End European agreements with tobacco industry designed to curb smuggling, urge experts

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The agreements drawn up between the European Union (EU) and the four major transnational tobacco companies, to crack down on cigarette smuggling and recoup lost tax revenues, are failing to meet their stated aims, concludes research published online in the journal *Tobacco Control*.

They are littered with loopholes, which the tobacco companies can easily exploit, and should be abandoned, say the researchers, ahead of World Tobacco Day at the end of this month.

The agreements were drawn up between 2004 and 2010 with Philip Morris (PM), including Philip Morris International (PMI), Japan Tobacco International (JTI), British American Tobacco (BAT), and Imperial Tobacco Limited (ITL), following emerging evidence of the direct and indirect involvement of the tobacco industry in smuggling activities, and subsequent litigation.

The agreements released these companies from any civil claims relating to previous smuggling activities and, in the case of Philip Morris and JTI, were set up in exchange for dropping legal proceedings against them.

The intention was to crack down on the illegal trade in cigarettes across Europe by requiring the four companies to secure their supply chain through marketing and tracking/tracing activities and by making two types of payment to the European Commission and the member states of the EU.

These payments comprised annual fixed sums payable from 2004 up to 2030, ranging from US$ 200 million to US$ 1 billion; and 'seizure payments' equivalent to 100% of the evaded taxes for seizures above quantities of 50,000 cigarettes in one haul, rising to 500% if total annual seizures exceed 150-450 million cigarettes.

To find out how well the agreements are working, the researchers analysed documents for 2004-12 not publicly available, but obtained under EU legislation. These showed that some €70,728,624 (US$ 100 million) had been paid out during this period by three out of the four transnational companies—PMI, JTI and ITL.

In 2012, these companies stumped up just €4.1 million, equivalent to 20 million seized cigarettes. But this is a tiny fraction (0.5%) of the 3.8 billion cigarettes seized in the EU that year, say the researchers.

The European Anti Fraud Office (OLAF) estimates that cigarette smuggling loses the EU €10 billion every year, so the average yearly total for seizure payments of €8.3 million made by three of the companies represents just 0.08% of these losses, the researchers say.

There are two main reasons why these payments are so small, they suggest. Only large quantity seizures qualify for the penalty, and since the agreements were reached, the average size of consignments has shrunk; and secondly, the payments only apply to genuine, not counterfeit, products, yet customs officials rely on industry to determine the status of the seizures which are not subject to independent verification.

Since the implementation of the first agreement up to 2013, the tobacco industry has claimed that most (78%) of the seizures were counterfeit, but these figures are several magnitudes higher than published industry estimates for the prevalence of counterfeit cigarettes, say the researchers.

They conclude that the agreements have served only to further industry interests and threaten progress in tobacco control.

"The seizure payments are paltry and are a wholly inadequate deterrent to [transnational tobacco company] involvement in illicit trade," they write. "The agreements contain too many loopholes."

The evidence suggests that the companies are failing to secure their supply chains, and "by enabling the industry to promote the agreements as an effective model of collaboration, they are also threatening tobacco control internationally," insist the researchers.

The agreement with PMI is currently being renegotiated, but the researchers say: "Our evidence suggests the EU should not extend its agreement...and, if legally possible should end the agreements with the other three tobacco companies."

More information: Assessment of the European Union's illicit trade agreements with the four major transnational tobacco companies, *Tobacco Control*, DOI: 10.1136/tobaccocontrol-2014-052218

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