

To the Parliamentary Joint Committee on Law Enforcement

Milan, 25 January 2016

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Committee Secretary
Parliamentary Joint Committee on Law Enforcement
PO Box 6100
Parliament House
Canberra ACT 2600
Phone: +61 2 6277 3419
Fax: +61 2 6277 5809
le.committee@aph.gov.au

Re: Submission to the Australian Parliamentary Joint Committee on Law Enforcement related to Illicit Tobacco

Dear Sir,

I have noted that the Parliamentary Joint Committee on Law Enforcement started an inquiry on Illicit Tobacco on 2nd December 2015 and, following the terms of reference pointed out in your web page, I have the pleasure to submit my opinion hoping it could help the Committee to clarify the many issues that are related to the problem of the Illicit Trade in Tobacco Products (ITTP). My opinion mainly draws from the multiple research activities carried out by Transcrime in the field. Just one year ago we produced the report titled "The European Outlook on the Illicit Trade in Tobacco Products" that makes the point on the situation across European member states (<http://www.transcrime.it/en/pubblicazioni/european-outlook/>). I think that the European experience in analyzing and combatting the ITTP could be a good lesson and contribute to your inquiry.

Let me also add, Sir, that if I have no direct experience of the Australian situation I am quite familiar with some relevant criminal issues related to Australia. I have been consulted by the Law, Reform, Drugs And Crime Prevention Committee of the Parliament of Victoria (Hearing of February 10, 2014) on Organized Crime and Drugs and recently I have supervised the report "Cost of Serious Organised Crime in Australia", presented on December 18, 2015 by the Australian Minister of Justice, The Hon Michael Keenan MP (<https://crimecommission.gov.au/publications/intelligence-products/costs-serious-and-organised-crime-australia-2013-14>). Not to mention the many Australian colleagues with whom I continuously exchange opinions on common scientific issues.

Let me focus shortly on some of your points as detailed from your Terms of Reference using the lessons learned from the European experience. I attach to this opinion the executive summary of The European Outlook that can be entirely downloaded at the Transcrime website: www.transcrime.it

b. the role of Commonwealth law enforcement agencies in responding to the importation, use, manufacture, distribution and domestic growth of illicit tobacco;

As concerns the international and EU law enforcement agencies operating in Europe, such as Eurojust, Europol, Frontex, OLAF, Interpol and the World Customs Organization, they coordinate and support anti-ITTP actions in the EU and collaborate with national agencies to tackle illicit tobacco within national borders.

Despite their intense efforts, law enforcement agencies report approximately 7.0% of the actors and seize 6.7% of the total of illicit cigarettes. This is unlikely to deter criminals, and counsels the implementation of complementary policies relying on the reduction of criminal opportunities.

Along with the implementation of these policies, law enforcement agencies should provide publicly available data useful for understanding not only their workloads, but also the functioning of the illicit tobacco market. It is fundamental that to understand the problem to be addressed, it must first be measured in an agreed and realistic way. Further, knowledge about the ITTP's dynamics could be enhanced if law enforcement agencies publicly provided different types of information on an annual basis: e.g., data on illicit tobacco seizures disaggregated by type of product seized, brand, quantity and product origin and destination; data on convictions for ITTP, which should include data on convicted persons (name, age, gender, and nationality) and on the penalties imposed; estimates of the size of the ITTP by type of products. Penalties for those convicted cannot be a deterrent if they are unknown and unavailable to the public.

c. the loss of revenue for the Commonwealth arising from the consumption of illicit tobacco products;

The European Commission estimates that the annual loss of revenue in Europe due to Illicit Tobacco Products is more than €10 billion. Further, illicit consumption undermines health policy initiatives aimed at discouraging the consumption of tobacco products and their legitimate business, as most illicit products are not made in line with European rules on tobacco products.

Transcrime estimates that the illicit cigarette market yields proceeds amounting to between €7.8 billion and €10.5 billion yearly. In the EU, the revenues generated by the ITTP are comparable to those of the cocaine or heroin markets. Nevertheless, lower priority and fewer resources are devoted to the ITTP than to illicit drugs. Penalties for ITTP are also substantially lower.

d. the involvement of organized crime, including international organized crime, in the importation, distribution and use of illicit tobacco in Australia;

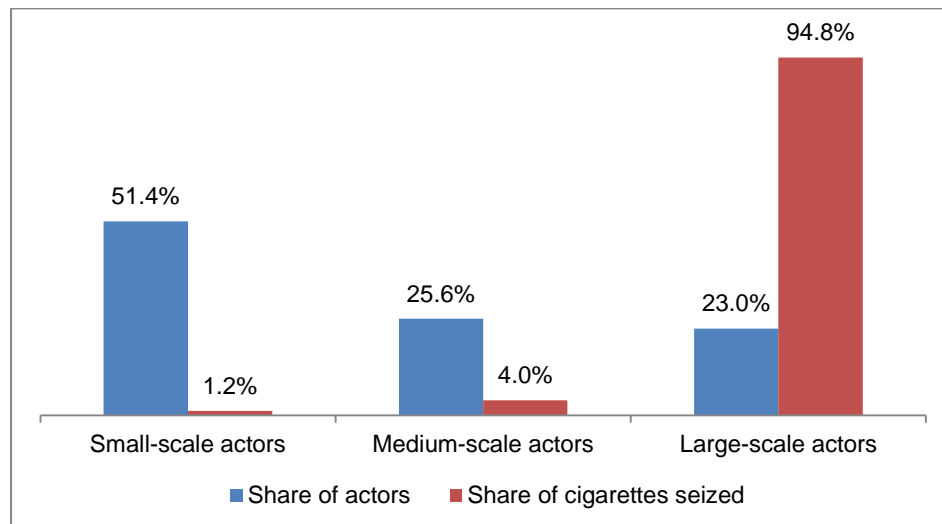
Some issues related to the involvement of Organized Crime in the ITTP follow.

Stable and organised criminal groups — such as Italian mafias, Eastern European criminal organisations or Asian criminal organisations — are present in different phases of the illicit tobacco trade. Indeed, large-scale smugglers are usually part of transnational criminal networks with a low degree of organisation and of transnational criminal networks with a certain level of organisation logistics (apartments, warehouses, transport trucks and distribution channels). They have detailed knowledge of customs regulation and may rely on their financial leverage to soften controls. Large-scale actors are not necessarily large groups because they can also buy other services (storage and logistics) from other criminal networks or single individuals. The potential profits associated with large-scale ITTP are incentives for organised crime networks that adapt quickly to law enforcement counter-measures and make a flexible use of diverse transport and distribution channels.

According to open sources, large-scale actors account for the largest ITTP share. In the EU, they are less numerous (only 23.0% of the actors reported in the open sources), but they are responsible for 94.8% of seized cigarettes. Conversely, small-scale actors represent 51.4% of the sample, but they account for a mere 1.2% of the illicit cigarettes seized. Medium-scale actors (25.6% of the total) transport 4.0% of the total cigarettes seized (Figure 1).

Figure 1. Share of actors (N=7,398) and cigarettes seized (N=6.8 billion sticks) per category of ITTP actors in the EU (2010–2013)

Transcrime elaboration on open source data



e. the effectiveness of relevant Commonwealth legislation; and other related issues.

Some considerations from the European experience follow.

The best answer to this point is what is written in my introduction to “The European Outlook on the Illicit Trade in Tobacco Products”:

“Because tobacco control measures aimed at improving health may generate negative side-effects in terms of criminal opportunities. This means that if the illicit tobacco trade is to be reduced, it is necessary to understand the trade-off between regulation of the legal markets and the impact that regulation has on the illicit ones. In the present situation, this trade-off exists in different forms but is not considered with due attention. Regulators continue to deal with health issues, while leaving it to law enforcement agencies to deal with crime. This is a division of labour that cannot work; both are reciprocally linked. Adopting an approach aimed at the reduction of opportunities and the consequent preventive policies will reduce this trade-off, maximizing health and minimizing crime at a cost less than that of the current division of labour policies. Tracking and tracing could be a good example if properly implemented at a global level for all products. As we explain in Chapter 7, this policy itself is not the main condition for success; rather, the level of implementation will determine it.” (page 18, <http://www.transcrime.it/en/publicazioni/european-outlook/>).

This section gives the idea of what are the limits of regulation and how it should be necessary for regulators to take the consequences of their regulation into account. Responsibility must rest with those agencies competent to consider such matters.

Just a local example from Australia. It relates to the implementation of standardized packaging. My interests and curiosity goes to the consequences of this policy focusing on the criminal ones. My research is about the trade-offs between health, crime and sometime individual rights. Let me say, Sir, that I think, in the absence of hard data, that these Australian highly restrictive laws risk to be an example of regulation which causes the growth of crime (illicit tobacco), lowers health outcomes while having a direct cost to government revenue.



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I do not want to add more. It is my deep conviction that in this globalised world, keeping existing differences, countries can learn more from the experiences of the other countries in fighting opportunities for Organized Crime. This note has shown my understanding of the European experience and in the same time my interest on the development of the Australian one.

Thank you for keeping me informed of your consideration of this important issue. I would be pleased to appear and give evidence to any hearing of the Committee should that be of assistance.

Best regards

Ernesto U. Savona

Director and Professor