

Lord Hannay of Chiswick
House of Lords
London
SW1A 0PW

28 February 2012

Dear Lord Hannay,

EU Sub Committee F consideration of the EU review of the Tobacco Products Directive (TPD)

We are contacting you in your capacity as the Chair of the House of Lords EU Sub Committee F, to provide you with a considered view on the potential implications of the proposed EU regulations on the international tobacco black market. It is a matter we feel very passionate about and we hope you will acknowledge our views as part your committee considerations.

We are two former senior officers that have collectively served for over 60 years in the police service tackling domestic and international organised crime.

Between us career positions have included - Assistant Chief Constable with the Police Service of Northern Ireland responsible for Crime Operations including cross-border smuggling; and Commander of Specialist Operations at New Scotland Yard leading the Organised Crimes branch, the Flying Squad and the Fraud Squad.

During our careers we have conducted numerous operations against organised crime in the UK, EU, US, Russia, Africa and Asia.

We hope you will find our experience relevant when considering our view about the potential impact that TPD might have on tobacco smuggling and the fight against organised crime.

Our two principle areas of concern in these proposals are:

- **Standardisation of tobacco packaging** (Articles 7, 8, 9, 13: Labelling and Packaging) may make tobacco packets easier to copy because there will be fewer distinguishing features to replicate. It will make it much harder for retailers, consumers and police on the streets to distinguish black market goods from the real thing, making meaningful intelligence operations much harder.

- **Prohibition** (Article 6: Regulation of Ingredients) of any consumable goods could create another market for criminal gangs to exploit. The EU regulations would ban a number of tobacco products currently sold by retailers, such as menthol and slim cigarettes that could cause further exploitation.

Below is some further information to help illustrate these concerns.

Organised Criminal Operations

Smuggled tobacco comes to the UK from the Far East, UAE, China, Russia and Eastern Europe predominantly. These sophisticated operations are run by highly organised criminal gangs and help to fund other criminal activity.

The Financial Action Task Force, an inter-governmental body composed of 34 member states (including UK, Germany, China, Russia and South Africa), has reported that tobacco smuggling *"is a low risk, high profit enterprise that entices traditional criminal traffickers to move into more lucrative and dangerous criminal enterprises such as money laundering, arms dealing and drug trafficking."* (FATF, Illicit Tobacco Trade Report, June 2012)

These criminal gangs operate in a similar manner to legitimate businesses. They closely monitor all new regulations to see if they present opportunities to increase their profits. We firmly believe the proposed TPD regulations will provide significant opportunity for criminal elements to do just that.

Lucrative Market

High taxation on tobacco products has made the UK and Ireland very attractive to organised crime. According to HMRC's *Measuring Tax Gaps 2012* report, the black market is worth approximately £3 billion every year. For example, an average pack of twenty cigarettes costs approximately £7.50 of which around £5.50 is tax. A criminal can make the same counterfeit packet outside Europe for 25p and sell it for up to £4. Organised criminals can make approximately £1.2 million profit per 40ft container lorry coming into the UK. The margin of profit is worth the risk of arrest and imprisonment.

One of the justifications for the new regulations is to create a level playing field for the internal market. But there is already a dual market in operation here, a legal one and an illegal one. The more regulated one market becomes the more opportunities are created in the other. Until these criminal opportunities are fully understood and respective mitigation measures taken, the idea of a level playing field will be undermined.

Intelligence Led Operations

Pivotal to any operation against organised crime is good street level intelligence. Any standardisation of pack appearance may make it more difficult to spot and track smuggled tobacco because the lack of distinguishing features make it more difficult to identify.

Only law enforcement officers carrying specialist equipment can detect covert markings. This equipment is not available to retailers and consumers who rely instead on colour, embossing and shapes to authenticate a pack.

Dissident Groups

We know from previous operations that members of the dissident Irish Republican groups such as the CIRA and the RIRA use counterfeit and non-duty-paid tobacco to fund their continued activities - including funding terrorist organisations. This is corroborated in the 25th report of the Independent Monitoring Commission in 2010.

Groups such as the PKK, Islamic Jihad, Al-Qaeda, Hezbollah and Hamas are widely known to finance their terrorist operations through selling counterfeit or non-duty-paid tobacco. As recent events in Algeria demonstrate, the Al-Qaeda terrorist leader, Mokhtar Belmokhtar (aka Mr. Marlboro), has funded militant jihadist networks in the region through tobacco smuggling.

In our experience, many people are not aware of this fact and they view smuggled tobacco as a 'Robin Hood' crime.

The TPD proposals risk compounding this view because it will ban already popular tobacco products allowing criminals to fill the hole, giving the consumer what they want. We must do more to help communities understand the damaging nature this organised crime can have and in doing so encourage more people to come forward with information.

Alternative Options

We believe that before additional tobacco control options are considered, a more thorough analysis should be carried out on the potential impact of those policies on the organised crime market. This analysis should include projections of how new regulations in the legal market present new opportunities in the illegal market. For example, how the banning menthol cigarettes could increase distribution of these products in the illegal market. Additionally, other non-regulatory options should be assessed that will have less unintended consequences on the illegal market, including better education.

We would also like to see member states spend less time on symbolic cessation driven regulations if the evidence base is scant and more time considering practical measures such as tougher sentencing for illegal tobacco crimes. This would help foster a more negative community response to this organised crime.

Paradoxically, if member states focused on combating the black market they could produce better overall improvements to public health. Smuggled counterfeit tobacco contains levels of cadmium and other highly toxic metals. These products are often targeted at those communities with low levels of disposable income. Therefore any increase in levels of counterfeit tobacco as a result of the TPD regulations could embed and not break cycles of ill-health and crime in these areas.

Should you wish, we would be happy to discuss these views and experiences in more detail in person. If so please do not hesitate to contact us via the details below.

Yours sincerely,

[Redacted]
Peter Sheridan

Former Assistant Chief Constable with the Police Service of Northern Ireland

[Redacted]
Roy Ramm

Former Commander of Scotland Yard's Serious and Organised Crime branch

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