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Subject: Council conclusions on stepping up the fight against illegally traded tobacco products in the EU
- Council conclusions (7 December 2017)

Delegations will find in the Annex the Council Conclusions on stepping up the fight against illegally traded tobacco products in the EU, adopted by the Council at its 3584th meeting held on 7 December 2017.

COUNCIL CONCLUSIONS
ON STEPPING UP THE FIGHT AGAINST ILLEGALLY TRADED
TOBACCO PRODUCTS IN THE EU

THE COUNCIL OF THE EUROPEAN UNION,

WELCOMING the Commission's 'Tobacco Implementation Report'¹ progress report on the implementation and execution of the Action Plan accompanying its Communication,

HIGHLY CONCERNED by the continued scale of the illicit tobacco market in the European Union, of which illegally manufactured or traded cigarettes constitute by far the biggest share, and by the increase in illegally traded water-pipe tobacco and other tobacco products,

TAKING INTO ACCOUNT the significant negative financial impact of this illicit trade on the budget of the EU and the Member States, and also its considerable negative impact on health protection and the rule of law,

HIGHLY CONCERNED by the fact that organised crime groups are very active in smuggling tobacco products and by the increasing number of dismantled illegal production locations within the EU,

¹ 9319/17

RECALLING the priorities and tasks that have been set out in strategic documents such as the renewed European Union Internal Security Strategy 2015-2020², the Council Conclusions on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021, which include as a crime priority excise fraud³, the Council Conclusions on the Progress Report on the implementation of the EU Strategy and Action Plan for customs risk management⁴, the Council Conclusions on Developing the EU Customs Union and its Governance⁵, the Council Conclusions on customs funding⁶, the Council Conclusions on enhanced exchange of customs related information with third countries⁷ and the Council conclusions on the way forward to improve information exchange and ensure the interoperability of EU information systems⁸.

RECALLING the continuing relevance and importance of the priorities and tasks that have been set out in strategic and other documents related to the illegal tobacco trade such as the 2013 EU strategy to step up fight against Illegal tobacco trade⁹ and its Action Plan¹⁰ and the Council conclusions on stepping up the fight against cigarette smuggling and other form of illicit trade in tobacco products¹¹.

RECALLING the European Parliament resolution of 9 March 2016.

HIGHLIGHTING the importance of strengthening customs risk management by tackling risks, strengthening supply chain security and facilitating trade and recalling the Import Control System (ICS) as a key initiative for strengthening real-time risk analysis and supporting better collaboration between customs authorities and between customs authorities and other authorities,

NOTING that the Council's conclusions on the Risk Management Strategy underlined that 'effective and efficient controls and mitigation measures should be enhanced by developing further interagency cooperation and improving the related accessibility and sharing of risk information',

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- 2 9798/15
 - 3 9450/17
 - 4 14894/16
 - 5 7585/1/17 REV 1
 - 6 7586/17
 - 7 14220/6/16
 - 8 10151/17
 - 9 11014/13 + COR 1
 - 10 11014/13 + ADD1
 - 11 16644/13

STRESSING the role of customs authorities as the leading authority for controlling the cross-border movement of goods, especially key inputs for manufacturing cigarettes (equipment, acetate tow/filters, cigarette paper, raw tobacco) and tobacco products (cigarettes, cut tobacco, loose tobacco, water-pipe tobacco, nicotine-containing liquids for e-cigarettes, smokeless tobacco),

HIGHLIGHTING the importance of effective multilateral, multidisciplinary and multinational cooperation between relevant authorities at national, at EU level and with third countries and other relevant parties in the fight against illegally traded tobacco products in the EU,

CONSIDERING that consistency should be ensured between actions aimed at the fight against illegally traded tobacco products and the 2018-2021 EU Policy Cycle crime priority on excise fraud and that experience gained from the previous conclusions and actions should be duly taken into consideration,

ACKNOWLEDGING the need to efficiently investigate, prosecute and sanction offences related to illegally traded tobacco products, including through the seizure and confiscation of the proceeds of crime and by preventing such funds from flowing into the EU economy,

NOTING the importance of implementation and of efforts aimed at fostering international implementation of the necessary supply chain control measures, such as those provided for by the Tobacco Products Directive and the Protocol to eliminate illicit trade in tobacco products to the WHO Framework Convention on Tobacco Control (FCTC Protocol),

HIGHLIGHTING the growing importance of tackling the cheap-white phenomenon and reaching out to the main source and transit countries outside the EU in order to enhance intelligence-sharing and cooperation,

NOTING that there is a need to enhance the multi-agency approach and to share analytical information among EU law enforcement agencies and EU bodies (including OLAF and DG TAXUD, Europol and the European Border and Coast Guard Agency (Frontex)),

NOTING that there is a need to reduce the incentives for illicit activities and the social acceptability of the illegal tobacco trade,

INVITES THE MEMBER STATES AND THE COMMISSION each one in the sphere of its competence:

- to improve the operational capabilities at national and European level to detect and investigate illegally traded tobacco products, including by:
 - improving risk management, as indicated in the Council Conclusions on strengthening the security of the supply chain and customs risk management ;
 - enhancing the collection of data and information based on advanced analytical IT solutions and creating interoperability options to fight against illegal tobacco trade;
- taking necessary measures to improve co-operation and enhance multi-agency-approach between national and EU and international levels and amongst EU and international stakeholders by sharing information, granting access, using existing platforms and communication channels, such as OLAF's AFIS, DG TAXUD's CRMS, Europol's SIENA, WCO's CEN, Frontex's Eurosur and that comply with specific data protection requirements and respect competences;
- to take the necessary measures to reduce the social acceptability of consumption of illegal tobacco products and the illegal tobacco trade;
- to explore solutions leading to a more systematic monitoring of the key input materials for production of tobacco products (such as machinery, on raw cut tobacco, filters and papers used by the tobacco industry) and the new tobacco products (such as e-cigarettes, smokeless tobacco).

INVITES THE MEMBER STATES:

- to consider ratifying and implementing the FCTC Protocol;
- to expand international cooperation using the tools available from Frontex and Europol along with other information exchange systems and databases, without duplicating existing and well-functioning information exchange systems;

- to improve international cooperation, including as it relates to investigation and law enforcement authorities, to enable an effective fight against the illegal tobacco trade, for example by setting up joint investigation or analysis teams on the basis of the Naples II Convention;
- to ensure that investigations are comprehensive, encompassing criminal money flows and the recovery of illegal assets.

INVITES THE COMMISSION:

- to promote the FCTC Protocol to third countries (particularly the main source and transit countries) and to intensify the efforts to prevent illicit trade in tobacco in partnership with those third countries, including with respect to the fiscal drivers underpinning the illicit tobacco trade;
- to provide a document, which analyses individual provisions of the FCTC Protocol and discusses their implementation at EU and national level;
- to determine the technical standards for the Tracking and Tracing system in line with the Tobacco Products Directive, which shall not impose disproportionate charges on operators, in particular on small and medium size operators.
- to put forward an action plan setting out new measures to tackle the problem of 'cheap whites' as a matter of urgency;
- to expand OLAF's liaison officers' network to source and transit countries of illegal tobacco products and to use the Europol liaison officers' network;
- to review statistical needs and reporting form fields and to carry out regular analysis of collected data and provide strategic and operational overviews on the illegal tobacco trade to Member States' authorities, in close cooperation with Member States, Europol, Frontex, OLAF and other stakeholders.