Industry involvement in EU tobacco tracking system divides stakeholders

By Sarantis Michalopoulos | EURACTIV.com   🖮 Mon Mar 6 11:04:45 2017 (updated: 🖮 Tue Mar 7 15:07:38 2017)
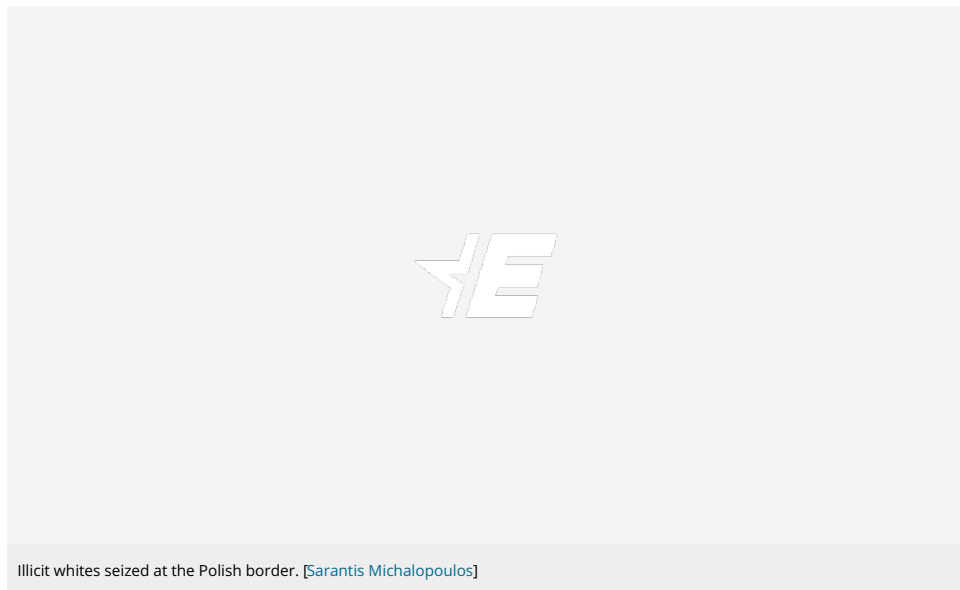
Illicit whites seized at the Polish border. [Sarantis Michalopoulos]

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The involvement of the tobacco industry in an EU-wide track and trace system to tackle smuggling has divided relevant stakeholders.

In July 2016, the European Commission decided to end an anti-smuggling deal with tobacco firm Phillip Morris International (PMI) and pledged to focus on the new EU tobacco directive (TDP), as well as the Framework Convention on Tobacco Control (FCTC) with the World Health Organisation (WHO) to fight against illicit tobacco trade [See background].

Commission vows to tackle illicit tobacco trade 'by its own means'

The European Commission will focus on the new tobacco directive, as well as accords with the World Health Organisation to fight against illicit tobacco trade, following the expiration a 12-year deal with Marlboro-maker Philip Morris.

The Commission and six EU member states have already signed the FCTC Protocol. The EU TDP responds to the EU obligation under the FCTC Protocol, which establishes a global tracking and tracing regime.

But many issues still lie ahead and the main question is who will have responsibility for the Track and Trace system (T&T) at the EU level. One aspect suggests that the tobacco industry should be excluded from the process, while another views industry involvement as necessary.

The Commission's impact assessment

Speaking at a conference organised in the European Parliament last week, Dr Andrzej Rys, director of DG SANTE, said that in accordance with the TPD, the executive was currently preparing an impact

assessment for an EU-wide system for T&T of tobacco products that should be in full compliance with the FCTC Protocol.

The European Commission started working on Implementing and Delegated Acts regulating T&T right after TPD was adopted in 2014. Initially, it contracted the first external consultant Eurogroup Consulting, who subcontracted the work to Sovereign Border Solution, to deliver an assessment. The Feasibility Study presented four options, all specifying that a tax stamp based solution must be used as T&T.

The study was contested by EU member states, as some of them do not use a tax stamp. In 2016, the executive assigned a new consultant, Everis, whose approach, rather than focusing on which technology to choose, privileges the roles of manufacturers, IT solution providers and governments.

The Juncker Commission is currently exploring three alternative scenarios. The first, an industry-operated solution delivers a traceability system that is largely operated by the industry, but requires additional legal analysis if and how it could be made compatible with the TPD and the FCTC Protocol.

The second scenario provides a system, controlled by an independent third party operator, aimed at reducing the need for additional public control measures. However, this system slaps new costs for coordination between the industry and the third party operators.

A third scenario refers to a split of responsibilities between the industry and a third party.

Dr Rys pointed out that the Commission regularly seeks input from member states, stakeholders and independent experts.

"To give you an example of how successful and beneficial these consultations can be, I would like to mention the last workshop with stakeholders in December. This event brought together around 100 stakeholders from different sectors, such as NGOs, manufacturers and service providers, and demonstrated a good way to facilitate common discussions and listen to the various different views that exist," the EU official said.

He made it clear, though, that the consultations with the tobacco industry are limited to the extent strictly necessary in line with the FCTC Protocol.

Primarily a health issue

French Socialist lawmaker Gilles Pargneaux (S&D), Vice-chair of the Committee on the Environment, Public Health and Food Safety, focused on the public health aspect of the illicit tobacco trade.

He argued that if the illegal trade was eliminated, it would represent a decline in the consumption of tobacco products by approximately 1.9% and stressed that traceability would play a key role in that direction.

Pargneaux, also, stressed that the fiscal impact as the system could result in annual tax losses of approximately €47 billion worldwide and up to €12 billion at EU level.

Referring to the Global Illicit Trade Summit organised last month in Brussels, he noted that Japan Tobacco International (JTI) sponsored the event in order to promote its own traceability system. "We all know the limits of the system promoted by the industry as well as the incompatibilities that this represents with the FCTC Protocol," the centre-left MEP warned.

Pargneaux told euractiv.com that the Commission's scenarios which involve the tobacco industry should be ruled out as they are against the spirit of the FCTC Protocol.

"It's also about security [...] some terrorists are financed by the illicit tobacco trade. One of the main terrorist chiefs in the Sahara region has been involved in these activities and he has the nickname Mr Marlboro," the lawmaker noted.

WHO: Tobacco industry interferes

Katharina Kummer Peiry, a senior legal officer of the World Health Organisation FCTC Secretariat, stressed that there has been a slowdown in the ratification of the FCTC Protocol and accused the tobacco industry of "interfering".

As a first reason for the delay, she cited the difficult cooperation among public authorities around the world, as ministries of health have the lead but other actors such as the ministries of finance, customs, and law enforcement must be involved as well. "To get other ministries involved is a difficult task," she noted.

"What we hear from countries around the world, recently even from the African region, is that tobacco industry representatives are going to different parties and say that it's complex, costly [...] we have the solution for you," the WHO official stated, referring to the interference of the tobacco industry with the ratification process of the FCTC Protocol.

She believes that the industry is using the financial resources argument in order to convince several governments and ultimately promote in these countries their own system as the ideal one. "This is a big concern for the WHO," she warned.

Foxes and chickens

Dr Francisco Rodriguez Lozano, president of the European Network for Smoking and Tobacco Prevention (ENSP), stressed that the illicit trade can only be tackled through an effective traceability system, under the EU TDP and without the involvement of the tobacco industry.

"We know that behind the contraband are often organised criminal groups," Lozano said.

However, on many occasions, as it has been recorded in numerous trials, the tobacco industry itself was found guilty in criminal activity. "Tobacco companies for which it was so easy, so convenient and of course so profitable to place their own lethal products on the black market," Lozano said, adding that the relevant stakeholders should not consent to a traceability system, behind which the tobacco industry can have control, directly or indirectly.

"World-leading organisations such as the WHO have already expressed their concerned on this issue and strongly recommended to keep the industry out. They are part of the problem [...] we should do not allow foxes to be appointed and look after our chickens!" he emphasised.

OLAF: All actors should be involved

In a recent interview with EURACTIV, director of policy at the European Anti-Fraud Office (OLAF) Margarete Hofmann admitted that illicit tobacco trade was a major source for organised crime, but stressed that multitude sources are needed in order to solve it.

EU anti-fraud official: Tobacco smuggling is 'major source' of organised crime

Cigarette smuggling costs national and EU budgets more than €10 billion annually in lost public revenue and is a major source of organised crime, including terrorism, Margarete Hofmann told Euractiv in an interview.

"Clearly, in order to continue being successful in fighting customs fraud in the context of a global marketplace, enforcers have an acute need for information of potential investigative interest coming from a multitude of sources," she said.

Speaking at the same conference, Georg Roebling, OLAF's Head of Unit: Customs and Tobacco Anti-Fraud Policy, reiterated that a multilevel approach is needed.

Asked by EURACTIV whether tackling the tobacco smuggling without the technical and intelligence support of the industry would still be possible, he replied, "We try to get information on illicit tobacco trade from as many sources as possible [...] the more sources of information we have the more efficient we will be."

A European Parliament resolution on the PMI agreement, adopted on 9 March 2016, calls on the companies to continue to apply the T&T and due diligence ('know your customer') provisions contained in the current agreement, regardless of whether or not it is extended.

What the industry says

Contacted by EURACTIV, Alvise Giustiniani, the head of Anti-Illicit Trade Strategy at Philip Morris International (PMI), stressed that it was a business imperative for PMI to combat the serious problem of illicit trade.

"We are wholly aligned with the objectives of the TPD, which presents a unique opportunity to put in place an effective and lasting solution to this growing and complex issue," he noted, adding though that excluding manufacturers, or any part of the supply chain, would very obviously result in "a less effective system and a lost opportunity to tackle illicit trade once and for all.

"PMI is not in the tracking and tracing business and we are not wedded to any one system," he added, arguing that his company believes in open and effective standards that enable us to choose the most effective technologies to combat this evolving crime. "We fully support the independent control mechanisms foreseen by the public authorities to ensure full compliance with all the provisions of TPD and the FCTC Protocol," the Philip Morris official concluded.

Denis Fichot, Corporate Affairs and Communication Director at JTI, told EURACTIV that the ideal T&T system would take a lot of years and it's a long-term objective between the EU and the FCTC Protocol.

For JTI, the track and trace system should be affordable and include new technologies and innovation that can suit each of the people in the supply chain.

"Our company favors open standards where you can have everyone, the Microsofts of the world, the SAPs, the big technological companies and the small technological companies, who, as long as they can meet a set of standards, as long as they can come up with the data that allows it to be inputted into a focal sharing point, then that's what matters," Fichot said.

Transparency issues

At the conference, no tobacco industry was represented, which raised questions among participants over the transparency of the discussion.

Despite the fact the industry is the first to be concerned when it comes to implementing this traceability, Pargneaux stressed that it would be "incongruous" to sit at the same table as he represents a group, which works against the tobacco industry interference.

He, also, referred to the article 5.3 of the FCTC that states: "When defining and implementing their public health policies on tobacco control, the parties must ensure that these policies are not affected by the commercial and other interests of the tobacco industry."

Also on the panel was Zbigniew Sagan, the technology chief of Advanced Track and Trace, and Leszek Bartłomiejczyk, who currently works as an independent consult in T&T systems, but who previously worked for SICPA Security Solutions. Both Advanced Track and Trace and SICPA belong to the same International Tax Stamp Association and represent the tax stamp solution.

SICPA's tax stamp system has been implemented in countries like Kenya, Brazil, Turkey, and California.

"The traceability of tobacco products has already been implemented in some countries such as Turkey and Kenya with very conclusive results. On the other hand, this traceability exists in many other sectors of the economy from which we can draw some lessons even if I am not without ignoring the specificities of the tobacco industry," Pargneaux noted.

"Unfortunately I found this part [of the conference] unbalanced and not useful, as only one product based company got the opportunity to provide their view on the topic of Track & Trace and Authentication," a participant told EURACTIV on condition of anonymity.

"Instead, the conference only talked about one side, and did not provide any chance for discussing valuable alternatives," he added, stressing that on the contrary Commission's DG Sante and its technical partner Everis performing the study on the different policy options related to T&T and Authentication, "seem to take into account and assess these different approaches".

"I wanted to emphasise that in the context of this debate we do not seek to promote a technology that would be available from a particular company," Pargneaux commented.

BACKGROUND

In July 2016, the European Commission decided to end an anti-smuggling deal with tobacco firm Phillip Morris International (PMI) and pledged to focus on the new EU tobacco directive, as well as accords with the World Health Organisation (WHO) to fight against illicit tobacco trade.

The EU has similar agreements with other tobacco companies such as JTI, which expires in 2022, and with BAT and Imperial Brands, both ending in 2030.

Under the Tobacco Products Directive, which took effect on 20 May, legal cigarette sales in the EU will be tracked and traced as from May 2019. In particular, member states must ensure that all unit packets of tobacco products are marked with a unique identifier.

"The Commission considers that the combination of the Tobacco Products Directive (TPD) and the Protocol to Eliminate Illicit Trade in Tobacco Products negotiated in the context of the Framework Convention on Tobacco Control (FCTC) are the best instruments to fight illicit trade by regulatory means," the then Budget Commissioner Kristalina Georgieva noted.

TIMELINE

- **May 2017**: The European Commission will hold the next stakeholder workshop

FURTHER READING

European Commission

- Analysis and Feasibility Assessment Regarding EU systems for Tracking and Tracing of Tobacco Products and for Security Features

- Call 2013: Tenders
- Revision of the Tobacco Products Directive
- Tobacco Policy

European Parliament

- Resolution of 9 March 2016 on the tobacco agreement (PMI agreement)

Corporations & Associations

- International Tax Stamp Association
- SICPA

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   06/03/2017 at 15:19
   Article 5.3 states: "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial other vested interests of the tobacco industry in accordance with national law" NOT "When defining and implementing their public health policies on tobacco contro parties must ensure that these policies are not affected by the commercial and other interests of the tobacco industry." Source:
   http://www.who.int/tobacco/wntd/2012/article_5_3_fctc/en/

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