



Plenary sitting

B8-0316/2016

2.3.2016

MOTION FOR A RESOLUTION

further to Questions for Oral Answer B8-0109/2016, B8-0110/2016, B8-0111/2016, B8-0112/2016, B8-0113/2016, B8-0114/2016 and B8-0115/2016

pursuant to Rule 128(5) of the Rules of Procedure

on the Commission's 'Technical assessment of the experience made with the Anti-Contraband and Anti-Counterfeit Agreement and General Release of 9 July 2004 among Philip Morris International and affiliates, the Union and its Member States' and the forthcoming expiry of that agreement (2016/2555(RSP))

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on behalf of the PPE Group

European Parliament resolution on the Commission's 'Technical assessment of the experience made with the Anti-Contraband and Anti-Counterfeit Agreement and General Release of 9 July 2004 among Philip Morris International and affiliates, the Union and its Member States' and the forthcoming expiry of that agreement (2016/2555(RSP))

The European Parliament,

- having regard to the Anti-Contraband and Anti-Counterfeit Agreement and General Release of 9 July 2004 among Philip Morris International (PMI) and affiliates, the Union and its Member States,
 - having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC¹,
 - having regard to the Protocol to Eliminate Illicit Trade in Tobacco Products adopted during the fifth session of the Conference of the Parties to the WHO Framework Convention on Tobacco Control by Decision FCTC/COP5 (1) of 12 November 2012,
 - having regard to the Commission staff working document of 24 February 2016 entitled 'Technical assessment of the experience made with the Anti-Contraband and Anti-Counterfeit Agreement and General Release of 9 July 2004 among Philip Morris International and affiliates, the Union and its Member States' (SWD(2016)0444),
 - having regard to its resolution of 11 October 2007 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 System²,
 - having regard to the questions to the Commission on the Commission's 'Technical assessment of the experience made with the Anti-Contraband and Anti-Counterfeit Agreement and General Release of 9 July 2004 among Philip Morris International and affiliates, the Union and its Member States' and the forthcoming expiry of the agreement (O-000010/2016 – B8-0109/2016, O-000014/2016 – B8-0110/2016, O-000015/2016 – B8-0111/2016, O-000016/2016 – B8-0112/2016, O-000017/2016 – B8-0113/2016, O-000018/2016 – B8-0114/2016 and O-000019 – B8-0115/2016),
 - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas tobacco smuggling is a serious crime, which contributes to the funding of other international organised criminal activities, including terrorism, and human, drugs and arms trafficking;

¹ OJ L 127, 29.4.2014, p. 1.

² OJ C 227 E, 4.9.2008, p. 147.

- B. whereas tobacco fraud is a public-health concern, which poses an even greater health risk than genuine cigarettes; whereas, since counterfeit cigarettes are illegally manufactured and imported, the ingredients used are not known;
 - C. whereas tobacco fraud undermines anti-smoking policies, thereby fuelling the tobacco epidemic, increasing access to (often cheaper) tobacco products, especially for young people and low-income groups;
 - D. whereas 700 000 EU citizens die prematurely every year from smoking;
 - E. whereas the core aim of the PMI agreement is to reduce the prevalence of PMI contraband on the illicit EU tobacco market;
 - F. whereas the Commission's technical assessment of the PMI agreement concludes that this core objective has been effectively met, but that the reduction in PMI contraband has not led to an overall reduction in the number of illicit products on the EU market;
 - G. whereas the PMI agreement has so far provided financial benefits to public revenue amounting to approximately EUR 1 billion in annual payments and EUR 68.2 million in seizure payments, divided between the Commission (c. 10 %) and the Member States (c. 90 %);
 - H. whereas the PMI agreement is set to expire on 9 July 2016;
 - I. whereas there have been significant changes to the market environment since the current PMI Agreement was signed, in particular the increased presence of non-branded cigarettes, often referred to as 'cheap whites';
 - J. whereas there have been significant changes to the regulatory environment since the current PMI agreement was signed, in particular the adoption of Directive 2014/40/EU concerning the manufacture, presentation and sale of tobacco and related products, and of the Protocol to the WHO Framework Convention on Tobacco Control;
 - K. whereas Cases C-358/14 *Poland v Parliament and Council*, C-477/14 *Pillbox 38 (UK) Limited* and C-547/14 *Philip Morris Brands SARL and Others*, which challenge Directive 2014/40/EU, are currently before the Court of Justice of the EU and should be withdrawn by the tobacco manufacturers in question at the earliest opportunity;
1. Welcomes the Protocol to Eliminate Illicit Trade in Tobacco Products ('FCTC Protocol') adopted in respect of the WHO Framework Convention on Tobacco Control's and calls for the ratification process to be completed in order for the tracking and tracing system to become effective by 2022 or 2023;
 2. Welcomes the adoption of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC¹ (the Tobacco Products Directive);

¹ OJ L 127, 29.4.2014, p. 1.

3. Emphasises that the Protocol to the WHO Framework Convention on Tobacco Control and the Tobacco Products Directive together form the EU's core instruments in its fight against the illicit tobacco trade;
4. Welcomes the Commission's technical assessment of the experience of the PMI Agreement; regrets, however, that the assessment was only published on 24 February 2016, despite its announcement in May 2015, and that Parliament's capacity to express its view in a timely manner on this complex and delicate matter has thereby been undermined;
5. Takes note of the Commission's assessment that the PMI agreement has effectively met its objective of reducing the prevalence of PMI contraband on the illicit EU tobacco market, as shown by a drop of around 85 % in the volume of genuine PMI cigarettes seized by Member States between 2006 and 2014;
6. Notes, however, that this reduction in PMI contraband did not lead to an overall reduction in illicit products on the EU market; notes also that the contraband consisting of smuggled products from large manufacturers has been increasingly replaced by other products including non-branded cigarettes ('cheap whites') typically produced in third countries;
7. Emphasises the significant changes in the market environment since the current PMI agreement was signed, particularly the increased presence of 'cheap whites'; adds, however, that the PMI Agreement was never intended to address the issue of the smuggling of 'cheap whites' within the EU;
8. Notes that the European Anti-Fraud Office (OLAF) and the customs authorities of many Member States have emphasised the value-added of the agreement to their investigative activities;
9. Notes that, as a result of the tobacco agreements, companies have applied stringent checks on their production, their customers and contractors, their storage and movement of cigarettes and the types of acceptable payment for cigarettes;
10. Regrets the fact that the management of the tobacco agreements by the Commission has not always been transparent, may have given rise to situations of conflict of interest and has not been subject to real democratic scrutiny;
11. Calls on the Commission to take all necessary steps to ensure maximum transparency in the exploratory talks about the possible extension of the agreement, including appropriate involvement of Parliament;
12. Is deeply concerned that the budget of the European Anti-Fraud Office (OLAF) is partly financed by yearly payments from the tobacco industry, as mentioned in the tobacco agreements, since this could lead to a certain conflict of interest;
13. Welcomes the Commission's efforts since 2014 to improve management and implementation of the PMI Agreement, including the establishment of a new testing facility for seized cigarettes and the new IT application (ToSMA) for the exchange of information on seizures;

14. Calls on the Commission to explore ways to further improve control mechanisms with regard to analysis of seized cigarettes in order to minimise the risk of false determinations by the manufacturer;
15. Notes that the track-and-trace system provided for in the Tobacco Products Directive should take effect in May 2019;
16. Emphasises that the Commission must take immediate steps to ensure the full transposition of the Tobacco Products Directive in all Member States;
17. Notes also that the FCTC Protocol will not enter into effect until 2022 or 2023 at the earliest;
18. Reiterates the continuous need to fight illicit trade, counterfeiting and tax evasion; whereas the Commission should therefore look for ways to address the current situation in a transparent and accountable manner, with the involvement of the European Parliament, given the possible gap between the expiry of the PMI agreement currently in force and the entry into force of the Tobacco Products Directive and the Protocol to the WHO Framework Convention on Tobacco Control;
19. Emphasises that any possible negotiation that might potentially lead to an extension of the agreement must take into account the significantly different regulatory environment in place since the signing of the current agreement;
20. Emphasises, therefore, that any possible extension of the agreement could be considered a transitional arrangement to prevent a regulatory gap until both the Tobacco Products Directive and the FCTC Protocol take full effect;
21. Calls on PMI to continue to apply the track-and-trace and due diligence ('know your customer') provisions contained in the current agreement, regardless of whether or not it is renewed;
22. Expresses concern at the fact that the PMI Agreement currently in force could not deal with the issue of 'cheap whites' given that these are unbranded cigarettes and therefore fall outside the agreement's scope; calls on the Commission, therefore, to come forward with an action plan setting out new measures aimed at tackling this problem as a matter of urgency;
23. Calls on the Commission to explore the possibility of seeking the expiration of the other three agreements with tobacco manufacturers upon the entry into force of the FCTC Protocol;
24. Calls on the Commission to put forward an additional regulation to apply track-and-trace and due diligence ('know your customer') provisions to raw cut tobacco, filters and papers used by the tobacco industry, as an additional tool to fight against contraband and counterfeit products;
25. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.