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OBSERVATIONS

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TOBACCO CONTROL

European watchdog is failing to hold tobacco industry to account over smuggling

What are agreements with the industry worth?

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For over a decade the European Union's antifraud organisation, OLAF (Office Européen de Lutte Antifraude) has, controversially, engaged with the tobacco industry, ostensibly to counter tobacco smuggling. This is despite extensive evidence of industry complicity in smuggling,[1] a situation that seems to persist.[2] It also represents a U-turn by OLAF, which in 2000 filed a lawsuit accusing tobacco manufacturers of "an ongoing global scheme to smuggle cigarettes."

In 2004 OLAF halted this litigation in exchange for a legally binding agreement with Philip Morris International to tackle the illicit trade.[3] Subsequently, the European Union signed similar agreements with three other big tobacco companies. The agreement with Philip Morris is about to expire, and talks on possible renewal have begun.

Lack of transparency

These agreements may have undermined OLAF's judgment.[3] Analysis has highlighted a lack of transparency in how the agreements operated, with growing industry control over data, making them almost impossible to evaluate. Philip Morris's own data indicate that in 2010, six years into the agreement, almost a quarter of illicit cigarettes in Europe were its brands.[4] It is clear that the tobacco industry has not adequately controlled its supply chain and that the fines detailed in the agreements are not enough to deter the industry from involvement in illicit trade.[3 4]

An investigation made under freedom of information legislation showed that OLAF had failed to hold the industry to account. One document dated 3 July 2015 set the tone. In it Philip Morris noted that it "continues to be extremely pleased with the operation of the agreement."[5]

Other documents may explain Philip Morris's pleasure over the extent of OLAF's oversight. Although the company promised to do business only with some approved contractors that had taken measures to reduce smuggling and to update regularly a list of such contractors, OLAF requested this list only once, in 2012. There is no record that OLAF ever sought information on the sales volumes of these approved contractors or on the due diligence that Philip Morris committed to undertake to ensure that the contractors were complying with anti-smuggling measures. Similarly, OLAF seems never to have exercised its right to interview Philip Morris staff or to ask for information on the number of cigarettes held in tax or customs warehouses.[6]

Track and trace

The EU's Tobacco Products Directive,[7] due to come into force in 2016, requires that all tobacco traded in Europe be identified by "track and trace" systems from May 2019. The industry has taken the lead, promoting its own system, Codentify, which has many weaknesses.[8] It makes it impossible to determine when cigarettes are diverted into the illegal supply chain. The codes are visible, and it is difficult to tell duplicate from real products. It seeks to replace government managed tax stamps with an industry controlled system. Most worryingly, Codentify puts the industry in control of the system, despite its long history of involvement in the illicit trade and of manipulating data about illicit trade.[9]

Other systems avoid these problems, but the tobacco industry is lobbying against them.[10] Now, OLAF has expressed concern that any rival technology might disrupt its relationship with the industry. This is despite accumulating evidence that this relationship has benefited only the industry.[3] It is also despite the requirement on the EU, as party to the World Health Organization's Framework Convention on Tobacco Control, to protect its policies from industry influence and to ensure that track and trace systems are run independently of the industry, as the head of the convention secretariat has recently reiterated.[11]

Finally, Philip Morris is challenging the Tobacco Products Directive in the European Court of Justice. Can OLAF justify continuing its cooperation with a company whose action, if successful, would prevent implementation of the EU's most important piece of tobacco control legislation in the past decade?

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Given the tobacco industry's history of misleading the public over the harms of tobacco, and recent allegations of British American Tobacco's involvement in bribery, including the use of bribery to promote use of Codentify over rival systems,[12] it is inconceivable that any legitimate organisation would give the industry any credibility at all.

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