World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products. Provisions which do not fall under Title V of Part III of the TFEU

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PURPOSE: to conclude, on behalf of the European Union, the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, in so far as the provisions of the Protocol which do not fall under Title V of Part III of the Treaty on the Functioning of the European Union are concerned.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the World Health Assembly adopted in 2003 the **Framework Convention on Tobacco Control (FCTC)**, which aims at reducing tobacco-related deaths and diseases around the world in a comprehensive manner. The EU concluded the FCTC by Council Decision 2004/513/EC.

The Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control was signed on 20 December 2013.

Illicit trade in tobacco products and in particular cigarette smuggling into the EU and within the EU is a **criminal activity causing huge losses in revenue** for the EU and the Member States in terms of unpaid taxes and customs duties. Estimates indicate more than €10 billion losses of revenue annually to the EU and Member States.

Most of the EU Member States are affected by the illicit tobacco trade, either as points of entry or transit or destination countries. Since the illicit products mostly originate from countries outside the EU, international cooperation, in particular also based on clear legislative procedures, is key to addressing the problem of illicit trade. The FCTC Protocol currently constitutes the **only multilateral regulatory initiative in the area**.

It is now necessary to approve the Protocol on behalf of the European Union.

CONTENT: under this proposal, the Council is invited to approve, on behalf of the European Union, the **Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control**.

This Decision applies to the provisions of the Protocol which **do not fall** within the scope of Title V of Part III of the Treaty on the Functioning of the European Union (Freedom, Security and Justice).

The Protocol contains a complex **set of measures**, rules and policy in the field of fighting illicit trade in tobacco products. The Protocol provisions fall into different areas of EU activity which may be subdivided as follows:

- the manufacture and sale of tobacco (and related) products;
- customs controls and cooperation including through mutual administrative assistance in customs matters;
- approximation of criminal offences, judicial cooperation in criminal matters and police cooperation;
- harmonised taxation and related rules.

The Protocol:

- requires the introduction of a licensing, equivalent approval or control system by a competent authority for any natural or legal person involved in the manufacturing and in the import and export of tobacco products and manufacturing equipment;
- requires all natural and legal persons engaged in the supply chain of tobacco, tobacco products and manufacturing equipment to conduct customer due diligence;
- also provides for the establishment of a global tracking and tracing regime, within five years of the entry into force of the Protocol, consisting of national and/or regional tracking and tracing systems controlled by the Parties for all tobacco products manufactured in or imported into their territory.

Those articles are complemented by provisions on: (i) record-keeping and security and preventive measures, including anti-money-laundering measures and reporting of suspicious transactions; (ii) sales by Internet; (iii) duty free sales of tobacco products and the obligation to implement effective controls on tobacco and tobacco products in the free zones, including not mixing tobacco products with non-tobacco products at the time of removal from a free zone.

Part IV of the Protocol defines the conduct to be established as unlawful under the Parties' legislation and obliges the Parties to ensure that natural and legal persons are held liable for such unlawful conduct, including criminal offences. Further provisions concern seizure payments, the handling of confiscated tobacco and special investigative techniques.

Part V of the Protocol contains provisions for the exchange of relevant information between the Parties, cooperation and mutual assistance (both administrative and legal in relation to criminal matters), jurisdiction and extradition.

In parallel to this proposal, the Commission presented a separate proposal for a Council Decision on the conclusion of the Protocol, on behalf of the European Union, as regards provisions which fall under Title V of Part III of the TFEU.