

Europol's contribution to the Australian Parliamentary Joint Committee on Law Enforcement inquiry into illicit tobacco

Europol and EU law enforcement cooperation

Europol is the European Union's (EU) law enforcement agency, based in The Hague, The Netherlands. Our main goal is to help achieve a safer Europe for the benefit of all EU citizens. We do this by assisting the EU's Member States in their fight against serious international crime and terrorism.

Europol's Focal Point (FP) Smoke is a team of analysts and specialists, supporting law enforcement agencies with criminal intelligence analysis and providing operational support to on-going investigations in order to combat organised crime groups (OCGs) engaged in excise fraud (tobacco, alcohol and oils). Although FP Smoke's main focus is the 28 EU Member States, we also work closely with 8 associated countries and organisations from outside the EU, one of which is Australia. Australia fully associated to FP Smoke in 2009 with Customs and Border Protection Service, and the Federal Police taking the lead.

Australia and Europol have concluded an operational agreement, which permits the exchange of information containing personal data. The Australian Liaison Bureau at Europol is staffed by the Federal Police, who also represent the other competent Australian law enforcement agencies. Currently 185 Europol Liaison Officers (ELOs) are based at Europol headquarters. These ELOs are posted at Europol by the 28 EU Member States and our 12 non-EU partners. They guarantee fast and effective cooperation based on secure information systems, personal contact and mutual trust.

The illicit tobacco trade in Europe

Excise Fraud has been designated by EU Justice and Home Affairs Ministers as an EMPACT priority (European Multidisciplinary Platform against Criminal Threats) under the EU law enforcement policy cycle 2014-2017¹. The aim of this priority is to "disrupt the capacity of organised crime groups involved in excise fraud." The EMPACT platform enhances the ability of participating countries and agencies to collaborate and coordinate their activities, and to benefit from funding from the EU's Internal Security Fund. The strategy involves activities related to intelligence development, operations, criminal proceeds, capacity building, training, raising awareness and cooperation with third parties (non-EU countries and international organisations). Operational Action Plans (OAPs) in each priority area translate the strategic plan into workable actions focussed on specific areas of crime.

The main areas of the illicit tobacco trade in Europe include:

- Smuggling – the unlawful importation of cigarettes and tobacco products
- Illegal manufacturing – the unlicensed production and counterfeiting of cigarettes and tobacco products.²
- Diversion – abuse of the T1 and T2 community transit excise duty suspension schemes³

¹ See <https://www.europol.europa.eu/content/eu-policy-cycle-empact> for more information.

² Between 2005 and 2014, 142 illegal manufacturing facilities were dismantled in the EU.

³ These are customs procedures which allow goods not in free circulation to move within the EU whilst under excise duty suspension.

In 2013 the estimated revenue loss from counterfeit and contraband tobacco to the governments of the EU was €10.9 billion.⁴ Tobacco smuggling affects us all. The stolen revenue could have been spent on vital public services such as schools, hospitals and law enforcement to combat the problem.

In 2014 counterfeit and contraband tobacco consumption in the EU was estimated at 56.6 billion cigarettes per year.⁵ This is equivalent to 5,660 x 40 foot containers full of cigarettes being smuggled into the EU each year. This equates to about 10.4% of total cigarette consumption, so 1 in 10 of all the cigarettes smoked in Europe are from an illicit source. Illicit white or cheap white cigarettes⁶ are currently one of the major threats. In 2005 they were virtually undetected in the EU, and in 2014 they accounted for 37% of the total illicit consumption.⁷

According to Transcrime⁸, in 2015 the illicit cigarette market yielded between €7.8 billion and €10.5 billion in criminal proceeds. In the EU, the revenues generated by the ITTP [Illicit Trade in Tobacco Products] are comparable to those of the cocaine or heroin markets. Between 2007 and 2013, cigarette seizures by EU law enforcement decreased by 14.5% (from 4.5 to 3.8 billion sticks). Despite their efforts, EU national authorities seized only 6.7% of the estimated illicit cigarette market in 2013.

In 2010 the UN Security Council Investigative Body released a statement saying millions of dollars in illicit tobacco revenues are reaching al-Qaeda, the Taliban, other terrorist organisations and organised crime groups. At Europol we see tobacco smuggling as a “crime enabler” or “threat financier”. The huge illegal profits criminals make are used to fund other areas of serious organised crime.

Approximately 95% of the EU legal cigarette market is dominated by four big international tobacco companies. These include Phillip Morris International, British American Tobacco, Japan Tobacco International and Imperial Tobacco Limited. On behalf of the EU Member States, the European Commission has signed legally binding agreements with these companies in an attempt to prevent their genuine products from falling into the hands of criminals.

The tobacco manufacturers agreed to introduce a number of improvements. This includes making substantial payments to the participating countries, to help fight smuggling. They also agreed to implement control measures in manufacturing, sales, distribution, storage and shipment practices. These include tracking and tracing of genuine products, and know your customer verification checks.

Revisions of the European Tobacco Products Directive (TPD), negotiated in 2014, must be transposed into domestic law in each EU Member State by 20 May 2016. This will harmonise and strengthen various aspects of tobacco control legislation including a maximum pack size, a ban on flavours and

⁴ KPMG Sun report

⁵ KPMG Sun report

⁶ these are cigarettes which are usually legitimately manufactured in one country where they have a domestic market, but are smuggled into another country where they do not have a licence to be sold legally

⁷ KPMG Sun report

⁸ Transcrime is the Research Centre on Transnational Crime of the Università Cattolica del Sacro Cuore di Milano

advertising, regulation of ingredients, mandatory pack warnings, regulation of e-cigarettes, and the introduction of EU wide tracking and tracing.

Law enforcement good practices

The following paragraphs detail some good practice Europol uses to support the EU Member States to combat OCGs engaged in the illicit tobacco trade. Intelligence-led policing aims to develop the best intelligence picture from a variety of sources on which to base future operations. This allows limited law enforcement resources to target the most harmful OCGs. A multi-agency approach enables collaboration between different agencies such as police, customs, border guards, coastguard, tax and security services. This promotes the sharing of information and resources between these key partners.

Europol receives intelligence contributions on multiple crime areas. Intelligence analysis across different crime areas is compared to enhance knowledge of an OCG, for example identifying money laundering aspects of excise fraud. On FP Smoke we also try to encourage parallel financial investigations to run in conjunction with the excise fraud investigation. This promotes the identification and seizure of criminal proceeds and assets.

FP Smoke has developed a number of public and private sector partnerships which greatly facilitate our work. By cooperating with the private sector we have benefited from sharing information and knowledge and receiving training. For example tobacco manufacturers can provide forensic support to investigations by linking numerous cigarette samples to a single manufacturing source.

A Joint Investigation Team (JIT) is a useful law enforcement tool whereby a team can be established for a fixed period to investigate specific cases. They are based on an agreement between two or more EU Member States, but can also include non-EU countries. The JIT facilitates the cross border movement of information, evidence and resources between law enforcement agencies based in different countries.

FP Smoke also raises awareness of the negative impact of excise fraud amongst the general public, and in the judicial and political environments. Educating the public about the role they play in fuelling demand for illegal cigarettes is an essential aspect of combating excise fraud. There is also an important role to play in advising and assisting those in policy and legislative roles in their efforts to strike the right balance when introducing new tobacco control and removing loopholes exploited by criminals.