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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft Council conclusions on stepping up the fight against illegally traded tobacco products in the EU

1. At its meeting on 13 July 2017, the CCWP started to identify the topics to be addressed in the draft Council conclusions that the Presidency intended to prepare on the Progress report on the implementation of the Commission Communication "Stepping up the fight against cigarette smuggling and other forms of illicit trade in tobacco products- a comprehensive EU strategy".
2. Based on that discussion and contributions received from a number of delegations, draft Council conclusions on measures to step up the fight against illegally traded tobacco products in the EU were presented at the CCWP meeting on 13 September 2017 and discussed at the CCWP meetings on 31 October, 14 November and 28 November 2017. On 28 November 2017, the CCWP agreed on the draft Council conclusions as set out in 11761/3/17 REV 3 + COR 1, and agreed to submit them to COREPER/Council for approval. HU and PL indicated that they would not oppose the approval of the conclusions.

3. COREPER agreed on the draft Council conclusions as set out in 11761/3/17 REV 3 + COR 1 at its meeting on 29 November 2017 and to invite the Council to approve them. HU and the Commission asked to enter the declarations which are set out in the Annex in the minutes of the Council.
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Statement by Hungary

Hungary strongly regrets that the European Commission refused to postpone the vote on the Implementing Regulation on technical standards for the establishment and operation of traceability system for tobacco products to be adopted pursuant to Article 15 of the Tobacco Products Directive (2014/40/EU). The vote, which ended on 29 November 2017, regrettably paves the way for a Tracking and Tracing System which is highly expensive, complicated, and above all, totally unfit for its purpose: combating the illicit trade of tobacco products. Hungary reminds that the most serious trend in this illicit trade is the smuggling of "cheap whites", and that the costly Tracking and Tracing System that we will have to be applied as from 20 May 2019 will do nothing to combat this trend.

It is equally regrettable that, despite the commitment taken by the High Level Working Party of Directors General for Customs, and repeated requests by Hungary (including in the joint Declaration of the Hungarian, Polish and Slovak customs directors supported in the principle by 11 Member States), the possibility to hold a substantive debate on the competitiveness aspects and the possible serious distortion of competition to the detriment of small manufacturers in the appropriate fora of the Council has been denied.

Hungary wishes to reiterate the statement it made at the Competitiveness Council on 30 November 2017, in particular that:

- the Tracking and Tracing System will not resolve the problem of the illicit trade in the global tobacco market as no interoperability is guaranteed with the schemes operated by third countries;
- the Tracking and Tracing System will outrageously favor both large tobacco corporations (leading in all likelihood to a further consolidation of the industry), and the big firm(s) that will implement the system at technical level with regard to their already existing system;
- small manufacturers, as opposed to large corporations, have no tracking and tracing system in place and will face huge operational costs, which will threaten the survival of their business. In Hungary alone, the implementation of the Tracking and Tracing System puts at risk some 30.000 jobs. The flexibilities envisaged in the implementing regulation do not offer a solution that would make the on-off necessary investment sustainable for small businesses.

Against this background, Hungary urges the Commission to closely monitor the nefarious consequences of the Tracking and Tracing System that small manufacturers and their workers will inevitably bear and to propose, as soon as possible, adequate solutions to mitigate these consequences.

Hungary reiterates its commitment to support all initiatives, which aims at reaching tangible results in combating smoking and the illicit trade of tobacco products.

Statement by the Commission

The Commission welcomes the support expressed by Council for the Commission's strategy against the illicit tobacco trade, and especially cheap whites, which remains a preoccupying phenomenon.

The Commission in particular welcomes Council's encouragement to promote the FCTC Protocol in third countries (particularly the main source and transit countries).

In this light, the Commission however regrets that internally, Council only invites Member States to consider ratifying and implementing the FCTC Protocol.

From the Commission's perspective, this statement puts in question the coherence of the EU's external and internal action and the principle of sincere cooperation. In addition it raises difficulties of legal interpretation, notably with regard to the binding nature of agreements concluded by the Union, as provided for by Article 216(2) of the Treaty on the Functioning of the European Union.
