

European Commission and Philip Morris International sign 12-year Agreement to combat contraband and counterfeit cigarettes

The European Commission, together with 10 Member States of the European Union¹ and Philip Morris International (PMI), today announced a multi-year agreement that includes an efficient system to fight against future cigarette smuggling and counterfeiting and which ends all litigation between the parties in this area. Through the Agreement, Philip Morris International will work with the European Commission, its anti-fraud office OLAF, and law enforcement authorities to help in the fight against contraband, including the rapidly growing problem of counterfeit cigarettes. The agreement includes substantial payments by Philip Morris International, which could total approximately USD 1.25 billion over twelve years. "I welcome the conclusion of the negotiations of this important agreement. This agreement is to the advantage of the EU to protect its financial interests," said Commission President Romano Prodi. "This Agreement represents a major step forward in the battle against contraband and counterfeit cigarettes," said Commissioner Michaele Schreyer, responsible for budget and the fight against fraud "We believe that it will enhance the ability of the European Commission and the Member States to combat the illegal trade in cigarettes, which results in the loss of substantial tax and customs revenues each year. Contraband and counterfeit products cheat everyone: governments, consumers and legitimate businesses", she added.

Fight against counterfeit

The Commission and the EU Member States point to several reasons why they view expanded anti-counterfeit and anti-contraband efforts as requiring significant priority. Among other reasons, the European Community and the Member States are losing hundreds of millions of Euros in unpaid taxes from counterfeit cigarettes. In addition, counterfeit and other forms of contraband create a parallel illegal supply chain that invades and compromises legitimate distribution channels and competes unfairly with genuine products distributed through legitimate channels.

Over the last few years, the incidence of contraband Philip Morris cigarettes has been greatly reduced, but during the same time period, counterfeit cigarettes have become a growing threat to the European Community and the Member States. The Commission has therefore announced that it will build on existing efforts to combat the illegal trade in cigarettes by:

- Vigorously investigating cigarette counterfeiting in close cooperation with the Member States and law enforcement officials in critical locations worldwide;

¹ Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Portugal, and Spain.

- Targeting and interrupting the production of counterfeit cigarettes with the goal of preventing counterfeit cigarettes from being introduced into the European Community; and
- Recording and pursuing seizures of counterfeit cigarettes in the European Community to identify the source of the product and other relevant information.

Fight against contraband and money laundering: Know your customers and tracking and tracing

The Agreement builds on the efforts of all parties and introduces new and innovative procedures to combat the diversion of Philip Morris International's products into contraband channels in Europe and around the world. Today's agreement reflects the reality that success in defeating the contraband and counterfeit cigarette trade can be aided greatly through a joint agreement whereby major manufacturers like Philip Morris International and European law enforcement combine their resources and enhance their coordination in combating contraband and counterfeiting.

In addition to Philip Morris International's already existing fiscal compliance policy, the Agreement contains strong provisions, approved by all parties, which provide them with a mechanism for the long-term prevention of any large-scale smuggling of genuine Philip Morris cigarettes in the European market. The Agreement requires Philip Morris International to build on its existing review process for selecting and monitoring customers, to enhance its capabilities to track and trace certain packaging, and to provide expanded support to European law enforcement in its battle against the illegal trade in cigarettes. Under the Agreement, Philip Morris International agrees to continue limiting its sales to volumes commensurate with legitimate market demand. The Agreement also incorporates and builds into a comprehensive contractual framework Philip Morris International's existing anti-money laundering policies.

Historically, a key concern for the European Community has been the introduction of contraband cigarettes into the European Community. For that reason, the European Community has taken aggressive action to address cigarette smuggling. European law-enforcement efforts have resulted over the past several years in the reduction of the amount of cigarettes that enter the EU as contraband. The European Commission has determined that constructive agreements, such as this Agreement with Philip Morris International, are a useful tool in addressing these issues.

The initiative includes far-reaching product tracking procedures that will facilitate law enforcement efforts to determine the point at which any genuine product is diverted from the authorised sales channel. Consistent with the Agreement, Philip Morris International will mark certain packaging with information indicating the intended market of retail sale, mark "master cases" of cigarettes with machine-scannable barcode labels, and implement other procedures useful for the tracking and tracing of its products.

These obligations embody the first major joint tracking and tracing initiative and are consistent with the anti-contraband provisions of the WHO Framework Convention on Tobacco Control.

Payments under the Agreement

The European Community and ten Member States will receive substantial payments over a number of years. The amount of Philip Morris International's payments under the Agreement will vary based on a number of factors, and could total approximately USD 1.25 billion.

The Agreement also includes an initiative whereby PMI has agreed to make payments in the event of future seizures in the European Community of its genuine products above defined quantities. These payments will be made without regard to fault or wrongdoing by Philip Morris International. If other Member States sign the Agreement, including the new Member States, they will also be entitled to receive these payments.

Ending past disputes

While all these provisions are forward-looking, the Agreement also contains the parties' resolution of all past disputes relating to contraband cigarettes. In particular, the Agreement also brings to an end all litigation between the European Community and the ten Member States and Philip Morris International relating to contraband cigarettes. The Agreement also resolves Philip Morris International's case against the European Commission pending on appeal before the European Court of Justice.

The Commission is always prepared to have discussions with manufacturers who are willing to commit the necessary resources to improve ways to combat illegal trade in their products and associated criminal activity, such as money laundering. Producers also have a responsibility to fight illegal trade in their products. This Agreement should therefore serve as a model for other cigarette companies.

Background

In the negotiations with Philip Morris International, the Commission represented the European Community and the ten Member States. The Legal Service and OLAF conducted the negotiations for the Commission.

<http://europa.eu.int/comm/dgs/olaf/index.htm>

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