Implications of the agreement between the Community, Member States and Philip Morris on intensifying the fight against fraud and cigarette smuggling and progress made in implementing the recommendations of Parliament's Committee of Inquiry into the Community Transit System

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The European Parliament adopted a resolution based on the own-initiative report drafted by Bart **STAES** (Greens/ALE, BE) on the implications of the agreement between the Community, Member States and Philip Morris on intensifying the fight against fraud and cigarette smuggling and progress made in implementing the recommendations of Parliament's Committee of Inquiry into the Community Transit System (INI/1995/2321). Following the results of the Committee of Inquiry, Parliament, supported by the Council and the Court of Auditors, had recommended that, in order to prevent fraud, transit movements be computerised, the legal framework be revised and the Commission and the Member States improve physical checks based on common risk analysis.

Serious deficiencies in Member States' application of new transit rules: Parliament was worried about the numerous weaknesses that the Court of Auditors had found in Member States' application of the revised legal framework, in particular with regard to the verification of procedure simplifications, enquiries and recoveries. It was particularly worried by the Court's finding that in Germany, Spain, France, Belgium and Hungary duties on non-completed transits were entered in the B accounts although they were covered by guarantees. In some Member States, administrative practice with regard to the B accounts was questionable. Parliament called on the Commission to start infringement procedures against Member States whenever errors with regard to the B account are not one-off, but systematic and structural. It went on to observe that the House of Lords considered that approximately 4% of the UK's potential VAT revenue is being lost each year due to carousel fraud. It noted the House of Lords' findings that, although it appeared more lucrative to commit VAT fraud in intra-Community trade, it could also occur in trade involving trade with third countries. Parliament was deeply concerned about the House of Lords' explanations that, in the latter case, the abuse of the Community transit system forms part of the classical pattern of carousel fraud. It was shocked by the Court of Auditors' finding that the Commission did not carry out any own resources inspections focusing on transit between 2001 and 2005 but only in 2006, and wanted the Commission to inform Parliament of how the lack of inspections would be remedied in the future.

The agreement with Philip Morris: Parliament was very disappointed about the way the Commission had handled the distribution of the payments from the Philip Morris agreement among the 10 Member States and the Community, whereby the Community received only 9.7 % thereof and the rest went un-earmarked straight to the Ministers of Finance of the Member States. It considered that this distribution went against the spirit and intention of the agreement, which was negotiated on the basis that the USD 1,25 billion concerned had to be used in the fight against fraud. It understood that the unwise distribution of the payments made by Philip Morris under the agreement are a major deterrent against other manufactures concluding similar agreements or settlements, and it called on the Commission and

Member States to make it clear, before other agreements are signed, that future payments would be used for the fight against fraud.

Negotiations on further agreements: Members regretted that, until now, no other cigarette manufacturer had concluded a similar agreement. The Commission was asked to continue negotiations with all major players in the market in order to conclude agreements whereby the Philip Morris agreement, except the main payment, was the minimal standard. Parliament supported the Commission in its recent calls on Japan Tobacco and Reynolds American to sign similar agreements in return for the EU dropping legal proceedings against them. It felt, however, that the Commission should use all its legal powers to seek substantial compensation for losses incurred by the EU and the Member States from companies directly or indirectly involved in facilitating the illegal trade in cigarettes or other tobacco products, be it in the past or in the future.

Therefore, Members asked the Commission to: i) remedy the lack of inspections in transit; ii) consolidate databases, ensure data reliability with regard to fraud and irregularities and find a common approach to risk analysis and physical checks; and iii) continue promoting the achievements of the Philip Morris agreement at European and international level.

Parliament called on the Member States, to i) harmonise IT applications implementing the CTS, as suggested by the Commission in its legislative proposal on a paperless environment for customs and trade ("eCustoms Decision") (please see COD/2005/0247); ii) stop, in some Member States, the ambiguous practices carried out in some Member States concerning the B accounts; and iii) address, as a matter of urgency, the shortcomings listed by the European Court of Auditors, especially as regards checks on procedure simplifications, enquiries and recoveries.

Members were alarmed by the Commission's conclusion that tobacco products are still among the goods worst hit by fraud and irregularities, as in previous years. They called on the Commission to see to it that retail prices in the now enlarged Union are brought within a narrower band which will make it less profitable to smuggle cigarettes. They also asked OLAF not only to disclose the amounts of seizures but also the brand names involved.

In order to fight more efficiently the illicit trade in cigarettes, Parliament invited the Commission to take further measures: i to set up a laboratory enabling law enforcement personnel to check if cigarettes are genuine or not and to collect the results of these checks in a data base of the origins of the tobacco and other components used in those cigarettes; ii) to launch a study and a possible pilot project to identify the best possible technical solution for the identification of original cigarettes which will at the same time ensure that consumers purchase genuine cigarettes and guarantee the highest possible check on fraud; iii) to propose legislation to introduce a system of licensing for the purchase of machines and other equipment for producing cigarettes, and a ban on trade in second hand machines; iv) to establish a platform for all interested parties, including industry and civil society, to find and co-ordinate more effective approaches towards combating the illicit trade of tobacco products, including counterfeit cigarettes.

The Commission was invited to present a comprehensive report on its and Member States' follow-up to this resolution to Parliament's competent committee by the end of 2008.