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## TEXTS ADOPTED

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### **P8\_TA(2016)0082**

#### **Tobacco agreement (PMI agreement)**

##### **European Parliament resolution of 9 March 2016 on the tobacco agreement (PMI 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/EC<sup>1</sup>,
- having regard to the World Health Organisation Framework Convention on Tobacco Control (the ‘WHO FCTC’) and to the Protocol to Eliminate Illicit Trade in Tobacco Products, adopted during the fifth session of the Conference of the Parties to the WHO FCTC by Decision FCTC/COP5(1) of 12 November 2012,
- having regard to the Commission proposal of 4 May 2015 for a Council decision on the conclusion, on behalf of the European Union, of 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 (COM(2015)0193),
- 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)0044),
- 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

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<sup>1</sup> OJ L 127, 29.4.2014, p. 1.

recommendations of Parliament's Committee of Inquiry into the Community Transit System<sup>1</sup>,

- having regard to the question to the Commission on the tobacco agreement (PMI agreement) (O-000010/2016 – B8-0109/2016),
  - having regard to Rules 128(5) and 123(4) of its Rules of Procedure,
- A. whereas protection of the EU's financial interests is one of the Commission's key priorities, and whereas illicit trade in tobacco products, in particular smuggling of contraband and counterfeit cigarettes, costs national and EU budgets, at a conservative estimate, more than EUR 10 billion in lost public revenue per year;
- B. whereas illicit trade is a serious crime that contributes to the funding of other international organised criminal activities, including human, drugs and arms trafficking, and, in some cases, terrorist groups;
- C. whereas the core aim of the PMI agreement is to reduce the prevalence of PMI contraband on the illicit EU tobacco market;
- D. whereas the PMI agreement is set to expire on 9 July 2016;
- E. whereas the Commission's technical assessment of the PMI agreement concludes that this core objective has been met effectively, but questions the causality of this result and points out that the reduction in PMI contraband has not led to an overall reduction in the number of illicit products on the EU market;
- F. whereas the PMI agreement has provided financial benefits to public revenue of approximately USD 1 billion in annual payments and EUR 68,2 million in seizure payments, divided between the Commission (approximately 10 %) and the Member States (approximately 90 %); whereas there are no data on how the Member States have spent the revenue received under the agreement;
- G. whereas both the legal framework and the market environment of the illicit tobacco trade have changed substantially since the signing of the agreement, in particular as regards the increased presence of non-branded cigarettes, often referred to as 'cheap whites', and the development of the new area of liquid nicotine sales for e-cigarettes;
- H. 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 and should be withdrawn by the tobacco manufacturers in question at the earliest opportunity;
- I. whereas the Commission has committed to ratification of the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products, which is a major step towards strengthening the legal framework for the fight against illicit trade in tobacco products; whereas the Commission has undertaken to invite third countries to ratify the Protocol;
- J. whereas tobacco smuggling undermines EU public health policies and means that illicit tobacco products are available – including to young people – at a substantial illegal discount in many places; whereas not only are counterfeit cigarettes illegally

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<sup>1</sup> OJ C 227 E, 4.9.2008, p. 147.

manufactured and imported, but they contain unknown ingredients, thus constituting a serious health risk;

1. Welcomes the WHO FCTC Protocol to Eliminate Illicit Trade in Tobacco Products, and calls for the ratification process to be completed as soon as possible;
2. Welcomes the Commission's proposal to ratify the Protocol, and its undertaking to invite Member States and third countries to ratify it; notes that 15 countries have ratified the Protocol so far, including five EU Member States, and that the EU is currently preparing to ratify it;
3. Urges the Commission to pursue prompt ratification of the Protocol; believes, however, that renewal of the agreement would send a damaging and counterproductive message to third countries that the EU engages in inappropriate interactions with the tobacco industry even though the Protocol clearly prohibits such interactions;
4. Expresses its belief that renewal of the PMI agreement may not be compatible with the EU's obligations under Article 5.3 of the WHO FCTC, which could damage the EU's reputation as a global leader on tobacco control;
5. Points out that the Guidelines for implementation of Article 5.3 of the WHO FCTC state that '[t]here is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests';
6. 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/EC (the Tobacco Products Directive); stresses that the Tobacco Products Directive already provides for a legal requirement for tobacco companies to introduce and maintain a track-and-trace system which must be operational for cigarettes and roll-your-own tobacco products from 20 May 2019, and for other tobacco products from 20 May 2024;
7. Emphasises that the Commission must take immediate steps to ensure the full transposition of the Tobacco Products Directive in all Member States; notes that several Member States have informally indicated to the Commission that the transposition process for the directive has been completed; calls on the Commission to provide full information on the state of play of transposition following the expiry of the deadline of 20 May 2016;
8. Recalls that in May 2015 the Commission promised to deliver its assessment of the agreement with PMI as soon as possible; stresses that the Commission postponed the publication of the assessment several times and that it was finally published on 24 February 2016, one day before a plenary debate on the issue in Parliament; firmly considers such delayed publication to constitute a serious failure on the part of the Commission to meet its obligations of transparency, both to Parliament and to citizens, thus undermining Parliament's capacity to express its view in a timely manner on this complex and delicate matter;
9. Takes note of the Commission's assessment that the PMI agreement has met effectively 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; notes, however, that the Commission

questions the causality of this result, and also highlights the fact that the reduction in PMI contraband has not led to an overall reduction in the number of illicit products on the EU market; notes that contraband consisting of smuggled products from the large manufacturers has been increasingly replaced by other products, including non-branded cigarettes ('cheap whites') typically produced in third countries;

10. 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;
11. Emphasises that, when first concluded in 2004, the PMI agreement was an innovative instrument in tackling the illicit tobacco trade, but stresses that the market and regulatory environment have experienced substantial changes since then; stresses that the agreement does not address important characteristics of the illicit tobacco trade today, in particular the high proportion of the trade that is now made up of 'cheap whites'; is therefore of the opinion that all the elements covered in the agreement with PMI will be covered by the new legal framework made up of the Tobacco Products Directive and the WHO FCTC Protocol;
12. Concludes, therefore, that the agreement with PMI should not be renewed, extended or renegotiated; asks the Commission not to renew, extend or renegotiate it beyond its current date of expiry;
13. Urges the Commission to put in place, at EU level and by the date of expiry of the PMI agreement, all the necessary measures to track and trace PMI tobacco products, and to bring legal action for any illegal seizures of this manufacturer's products until all provisions of the Tobacco Products Directive are fully enforceable, so that there is no regulatory gap between the expiry of the PMI agreement and the entry into force of the TPD and FCTC;
14. 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 extended;
15. Expresses concern that the four agreements with tobacco manufacturers do not deal with the issue of 'cheap whites'; calls on the Commission, therefore, to come forward with an action plan setting out new measures to tackle this problem as a matter of urgency;
16. Calls on the Commission to bring forward a new, additional regulation establishing an independent track-and-trace system and applying due diligence ('know your customer') provisions to raw cut tobacco, filters and papers used by the tobacco industry, as an additional tool to combat contraband and counterfeit products;
17. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States, and the Secretariat of the World Health Organisation Framework Convention on Tobacco Control.