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Delegations will find attached document COM(2018) 846 final.

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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE**

2nd Action Plan to fight the illicit tobacco trade 2018-2022

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Introduction

The illicit tobacco trade has been a major concern for the EU and Member States for some time, and this on account of fiscal, health and security concerns. To tackle this phenomenon the EU had five years ago adopted a comprehensive strategy¹. In parallel, the Commission had put forward a first Action Plan² which was implemented in close cooperation with Member States.

In May 2017 the Commission reported³ on progress in implementing the Strategy and the Action Plan. In essence, the report noted that despite the many measures taken since 2013, the challenge posed by the illicit tobacco trade remained as preoccupying today as it had been in the past. The EU and its Member States have no choice but to continue to address the threat from illicit tobacco and its changing patterns with determination. In this sense, with its combination of strong legislative responses, robust law enforcement and enhanced cooperation at national, European and international levels, the 2013 Strategy remained relevant. The Commission concluded that based on the analysis presented and further dialogue with stakeholders, it would complete its review of the present Strategy and decide on the appropriate follow-up in 2018.

The Report was supported by Council Conclusions adopted on 7 December 2017, which also identified Member States' priority areas of further work in this area. In parallel, the Commission continued technical discussions with Member States in the competent Expert and Council working groups. Stakeholders were moreover consulted on 23 March 2018 during a public conference *"Fighting illicit tobacco trade – The Stakeholder Perspective"* jointly organised with the European Economic and Social Committee. That event was attended by stakeholder participants representing a broad spectrum of governmental, societal, business and academic perspectives.

The European Parliament has on several occasions underlined the grave concerns raised by the illicit tobacco trade, and the phenomenon of illicit whites⁴ in particular, most recently in the European Parliament Resolution of 3 May 2018 on the Annual Report 2016 on the protection of the EU's financial interests – Fight against fraud⁵. That report largely confirms the earlier Resolution of the European Parliament of March 2016 which called in particular for an action plan to fight the illicit trade with such products.⁶

The consultations have shown that fighting the illicit tobacco remains a shared concern for many stakeholders, and the issues identified in the Commission's 2017 report were on the whole deemed relevant.

¹ COM(2013) 324 final of 6 June 2013

² SWD(2013) 193 final of 6 June 2013

³ COM(2017) 235 final of 12 May 2017

⁴ These are 'brands' not affiliated with the established operators and typically do not have a legal distribution network in the EU. Such products are for the most part produced outside the EU. For an overview of the main categories of illicit tobacco products see the Staff Working Document SWD (2016) 44 final of 24.2.2016 pp. 11-12.

⁵ European Parliament resolution of 3 May 2018 (2017/2190(INI))

⁶ European Parliament resolution of 9 March 2016 (2016/2555 (RSP))

The 2nd Action Plan to fight the illicit tobacco trade 2018-2022

In light of the various contributions made, and in view of the persistent nature of the problem posed by the illicit tobacco trade, the Commission has decided to put forward a new Action Plan. It builds on the analysis of the 2013 Strategy and ensures continuity by keeping focus on the Framework Convention on Tobacco Control (FCTC) Protocol⁷ at the global level as well as on the successful implementation of the new EU traceability system for tobacco products in the EU⁸. These two items are set to remain the key elements of the EU's policy action in this area in the long term. Moreover, like its predecessor, the present Action Plan puts forward both policy and operational law enforcement measures since only a combination of these is liable to lead to a sustainable reduction in illicit tobacco trade.

At the same time, based on the analytical update presented in the 2017 Progress Report, this Action Plan also seeks to further strengthen the EU strategy in some respects. In particular, it seeks to address the illicit tobacco trade more systematically from a market perspective – based on the recognition that the black market of, e.g., cigarettes only exists because there are sellers and buyers for such products. In this perspective, this Action Plan presents a number of initiatives which are designed to curtail either the supply of, or the demand for, illicit tobacco products.

The 2nd Action Plan therefore proposes more systematically

- to fully exploit the potential of the new FCTC Protocol as a global instrument and forum to curb the illicit tobacco trade, by taking a leading role in its implementation, following the entry into force of the Protocol on 25 September 2018;
- to engage key source and transit countries via the various frameworks for cooperation available to the EU, so as to limit the supply actually arriving at our borders;
- to focus on some of the key input materials going into the illicit manufacture of tobacco products, ranging from raw tobacco and cigarette filters to manufacturing and packing equipment; and
- to raise awareness among consumers of the dangers of buying illicit tobacco products and the direct links to organised crime, as a means to reduce demand.

Last but not least, the illicit tobacco trade being both an opaque and constantly evolving activity, this Action Plan also proposes to continue investing in intelligence gathering and analysis, as a basis for effective targeting of policy and operational measures.

⁷ <http://www.who.int/fctc/protocol/en/>

⁸ The EU traceability system is the first regional system of its kind and will apply to all tobacco products manufactured in the EU as well as those manufactured outside the EU which are placed on the EU market. It allows for the monitoring of the current location of a product within the supply chain, creation of a time and location record for all movements of that product (tracking), as well as identifying the past locations of a product to verifying the product's route back to its origin (tracing). For an overview of the Revision of the Tobacco Products Directive (2014/40/EU) of 3.4 2014 see https://ec.europa.eu/health/tobacco/tracking_tracing_system_en

Many of the measures proposed in the 2013 Action Plan as well as in the present document directly target illicit whites, and often mainly so. To illustrate this point with one example: many products considered illicit whites in the EU are legal products in their respective countries of origin. If those countries were all to implement the disciplines of the FCTC Protocol, notably the track and trace system it requires, the supply of illicit whites on the EU market would be substantially reduced. Also operational measures and those focusing on the demand side would significantly impact the trade in illicit whites.

Review and monitoring

Five years after the presentation of the comprehensive Strategy to step up efforts to fight the illicit trade in tobacco products as well as the accompanying Action Plan, and based on the first report on those initiatives presented in May 2017, this 2nd Action Plan is designed to cover a similar period.

The Commission will monitor the implementation of this Action Plan as well as the future evolution of the illicit trade in tobacco products, and continue reporting to Member States on progress on an annual basis.