



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 22 November 2013
(OR. en)**

16644/13

**ENFOCUSTOM 163
UD 300
SAN 470
DROIPEN 146
COPEN 213
FISC 225**

"I/A" ITEM NOTE

From: General Secretariat of the Council
To: COREPER/Council
Subject: Draft Council Conclusions on stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products in the EU

1. On 3 July 2013, the Commission presented its Communication "Stepping up the fight against cigarette smuggling and other form of illicit trade in tobacco products - A comprehensive EU Strategy", accompanied by the Anti-smuggling Action Plan (doc. 11014/13 UD 139 SAN 217 DROIPEN 79 COPEN 96 + ADD 1 + COR1), which outlined the nature and scale of the EU problem with illicit tobacco trade, identified factors that contribute to it, and proposed a strategy to fight the problem in the EU.
2. Following the first discussion on the Communication and Action Plan at the Customs Cooperation Working Party (CCWP), Council Conclusions were drafted to address the issue of illicit trade in tobacco products.

3. The draft Council Conclusions were presented and examined during the CCWP meetings on 13 September, 11 October, 12 November and 18 November 2013, where the amended text was endorsed by the working party.
4. Consequently, COREPER is invited to confirm the agreement on the text of the draft Conclusions as set out in annex and to submit it to the Council for approval.

DRAFT

Council conclusions on stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products in the EU

THE COUNCIL OF THE EUROPEAN UNION

ALERTED by the evolution and growth of the illicit tobacco market in the European Union, in which illegally traded cigarettes constitute by far the biggest share;

TAKING INTO ACCOUNT the important negative financial impact estimated annually at over 10 billion euro of this illicit trade on the budget of the EU and the Member States; and also the considerable negative impact on health protection, especially of vulnerable groups such as young people;

TAKING INTO ACCOUNT the fact that organised criminal groups are increasingly active in cigarette smuggling¹;

NOTING the international dimension of the illicit trade;

NOTING the strategic importance of certain regions and countries in this trade;

RECALLING the Protocol to eliminate illicit trade in tobacco products adopted in November 2012 by the fifth Conference of the Parties to the WHO Framework Convention on Tobacco Control in Seoul, the Republic of Korea;

¹ EU Organised Crime Threat Assessment - OCTA 2011, p.24

RECALLING the customs and excise fraud related priorities and tasks that were set out in strategic documents such as the Stockholm Programme²; the Internal Security Strategy³; the Council Conclusions on the contribution of the customs authorities to the implementation of the Stockholm Programme in the fight against serious and organised cross-border crime⁴; the Commission Anti-Fraud Strategy⁵; the Council resolution of 13 December 2011 on the future of customs law enforcement cooperation⁶; the Strategy for the future customs law enforcement co-operation, endorsed by the Council on 6-7 December 2012⁷; Council Conclusions on the customs cooperation with Eastern neighbouring countries of 6 December 2011⁸; the Council Conclusions on strengthening the security of the supply chain and customs risk management⁹; the Council Conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017¹⁰ and the Multi-Annual Strategic Plan (MASP) related to the EU crime priority "MTIC/Excise fraud"¹¹;

STRESSING the customs authorities role, each within their respective legal framework, as the leading authority for controlling the movement of goods;

HIGHLIGHTING the importance of effective cooperation between relevant authorities on national and EU level in the fight against cigarette smuggling and other forms of illicit tobacco trade (hereafter – illegally traded tobacco products) in the EU;

EMPHASISING the importance of tackling global production and supply chain problems at source and leveraging EU and Member State influence to drive action to improve supply chain security, including intelligence-sharing;

² OJ C 115, 4.5.2010, p. 21., 23

³ doc. 7120/10 JAI CO EUR-PREP 8 JAI 182

⁴ doc. 8096/11 JAI 183 ENFOCUSTOM 18.

⁵ COM(2011) 376 final and SEC(2011) 791 final

⁶ OJ C 5, 7.1.2012, p.1.

⁷ doc. 17778/12 ENFOCUSTOM 142 COSI 131

⁸ doc. 16881/11 UD 317

⁹ doc. 8761/3/13 UD 90 ENFOCUSTOM 84 ENFOPOL 135

¹⁰ doc. 9849/13 JAI 407 COSI 62 ENFOPOL 151 CRIMORG 77 ENFOCUSTOM 89 PESC 569 RELEX 434

¹¹ doc. 12623/5/13 COSI 96 ENFOPOL 249 ENFOCUSTOM 121 CRIMORG 104 JAIEX 61 RELEX 689 PESC 930 UD 194 FISC 149

EMPHASISING the importance of an enhanced customs risk management for the fight against illegally traded tobacco products;

CONSIDERING that consistency should be ensured between actions aimed at the fight against illegally traded tobacco products and the respective EU Policy Cycle priority for the fight against serious and organised crime set for the years 2014-2017, the goals of MASPs and actions of annual Operational Action Plans (OAPs);

ACKNOWLEDGING the need to improve the co-operation and capacity of Member States and relevant EU institutions, bodies, offices and agencies, where applicable, to investigate, prosecute and sanction offences related to illegally traded tobacco products, including seizure and confiscation of the proceeds of crime;

AIMING to fight illegally traded tobacco products by all appropriate means, including by means of law enforcement and criminal prosecution;

HIGHLIGHTING the importance of efficient implementation of the Protocol to eliminate illicit trade in tobacco products to the WHO Framework Convention on Tobacco Control (hereinafter "the FCTC Protocol") in the EU;

NOTING the importance of efforts aimed at fostering international implementation of the necessary supply chain control measures in particular those foreseen by the FCTC Protocol;

HIGHLIGHTING the importance of setting clear priorities for the fight against illegally traded tobacco products that can be implemented at EU and, where relevant, national or regional level;

HIGHLIGHTING the request to the Commission to present a report, no later than mid-2018, on the provision of necessary financial resources to purchase appropriate tools for customs controls in the area referred to in Art. 3(a) of the TFEU, including the possibility of allocating these resources through a single fund.¹²

¹² doc. 17298/12 ADD1 UD319 AELE91 CODEC 2921

WELCOMES

The Commission Communication on a comprehensive strategy to fight against cigarette smuggling and other forms of illicit trade in tobacco products, and the Action Plan accompanying the Communication, in particular, the engagement to

- Improve operational cooperation and sharing of analytical information and intelligence among Member States' customs authorities and relevant EU institutions, bodies, agencies and offices with a role in the fight against illegally traded tobacco products (including OLAF and DG TAXUD, Europol, and Eurojust);
- Ensure the optimal use of existing IT tools for information exchange purposes;
- Reduce, via means proposed in the Action Plan, possible distortion in the internal market giving rise to the possibilities for illegal trade in tobacco products;
- Assist Member States in identifying the most suitable programmes to fund customs control equipment;
- Develop a specific voluntary training scheme in cooperation with the Member States responding to their identified and assessed specific training needs;
- Organise further targeted operational actions, e.g. Joint Customs Operations and identify customs priority control areas and increase their effectiveness within the limits of the Member States resources;
- Start an awareness raising campaign about the specific risks associated with the consumption of illicit tobacco products;
- Address the issue of illegally traded tobacco products with main source and transit countries outside the EU in a systematic manner.

INVITES THE MEMBER STATES AND THE COMMISSION

- To take the necessary measures to improve the operational capability to detect illegally traded tobacco products, notably by improving risk management, as indicated in the Council Conclusions on strengthening the security of the supply chain and customs risk management;
- To take the necessary measures to further improve investigations both at national and EU level and to improve the coordination in the field of customs law enforcement (including OLAF, DG TAXUD, Europol, and Eurojust within their competence in the fight against illegally traded tobacco products). These measures also need to address the significant dangers that are posed by the role played by organised crime groups in the illicit tobacco trade, and therefore include effective action to fight corruption;
- To agree on targeted operational customs and excise fraud related actions for the coming years and to ensure their effective execution taking into account in particular the Commission Communication and the Action Plan accompanying it, the MASP for the EU crime priority "MTIC/Excise fraud" and the OAPs implementing it;
- To participate, where possible, in customs and excise fraud related actions organised by international organisations, e.g. the World Customs Organisation;
- To discourage people from purchasing illicit tobacco products by raising awareness about the risks associated with it;
- To engage the necessary efforts in close cooperation with relevant EU institutions, bodies, offices and agencies to encourage the main source or transit countries outside the EU also ratify and implement the FCTC Protocol, and take all measures to reduce to a minimum the scope for smuggling and diversion of tobacco products;

- To engage the necessary efforts to improve the international cooperation of relevant EU institutions, bodies, offices and agencies and national law enforcement authorities to enable an effective fight against international criminal networks;
- To take the necessary measures, where appropriate, to ensure that the illicit trade in tobacco products is treated as part of the global tax fraud issue to be addressed across all international fora dealing with global tax issues, including the OECD and the G8 and G20 groups of countries;
- To cooperate with relevant international organizations and to combine efforts, available expertise, and to enhance efficient use of relevant existing systems/data bases.

INVITES THE MEMBER STATES

- To effectively use existing legal instruments, in particular the Naples II Convention;
- To take the necessary measures to ensure, on a sound legal basis, that investigations are comprehensive, cover also financial flows related to illicit trade in tobacco products and lead to an effective prosecution of smuggling and other forms of the illicit trade, including investigations where more than one Member State is involved;
- To ensure that sanctions are effective, proportionate and dissuasive;
- To actively participate in the development and implementation of the Action Plan, the implementation of the MASP for the EU crime priority "MTIC/Excise fraud" and the actions specified in OAPs in order to enhance the fight against illegally traded tobacco products;
- To facilitate customs' access to relevant financial programmes and funds, within the existing budget, particularly for appropriate tools for customs controls at the external borders of the EU, taking into account the importance of the fight against illicit trade in tobacco products.

INVITES THE COMMISSION

- To take steps to strengthen cooperation with main source and transit countries, on a sound legal basis, including through structured dialogues within the existing or new frameworks and by initiating the process of conclusion of international agreements or operational arrangements on fighting against illicit trade in tobacco products;
- To identify and present concrete ways of enhancing the financial and technical assistance available to Member States in their execution of the Action Plan and to facilitate customs' access to relevant financial programmes and funds, within the existing budgetary framework, particularly for appropriate tools for customs controls at the external borders of the EU, taking into account the importance of the fight against illicit trade in tobacco products;
- To organise regular meetings between experts from Member States and, as appropriate, with the participation of representatives of the EU agencies, such as Europol, with a view to improving the use of existing databases, carrying out an annual analysis of seizures of tobacco products and preparing threat assessments and operational actions;
- To ensure efficient and effective interservice and interagency operational cooperation and coordination of activities related to the fight against illicit trading of tobacco products with a view to ensuring best possible use of available resources, expertise and creating synergies;
- To continue making use of cooperation agreements with relevant tobacco manufacturers to fight the illicit trade in tobacco products;
- To monitor and evaluate the implementation of the Action Plan and the actions highlighted by the Council and report back by the end of 2017 (with interim reports by the end of each year), in particular, on the effects of the proposed actions on the different drivers of the problem.