World Health Organisation (WHO) Framework Convention on Tobacco Control: Protocol to Eliminate Illicit Trade in Tobacco Products

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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 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 EU signed the FCTC Protocol 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**. The Protocol contains a complex **set of measures**, rules and policy in the field of fighting illicit trade in tobacco products.

This Decision applies to the provisions of the Protocol **which 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:

- measures on the definition of unlawful conduct that may be established by the Parties as a non-criminal or a criminal offence, including establishing the liability of both natural and legal persons. The list of unlawful conducts also includes the laundering of proceeds of the unlawful conduct established as a criminal offence. Under Council Framework Decision 2001/500/JHA on money

laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, Member States shall ensure that certain money laundering offences are sanctioned by criminal penalties;
- measures on judicial cooperation in criminal matters (mutual legal assistance and extradition);
- measures on police and customs cooperation in criminal matters.

The United Kingdom, Ireland and Denmark shall not take part in the adoption of the Decision.

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 **do not fall** under Title V of Part III of the TFEU.