

# Executive Summary

This report presents the results of the project entitled *Crime Proofing the Policy Options for the Revision of the Tobacco Products Directive 2001/37/EC*, carried out by Transcrime.<sup>1</sup> This project originated from the Round Table on Proofing EU Regulation against the Illicit Trade in Tobacco Products hosted by Transcrime and Università Cattolica del Sacro Cuore (Milan, Italy) on 5 May 2011.

**Crime proofing of legislation (CPL)** is a scientific approach developed by Transcrime in 2006. The core idea is that legislation or draft legislation may have criminogenic effects.

Since the evidence shows that the EU tobacco market is extremely vulnerable to the illicit trade in tobacco products (hereinafter ITTP), **the study analysed the possible impact of the proposed policy options for the revision of the EU Tobacco Products Directive (hereinafter TPD) on the ITTP.** Indeed, the ITTP may jeopardize tobacco control policies, increase smoking prevalence by supplying cheap products, and cause significantly higher damage to human health given the reduced controls on and quality standards of illicit products. Finally, the ITTP decreases government revenues and affects the licit tobacco market, damaging the economy.

The Directorate General for Health and Consumer Protection (DG SANCO) of the European Commission is currently considering **revision of the TPD.** It launched an Impact Assessment (IA) in March 2010 which is still on-going. Thereafter, DG SANCO

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<sup>1</sup> As a concerned stakeholder in the fight against the illicit trade in tobacco products, Philip Morris International (PMI) welcomed the initiative of Transcrime to conduct research on this important and relevant area. PMI agreed to contribute financially to the research. However, Transcrime retained full control and stands guarantor for the independence of the research and its results.

commissioned a study from Rand Europe to support the Impact Assessment process. Rand published the study in September 2010. It provided detailed description of the policy options envisaged by clustering the elements provided by DG SANCO into five possible policy options.<sup>2</sup>

**The present report analyses all the proposed policy options for the revision of the TPD.** The study sought to assess whether the measures proposed may create unintended crime opportunities. ***The study was not concerned with assessment of the impact of tobacco control policies on health, government revenues and smoking behaviour. Without doubt, smoking is dangerous and must be regulated. The aim of the study was to contribute to the debate on the EU tobacco policies, the purpose being to prevent or minimize opportunities for the ITTP resulting from new EU measures.***

The methodology of the CPL consists of three steps of analysis. It has been applied to the possible policy options for the revision of the TPD with the following results.

**Step 1 Initial Screening (IA).** This activity scans the policy options for the revision of the TPD provided by the Rand study in order to establish whether they fall within the seven risk indicators provided. When the act matches one of these risk indicators, the

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<sup>2</sup> Each policy option may comprise one or more main action(s). The policy options developed by Rand Europe were:

Option 1: No change.

Option 2: No binding measures.

Option 3: Minimum revision of the directive, bringing it into line with scientific and international developments.

Option 4: Revision of the directive, bringing it into line with scientific and international developments and strengthening the protection of vulnerable groups.

Option 5: Revision of the directive with the objective of strengthening product regulation and full implementation of the polluter pays principle.

analysis moves to the second step; otherwise, the assessment is over.

As a result of the Initial Screening, policy option 3 (minimum revision of the directive, bringing it into line with scientific and international developments), policy option 4 (revision of the directive, bringing it into line with scientific and international developments and strengthening the protection of vulnerable groups), and policy option 5 (revision of the directive in order to strengthen product regulation and full implementation of the polluter pays principle) fell within the risk indicators 1) fee or obligations, 4) tax or costs, and 5) availability restrictions, and were therefore recommended for the second step of the CPL.

**Step 2 The Preliminary Crime Risk Assessment (PCRA).** This is a descriptive activity whose purpose is to identify and describe which crime risks can be envisaged (if any) and for which types of crime. If the acts are rated as medium/high crime risks, the analysis moves to the next phase. Otherwise, the assessment stops.

The PCRA on the policy options highlighted that the tobacco market is extremely vulnerable to crime, and in particular to the different types of the ITTP. The PCRA of the envisaged policy options, and the related main actions, reached the following conclusions:

- **There is no reliable information with which to assess the impact of the introduction of maximum limits on ingredients.** The crime risks may vary from marginal to extremely significant, depending on the extent and type of the limitations imposed. No ECRA is presently possible.
- **There is a high risk that generic packaging may favour the increased counterfeiting of tobacco products.**
- **There is a medium risk that the implementation of the “polluter pays” principle may cause the ITTP to grow as a consequence of significant increases in the prices of tobacco products.**
- **There is high risk that banning the display of products at points of sale may**

**increase the ITTP because of difficulties in identifying legitimate products and retailers.**

For these reasons, the above measures were recommended for the third step of the CPL.

**Step 3 The Extended Crime Risk Assessment (ECRA).** This is an analytical activity which describes the impact of the options/actions on the levels of ITTP, and namely on crime, actors, victims and costs. The ECRA on the main actions at risk under the policy options envisaged was limited by the scarcity of data on the ITTP and of previous studies focusing on the impact of the policies envisaged on the ITTP. Notwithstanding these limitations, the ECRA highlighted that:

- **Generic packaging is likely to impact on consumers’ capacity to distinguish legitimate products from counterfeit ones.** In particular, the measures envisaged do not adequately address the risks associated with a possible increase in counterfeiting.
- **The implementation of “polluter pays” actions may generate a high risk of increased ITTP.** Similar measures have never previously been introduced, and the estimated impact in terms of increased retail prices suggests that a significant share of the reductions in smoking prevalence may actually be the result of a shift to the illicit market.
- **The ban on displaying products at points of sale raises the risk of increased ITTP (particularly, the sale of illicit products by authorized retailers and sale by unauthorized retailers).** The risks will be higher if no specific measure is adopted to allow clear identification of legitimate retailers, and in those countries currently allowing the sale of tobacco products in bars, cafés, convenience stores, and clubs.

In **conclusion**, the study highlighted that the EU tobacco market is extremely vulnerable to the ITTP. Nevertheless, available information on the currently on-going impact assessment for the revision of the TPD indicates that DG SANCO paid almost no attention to the impacts on the ITTP.

As a result of the crime proofing exercise conducted by this study, some of the envisaged policy options proved to have significant risks of creating unintended opportunities for the ITTP. In particular, the implementation of generic packaging appeared likely to increase the counterfeiting of tobacco products. Also, adoption of the “polluter pays” principle, imposing the health costs of smoking on tobacco manufacturers, may bring unprecedented changes in the market. Furthermore, the estimated increases in final retail prices may

significantly increase the demand for cheap and illicit tobacco products.

Finally, the display ban may increase the risk of ITTP if no appropriate measure enables consumers to identify legitimate retailers clearly and unequivocally. This confirms that the lack of attention paid by the European Commission to the risks of increased ITTP may have serious consequences.

Given the difficulties associated with the policing of tobacco markets through traditional crime control strategies, innovative preventive strategies should be developed by applying approaches such as situational crime prevention or problem-oriented policing. Furthermore, the European regulation should be thoroughly proofed against the risk of creating opportunities for criminals.