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From: Presidency
To: Multidisciplinary Group on Organised Crime
Subject: The smuggling of manufactured tobacco products in the European Union and its links with organised crime.

1. Tobacco smuggling: general aspects

The volume and seriousness of tobacco smuggling has increased to unprecedented levels in recent years.

Data from international organisations working in the sector (World Customs Organisation and its Regional Intelligence Liaison Office for Western Europe – RILOWE) point to an increase in illegal tobacco sales which coincides with a rise in world tobacco consumption, especially in the world's poorer countries.

Illegal products are estimated to represent 30% of the world tobacco market, with an overall loss in national tax revenues of around € 16 billion.

As far as the EU Member States are concerned, tobacco smuggling is no longer a form of fraud almost exclusively confined to Italy and to a lesser extent to Spain. Since the abolition of intra-Community frontiers smuggling has grown rapidly throughout the European Union, particularly in the United Kingdom, France, the Netherlands, Germany and Belgium, even though Italy's geographical position at the heart of the Mediterranean and its long coastline continue to make it the crossroads for the illegal tobacco trade.

The table below shows the seizures (in tonnes) made in EU Member States in 2001 and 2002:

<i>Member State</i>	<i>2001</i>	<i>2002</i>
<i>United Kingdom</i>	<i>not available</i>	<i>not available</i>
<i>Germany</i>	<i>984,25</i>	<i>461,60</i>
<i>Spain</i>	<i>467,60</i>	<i>244,91</i>
<i>Italy</i>	<i>463,34</i>	<i>502,03</i>
<i>Belgium</i>	<i>333,80</i>	<i>345,56</i>
<i>France</i>	<i>214,60</i>	<i>172,96</i>
<i>Ireland</i>	<i>158,71</i>	<i>73,10</i>
<i>Netherlands</i>	<i>122,26</i>	<i>67,58</i>
<i>Greece</i>	<i>109,61</i>	<i>214</i>
<i>Austria</i>	<i>92,17</i>	<i>60,05</i>
<i>Sweden</i>	<i>47,61</i>	<i>26,88</i>
<i>Portugal</i>	<i>38,45</i>	<i>43,14</i>
<i>Denmark</i>	<i>38,16</i>	<i>52,86</i>
<i>Finland</i>	<i>27,79</i>	<i>21,80</i>
<i>Luxembourg</i>	<i>0</i>	<i>0</i>
Total EU	3 071,35	2.286,47

(data provided by European Commission - OLAF)

Seizures by the United Kingdom authorities are estimated at 2 600 tonnes, one third of which were made outside the territory in the framework of administrative assistance.

Apart from the United Kingdom, the figures for 2002 were down by 25% on the previous year. This trend was more marked in some Member States.

Generally speaking, in the countries hardest hit, contraband tobacco products represented 10% of legal sales, a figure which rises to 20 to 25% in some Member States.

Complete data are not available for the rest of the world. World Customs Organisation data are skewed because a significant number of countries fail to notify the relevant information. In fact, the EU Member States are the main source of data for the WCO database, which records seizures above 100 kgs. In 2001, only 533 cases of tobacco fraud were recorded, representing 3 221 tonnes; this clearly under-represents the scale of the phenomenon, given the figures for EU seizures alone.

The illegal import and wholesale trade aspects of tobacco smuggling are usually run by organised (including transnational) crime, whereas distribution and selling are in the hands of smaller-time criminals, for whom the activity is often the first step towards a more substantial criminal career.

In this connection, many Italian investigations have shown how tobacco smuggling has cemented links between regional mafia groups (Cosa Nostra, Camorra and Sacra Corona Unita) as well as between mafia-type organisations in Italy and criminal gangs abroad. This development has been encouraged by the transnational nature of this kind of crime, which frequently requires input from organisations operating in several countries.

Moreover, tobacco smuggling is often only one area of investment of criminal gangs, which tend to spread their risks, frequently using the same routes to smuggle drugs, human beings and weapons as well.

Investigations have also shown that, in addition to being a financial crime, tobacco smuggling provides transnational criminal organisations with a major means of amassing illicit wealth and is a significant source of funding for terrorist organisations like ETA and the IRA.

In order to reduce the risk of losing contraband tobacco shipments and to secure their profits, criminal organisations will often seek to bribe customs and police officers working to foil their illegal trade; they have even succeeded in corrupting court officials ¹.

Tobacco smuggling is a very dangerous crime :

- **socially**, because it disturbs public policy and public security;
- **politically**, if we consider the part played until recently by tobacco smuggling in certain parts of the Balkans, where it determined the official policies of tolerance if not more;
- **financially**, because the vast cash proceeds of tobacco smuggling feed other forms of crime, and, in particular, contaminate the legal economy through money-laundering;
- **in fiscal terms**, because it costs the European Union and national budgets huge sums in lost revenue (VAT and excise offences).

1.1. Counterfeiting of manufactured tobacco products

A new but significant branch of smuggling requiring investigation is the counterfeiting of well-known tobacco brands. This criminal trade, sometimes run by the same organisations that smuggle the genuine product or by organisations using the same routes, is more common in Eastern European countries. However, EU countries are also affected: this year two factories producing fake tobacco products were discovered in Germany and Belgium, both equipped with efficient Russian machines.

2. The smuggling system

The smuggling chain breaks down into a series of separate offences committed by criminal organisations with offshoots in different countries.

¹ A member of the Swiss judiciary was arrested in August 2000 on charges of colluding with Gerardo Cuomo, head of a large international smuggling ring.

In some of these countries, the cigarettes will merely be sorted and temporarily stored. Some will be involved in the transit operation, and in others the cigarettes will be finally be released for home use evading tax.

The emerging new patterns of smuggling, marked by a growing international dimension and a diversification of the routes for shipping manufactured tobacco products, have gone hand in hand with the expanding role of "intermediaries".

Earlier, all stages of the smuggling chain (orders, transportation, collecting payment, etc.) were carried out personally by one person or a small group. Nowadays the process is broken down, and for each separate stage, be it negotiating the deal, shipping the consignment or physically transporting the goods, there is a different company of one sort or another, which is specifically responsible for its part.

Such companies prefer to set themselves up in countries whose smuggling laws are notoriously more permissive or in the traditional tax havens.

2.1. The mechanics of smuggling

Smuggling organisations routinely use the intermediaries referred to earlier in order to buy manufactured tobacco products; such companies are especially established for the purpose in:

- Switzerland and Liechtenstein;
- the traditional tax havens (Panama, Belize, etc.), whose laws allow businesses to operate anonymously and which provide a bare minimum of international assistance;
- the most disparate group of countries (States in Central and South America, Republics of the former USSR), so as to hinder all *post hoc* reconstruction of the commercial transactions through which the tobacco has passed.

Once the purchasing deal has been finalised, the intermediary companies will give instructions to ship the tobacco to Antwerp, Rotterdam or to customs free zones in Switzerland.

After this, the companies figuring on paper as the purchasers give instructions for the tobacco products to be transferred to other companies and shipped by selected hauliers to warehouses in countries in Eastern European and elsewhere, whence they are smuggled into the European Union.

The multiple transactions carried out before illegal shipments reach their final destination have the sole purpose of concealing the true purchasers, whose role is to supply the smuggling organisations.

Foreign manufactured tobacco products are smuggled into Community territory according to two methods : presenting the goods for customs inspection or evading inspection.

In the first case the tobacco products enter Italian and Community territory through regular customs posts, loaded on lorries and accompanied by customs forms which are either material forgeries or false declarations; these shipments also exploit weaknesses in transit customs procedures which are not thorough.

Tobacco products which enter national and Community territory evading customs inspection do not pass through official customs posts; they are mainly brought in by sea on:

- fast motor launches, which come mainly from the Adriatic coasts of the Balkans;
- sea-going vessels (launches or fishing vessels), which load their contraband cargoes from a "mother ship" standing outside territorial waters and land them along the Italian coast.

2.2. Changes in smuggling methods

Smuggling organisations show great flexibility as to their operating methods and choice of location for their illegal business. They are quick to evade police and customs measures against them. Thus, if more robust anti-smuggling operations are being conducted along one sea or land border, with a larger deployment of officers and land, sea and air surveillance, the smuggling rings will swiftly transfer their activities to less well-patrolled areas, and, when the police come to implement their counter-measures, the smugglers have already taken steps to change their modus operandi.

3. Overall institutional response

In recent years all EU countries affected by smuggling have successfully sought to give a high-profile response to the spread of this crime.

In Italy there has been a comprehensive and effective institutional response leading to ever greater public awareness of the threat posed.

Of all the initiatives taken, the main one has been Law No 92 of 21 March 2001 whereby the entire system of penalties was recast.

The following provisions are of particular importance:

- **a redefinition of the offence of smuggling** foreign manufactured tobacco products, which now has a separate position within the Consolidated Customs Law;
- **more stringent penalties** for anyone who imports, acquires or possesses within the State even minimal quantities of foreign manufactured tobacco products;
- **the inclusion of specific aggravating circumstances**, with the addition of conduct (further to that covered by the Consolidated Customs Law) involving the use of:
 - **means of transport** whose type-approved features have been changed or modified so as to obstruct police action or pose a threat to public safety;
 - **partnerships or companies with share capital or financial assets** (however constituted) in States which have not ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8 November 1990) or which have not concluded and ratified judicial assistance agreements with Italy in regard to smuggling;
 - **inclusion in the Consolidated Customs Law of the specific offence of "criminal association for the smuggling of foreign manufactured tobacco products"**, which comes within the sphere of competence of the National Anti-Mafia Prosecutor's Office.

3.1. Law-enforcement strategy in Italy

In Italy the law-enforcement strategy (assigned in the first instance to the institutional competence of the *Guardia di Finanza*) may be broken down as follows:

- **the prevention stage**, aimed at increasing intelligence activities at national and international level; customs cooperation arrangements with counterpart bodies are of crucial importance here;
- **the suppression stage**, aimed at stepping up frontline measures and based on the coordinated and joint action of the air/sea and land elements of the police control system;
- **the investigation stage**, which sets higher-level objectives such as the detection of organisations, financiers, promoters and ring-leaders, who not infrequently enjoy political cover-up in some countries;
- **the post-crime follow-up stage**, which is concerned with identifying the financial flows relating to this type of crime and with recovering and seizing illegally accumulated assets.

It is important to seize the assets which the members of criminal organisations derive from their illegal activities. This is the only effective way to combat smuggling: while the seizure of tobacco consignments and means of transport causes economic damage to such organisations, it is not a definitive measure; the most effective campaign against smuggling does not usually succeed in reaching seizure levels of more than 20%-25% of total smuggled goods which would make this illegal activity uneconomic.

3.2. Development of smuggling and results of anti-smuggling activities in Italy

The data currently available shows a considerable reduction, with Italy as a country of transit for the smuggling of goods towards northern Europe.

Seizures in Italy during 1998-2002 were as follows (in tonnes):

1998	1.657
1999	1.648
2000	66
2001	292
2002	333

Up to 1999 Montenegro was the primary access channel for tobacco products in EU territory, using the region's port and coastal structures.

From 1999 to 2002 the route from Greece – previously a subsidiary one – saw a considerable increase. Seizures by the *Guardia di Finanza* of tobacco products coming from Greece accounted for the following percentages of total seizures:

1999	28%
2000	36%
2001	41%
2002	72%

Aggregate figures for smuggled tobacco products ¹ seized in Italy show that in recent years Italy has become a transit country while the United Kingdom is the principal market for smuggled tobacco.

¹ In 2002, 82% of the product seized in Italy.

The reduction in the illegal market in Italy and the country's redefinition as one of "transit" are due to factors that are complex and various. They include:

- **the increase in anti-smuggling activity** following episodes of bloody and violent resistance by a number of criminal associations which have perpetrated especially brutal crimes against ordinary citizens as well as the law enforcement agencies. Investigations by the *Guardia di Finanza* have enabled the biggest international criminal organisations to be broken up. On the basis of evidence gathered by the *Guardia di Finanza*, the judicial authority has in recent times issued 608 custodial orders against ring-leaders and organisers of illegal traffic, both in Italy and abroad, on completion of 27 major investigations;
- **investigative action** by magistrates, marked by spectacular judicial initiatives and developments in the international field as well;
- **the approval of Law No 92 of 19 March 2001**, which stipulated harsher penalties for those convicted of smuggling offences and provided for new and more thoroughgoing investigation systems;
- the increased customs cooperation between countries which has uncovered cases of corruption of customs officers;
- **the fact that Montenegro no longer plays the leading role** as logistical base for boats carrying foreign manufactured tobacco products.

4. **Anti-smuggling measures**

An effective campaign against smuggling linked to organised crime calls for:

- **appropriate legislative measures** which, as well as stipulating penalties with a strong deterrent effect, allow for the possibility of making use, from a judicial and investigative standpoint, of the same instruments to combat organised crime;
- particularly thorough **intelligence activity**, to be applied:
 - in cases where smuggled goods are presented for inspection, when the key concern is to scrutinise the firms to which the goods described in the customs papers are addressed, given that the firms involved are usually fictitious;

- and in cases where inspection is evaded, when routes and landing areas need to be known in good time;
- **effective investigation activity** to identify the various elements of the organisation, the financiers and the ring-leaders and to seize the assets they derive from their illegal activities.

A more effective anti-smuggling campaign requires greater international cooperation and harmonised legislation. It has been shown that members of criminal organisations usually transfer their logistical bases to countries where the rules are less strict or the local ethos is such that tobacco smuggling is regarded simply as a financial infringement and the fight against it is therefore accorded very little in the way of investigative resources. This is what has happened in recent years with some Italian criminal organisations which, either because of the application of the stricter legislation approved by the Italian parliament in 2001, or because of the more rigorous systems of investigation and suppression implemented by the law enforcement agencies, have moved *en masse* to other European countries, regarded as "safer", from where they continue to plot their smuggling schemes.

4.1 International cooperation

International cooperation is essential to the fight against tobacco smuggling. Individual action by each country is not sufficient.

Cooperation between the EU Member States has developed bilaterally and multilaterally, starting with the 1956 recommendations of the Customs Cooperation Council concerning administrative assistance, which provide the basic framework for cooperation between customs authorities. These customs cooperation arrangements were subsequently given a Community structure and a Regulation was issued in 1981 (and amended in 1997).

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