulted in the context of the project did not express particular concern with regard to the existence of free zones within their jurisdictions and their use in the context of illicit tobacco trade.

Regulatory approaches on this matter are varied. In some jurisdictions, free zones are completely absent. Where they are present, in most cases, customs authorities retain the same powers of inspection and control over transiting goods; however, in at least one case, customs authorities are not entrusted to perform controls over transiting goods.

In general, however, no indication emerged during the study visits that, when existing, free zones represent a concern for authorities in the context of combatting illicit tobacco trade.

4. Lessons learned and best practices identified

A compilation of lessons learned and best practices identified, based on the outcome of the study visits conducted at the national customs authorities of the participating countries can be found below.

4.1. International cooperation

- International cooperation is a key aspect of any effective enforcement strategy to counter illicit tobacco trade, which is mostly transnational in nature.
- Though levels of intra-EU cooperation are reported as high across jurisdictions, more efforts can be made to

ensure that information is shared promptly to support investigation and prosecution of illicit tobacco trade-related offenses.

- Higher levels of cooperation in the exchange of information regarding data sourced through new technologies, in particular, could be helpful.
- Cooperation with non-EU countries can be improved, depending on the existing level of cooperation between each country.
- In general, ratification of the Protocol among non-EU countries is recognized as an important step towards higher effectiveness of the existing and upcoming tools for exchange of information among authorities.¹

4.2. Domestic cooperation

- Domestic cooperation between agencies involved in combatting illicit tobacco is also an area open for improvement.
- Authorities should consider making data available to all agencies involved in combatting illicit tobacco.
- The establishment of dedicated bodies within relevant institutions involved in combatting illicit tobacco also emerged as a best practice, which can contribute to the development of a horizontal, cross-agency approach (including, in particular, in relation to the sharing of information). Examples of best practices in this regard include the following alternative options:
 - the creation of a dedicated team within the customs authorities to combat illicit tobacco; and/or
 - the establishment of an inter-ministerial intelligence unit including officers from all relevant ministries and officers with different skillsets and expertise; and/or
 - the establishment of an interagency cooperation board involving police, customs and border guards.

4.3. Measurement and monitoring of illicit tobacco

- Ensure a systematic approach towards measurement of the size of illicit tobacco markets by using different methodologies, including comparisons with data on seizures.

- Limit reliance on data provided by actors in the private sector and/or tobacco industry and cross check to validate data when these are the only source of information.
- Ensure sharing of information and data among domestic agencies involved in combatting illicit tobacco and ensure all agencies have access to relevant data.
- If possible, resources should be allocated for independent studies to be produced by public, independent bodies on the basis of official data.

4.4. Resources and tools to combat illicit tobacco

- The use of innovative detection techniques, including tracking and tracing systems,² monitoring control systems, license plate automatic recognition systems and automatic exchange of information on duties declarations, can help enforcement agencies in the detection of illicit tobacco transiting through the border.
- These tools can also provide relevant information regarding sources of illicit tobacco products.
- In order to achieve effective implementation of these methodologies more cooperation between authorities is necessary, specifically to support national law enforcement agencies in:
 - designing instruments for measurement and monitoring, including developing the algorithms on the basis of which these instruments operate;
 - developing common training curricula for customs, police and other law enforcement bodies in the effective use of new technologies for detection of illicit goods;
 - ensuring harmonization of applicable regulations (data protection) to ensure information sharing for data obtained through new technologies.
- Ensure resources are available to combat high-volume flows as well as small-quantities smuggling, particularly on the less patrolled border areas.
- Ensure adequate logistical resources are dedicated to customs units operating on the border checkpoints.

¹ Questions on the cooperation framework with intergovernmental organizations such as the World Customs Organization, the United Nations Office on Drugs and Crime and any other relevant international agencies were not included in the interviews and were therefore not identified as a challenge to the activities of domestic law enforcement authorities in the context of the study visits.

² Domestic tracking and tracing systems have been introduced in some of the participating countries in recent years; in any event, in accordance with recent EU legislation, all EU Member States are currently expected to introduce tracking and tracing systems for tobacco products.

4.5. Legal framework

- Ensure regulations are enacted to restrict the volume and frequency of incoming cigarettes for personal consumption, to disincentivize bootlegging.
- Ensure a proper domestic legal framework for the prosecution of bootlegging and smuggling of illicit tobacco products in small quantities.
- Ensure customs authorities have the necessary powers to conduct checks and control over goods transiting in free zones, if present in the territory of the country.

4.6. Awareness raising

- Enact measures to raise awareness of illicit tobacco among the public.
- Ensure coordination between health authorities and enforcement agencies working on illicit tobacco to develop educational campaigns.



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