

BRIEFING

on the EU cooperation agreements with tobacco manufacturers

Summary

In the past several years, the EU and Member states have shown that they take fight against illicit trade very seriously, by:

- developing a comprehensive framework for combating illicit trade in tobacco products
- regulating an industry which had a track record – and an obvious vested interest – of being involved in smuggling
- introducing traceability of tobacco products.

Key questions:

- Why does the EU maintain in place cooperation agreements with the industry it already regulates and controls?
- Are these contracts necessary or even beneficial to the EU's fight against illicit tobacco trade?

Why is this important?

1. Cooperation agreements with the tobacco industry are obsolete.

The contracts (latest concluded in 2010) were concluded **before** several strategic and legislative acts were adopted, which create a comprehensive regulatory and customs & law enforcement cooperation framework to control and curb illicit trade.

2. The agreement create the appearance of cooperation, when regulation is required

The agreements create a framework for cooperation with tobacco manufacturers which goes against the spirit and the letter of the [International Protocol to eliminate Illicit Trade in Tobacco Products](#) and of the [Framework Convention on Tobacco Control](#).

3. The renewal of one tobacco industry agreement was already rejected by the EU institutions and Member States

In 2016, at the [urging of the European Parliament](#), the EU and Member States decided not to renew one such agreement with Philip Morris International.

Background

- Following a lawsuit opened by the EU in the early 2000, PMI (Philip Morris International) agreed to a landmark agreement with the EU and its Member States to settle the court case in 2004. In the agreement, PMI undertook a series of obligations with a view to establish an extensive system of cooperation with the EU meant to address the illicit trade of its products



- In subsequent years, such agreements were signed with Japan International (2007-2022), British American Tobacco (2010-2030) and Imperial Tobacco (2010-2030).
- Through the agreements, the signatory companies undertook legal obligations to make certain payments to the EU and Member States and to prevent future smuggling of their own products:
 - Mandatory collective payments (total of US\$ 2.15 billion) to the EU and countries which are parties to the agreements
 - Seizure payments (100% of the evaded taxes of seizure products) to be made for any seizure of the companies' genuine products above a certain threshold
 - Measures (such as limits on sales) to prevent oversupplying of markets and diversion of tobacco products into illicit channels.
 - Monitoring the distribution system and the contractors which are supplied with cigarettes by the companies in order to prevent their diversion to the black market.
- The current EU legislative and policy framework with regard to the fight against illicit trade in tobacco products has been developed in recent years with the following elements:
 - The adoption of the [EU comprehensive strategy to combat illicit tobacco trade \(2013\)](#) and its action plans ([2013](#), [2018](#)). At the time, the 2013 Strategy stated: *"Apart from existing agreements with the main manufacturers, **there are so far no legal measures at EU level that oblige economic operators engaged in the tobacco supply chain to conduct due diligence during the course of their activities"**.* **BUT that is no longer the case:**
 - The adoption of the [International protocol to Eliminate Illicit Trade in Tobacco Products \(2012\)](#) and entry into force ([2018](#)) – the EU was instrumental to the design, adoption, and ratification.
 - The Protocol Article 8 (13) states: *"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 adoption of the EU [Tobacco Products Directive \(2014\)](#) which created an EU-wide [tracking and tracing system \(2019\)](#)
- The agreements are not part of the EU's legal and policy framework.
 - None of the key EU policy or instruments mention these agreements as part of the framework for combating illicit trade;
 - There is already a multi-sectoral, institutional network for cooperation, assistance and exchange between OLAF, Europol and the Member States in this area. Similarly, further ratifications of the Illicit Trade Protocol strengthen customs and law enforcement cooperation at global level between Parties.
 - Elements of the agreements are overlapping with elements of the legislative and policy framework e.g., with regard to tracking and tracing; due diligence and reporting requirements, measures to prevent oversupply, fees and fines.
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Call for action

The EU and Member States should terminate the remaining contracts with three international tobacco manufacturers



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