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To: High Level Working Party of Directors-General for Customs

Subject: Future Challenges for the Customs Authorities in the Control of Movement of Tobacco Products

- A background document for discussion at the High Level Working Party of Directors-General for Customs

Delegations will find in the annex the above revised document, prepared by the Presidency.

Future Challenges for the Customs Authorities in the Control of Movement of Tobacco Products

A background document for discussion at the High Level Working Party of Directors-General for Customs, prepared by the Presidency

28 June 2017

The European framework for fighting the illicit tobacco trade is undergoing important changes. The FCTC Protocol to eliminate illicit trade in tobacco trade ("Protocol") will eventually offer opportunities to better coordinate anti-smuggling action at the international level, but also pose challenges in terms of implementation in the EU (and beyond). A key element in that regard is the tracking and tracing system, as also required by the Tobacco Products Directive.

The extent of the illicit tobacco trade in the EU remains a cause for serious concern. It is estimated that the illicit tobacco consumption in the EU is in the range of 55 to 65 billion sticks annually albeit the overall decrease in consumption.

Apart from posing a serious threat to public health in view that it increases access to cheaper and less regulated tobacco products, this illicit trade also causes substantial losses in government revenues while providing funds for criminal organisations.

Over the last two years, seizures of illicit tobacco products across the EU have risen by a fifth. The smuggling of illicit cigarettes in very large quantities, particularly in containers is less frequent today as opposed to multiple border-crossings with smaller quantities which is gaining in frequency.

It has been observed that contraband from the major international producers is today less prominent in the EU. On the other hand, cheap whites and counterfeits dominate in the large-scale seizures particularly in seizures related to containerised cargo. Also the European Parliament called on the Commission to tackle in particular the problem of cheap whites.

The Protocol was developed in response to the growing illicit trade in tobacco products, including in cheap whites.

It aims, *inter alia*, to make the supply chain of tobacco products secure; one of the measures being the establishment between the Parties of a global tracking and tracing regime based on national and/or regional tracking and tracing systems, within five years of entry into force of the Protocol. It also requires the operation of a licensing or equivalent approval system with respect to both tobacco products and manufacturing equipment.

Moreover, the Protocol establishes offences, supports international enforcement cooperation, addresses liability and requires the disposal of confiscated products.

In view of the irreconcilable conflict between the tobacco industry's interests and public health interests, the Protocol includes specific obligations regarding mentioned industry. Parties have to ensure that any interaction with the tobacco industry is limited to the extent strictly necessary to implement especially tracking and tracing, and must not delegate any of their obligations in that regard to the tobacco industry.

The revised Tobacco Products Directive which was adopted in 2014, aims to secure the supply chain on the basis of an EU-wide tracking and tracing system. By implementing the tracking and tracing provisions of the TPD, Member States will also comply with the corresponding provisions of the FCTC Protocol. As of May 2019, cigarettes produced in, or for consumption in the EU, will be tracked and traced. The Commission is currently preparing the legislation required to establish the EU's future tracking and tracing system.

One issue of concern for Customs Authorities is the fact that Tax stamps are used in 22 Member States and the size and placement is defined by MS' domestic legislation. In 19 MS there is a requirement that stamps must be broken on the opening of the pack. Within two years health warnings must change on all packs and the tax stamp has to move. This means that all manufacturing processes have to be changed with significant consequences to the industry. Packaging has to change completely due to the health warning positioning.

The emerging tracking and tracing regime is complemented by the excise movement control system (EMCS), which is the second pillar of the emerging European control system for the movement of tobacco products. The EMCS is currently under review.

Discussion

What are the Member States' views on the opportunities and challenges offered by the new European framework to fight the illicit tobacco trade, including with regard to the emerging track and trace system?
