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The fight against illegal tobacco products

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ABSTRACT

This paper addresses the pressing issue of combating illicit tobacco products, emphasising the legal frameworks at both the national and European levels. It explores the roles and activities of various authorities dedicated to preventing illegal tobacco trade, including the European Anti-Fraud Office (OLAF) and the Criminal Office of the Financial Administration of the Slovak Republic. The study delves into the legislative landscape governing tobacco products, assessing its effectiveness in adapting to the evolving tactics of smuggling networks. In particular, the paper scrutinises how Slovak and European regulations align to counteract the sophisticated and increasingly complex strategies employed in illegal tobacco trafficking. Statistical data highlights the prevalence of contraband tobacco in Slovakia, illustrating the financial, health, and societal ramifications of the black market. The findings also point to a correlation between high tobacco prices and an increased likelihood of exposure to illicit products. Furthermore, the research supports hypotheses regarding the adaptability of Slovak legislation to contemporary tobacco consumption trends and the critical role of inter-European collaboration in enforcement efforts. However, it also identifies potential areas for legislative improvement, particularly in streamlining tobacco regulation. This study contributes valuable insights into the challenges and successes of the Slovak Republic's ongoing fight against the illegal tobacco trade.

Keywords: Tobacco products, illegal tobacco products, fight against illegal tobacco products, European Anti-Fraud Office, Criminal Office of the Financial Administration of Slovak Republic

INTRODUCTION

One of the current trends is the fight against illicit tobacco products, which is a very delicate situation that poses risks not only in the sphere of public health but also in the sphere of public finances. The smuggling of tobacco products is becoming more sophisticated from year to year, or decade to decade, due to the adaptation of the various smuggling groups to the current legislative changes and modern techniques aimed at detecting and intercepting illegal imports. On the other hand, the question must be asked: are smugglers adapting their practices and methods to legislation and the mechanisms used to intercept smuggled goods, or are legislation and those mechanisms adapting to smuggling practices? In this paper, we will focus on the definition of tobacco products in terms of the legislation in force in the Slovak Republic, we will map the specific institutions and tools that serve to detect and intercept illegally imported tobacco products at the European level, we will describe the fight against illegal tobacco products concerning legislation and procedures in the Slovak Republic regarding the activities of the Criminal Office of the Financial Administration, as a body of the Financial Administration of the Slovak Republic, which focuses on violations of regulations in the field of public finances.

According to current statistics, up to ¼ of all cigarettes produced in the world are a commodity traded on the black market, i.e. contraband tobacco products. For the territory of the Slovak Republic, it can be stated statistically that every 16th cigarette is illegal. This statistic focuses exclusively on cigarettes; other tobacco products (the definition of which will be dealt with in Chapter 1) are not included. The level of untaxed tobacco products is currently at 4.4%. This is research from 2021, which notes that the level has increased year-on-year from 2020, when it was 4.1% in 2020. However, if we compare that level in the long term, for example, to 2008, when the level of consumption of illicit tobacco products was 8%, this is a significant improvement.

It should be noted that the Slovak Republic is not considered a country of production of illicit tobacco products, nor is it considered a destination country to which smugglers direct their primary shipments. The Slovak Republic serves as a transit country, i.e., through which illicit tobacco products mainly enter the European Union, particularly the Schengen area. The difference between the prices of tobacco products in Slovakia and in Western European countries is so great that Slovakia is not an attractive destination for the primary sale of smuggled tobacco products. From the above, it can be hypothesised that the higher the prices of tobacco products, the higher the likelihood of exposure to illicit tobacco products.

The most used transport channel for smugglers is the Slovak-Ukrainian border, and the methods of smuggling are varied. To put it bluntly, there are no limits to the imagination. There have been cases of smuggling tobacco products in cars across the Uh river—which lies on the border—artificially built underground tunnels, and, currently, a growing trend of smuggling by drones.

The importation or use of illicit tobacco products involves three main categories of threat - health, economic and societal. As the production and sale of tobacco products is subject to strict standards and criteria, which are generally not adhered to in the production of illicit tobacco products, health is the primary interest at stake. The above hypothesis can be verified by noting that the illicit tobacco products used do not have proven manufacturing processes, their content is not known (they generally contain more tar, produce more carbon monoxide or contain other toxic substances, etc.), nor are the manufacturing processes and associated storage, where there is a risk of high levels of contamination. The economic harm is mainly to public finances, since tobacco products are subject to tax as such and excise duty. This is a major drain on the national budget. Last but not least is the social factor, which consists in encouraging criminal activity. Unless society fundamentally condemns such behaviour and actions, the trade in illicit tobacco products will continue to operate.

Slovak legislation reflects modern trends in the use of tobacco products, especially concerning alternative ways of using tobacco products.

The Slovak Republic has a high level of fighting illicit tobacco products, regarding European cooperation in this area.

The Slovak Republic's legislation on tobacco products suffers from so-called hypertrophy, which weakens the law's enforceability and makes it opaque.

1. Tobacco products

„*Ubi homo, ibi societas; ubi societas, ibi ius*“. The above statement was made by the Roman philosopher and statesman Cicero, and can be considered timeless about the time it was made. Its content is still fully applicable today. Where there is man, there is society; where there is society, there is law. From its content we can very easily deduce the need to incorporate man, the individualist, into a larger grouping, society. For that society to function, it needs to have clearly defined structures and rules. That is to say, to have a functioning system of law. Without law there would be no order, only chaos and anarchy. Legal regulation applies to all social relations, with tobacco products being no exception.

According to European Union legislation, tobacco products are classified primarily based on their intended use and form. The classification includes the following main categories:

- Cigarettes – Rolled tobacco products for smoking.
- Cigars and Cigarillos – Larger rolled tobacco products, typically with more tobacco.
- Pipe Tobacco – Tobacco intended for use in pipes.
- Roll-your-own Tobacco – Loose tobacco for rolling into cigarettes by the consumer.
- Smokeless Tobacco Products – Products like chewing tobacco and snuff, intended for oral or nasal use without combustion.
- Novel Tobacco Products—This category includes items such as heated tobacco products, which are consumed by heating rather than burning.

These classifications and definitions are primarily found in Directive 2014/40/EU, also known as the Tobacco Products Directive (TPD), which governs the EU's manufacture, presentation, and sale of tobacco and related products. The directive lists specific requirements for each category, including packaging, labelling, maximum emission levels, and health warnings. It also sets provisions for reporting ingredients and monitoring the market for novel tobacco products.

Additionally, Regulation (EU) No 764/2008 (now incorporated into the EU Single Market rules) ensures that products legally sold in one EU country can be sold in others, provided they meet the necessary safety and labelling standards.

In the past, certain tobacco products were classified as food products in some jurisdictions, including under Slovak law. This was largely due to historical definitions and regulatory frameworks that initially grouped non-combustible items, such as chewing tobacco or snuff, with consumable items intended for ingestion or intake into

the body. However, this classification has since been revised, as tobacco products have unique health risks and require distinct regulations from food products. The key reasons for the shift away from classifying tobacco as food are:

1. **Health Risks:** Tobacco contains harmful substances, such as nicotine, tar, and other carcinogens, which are not compatible with the safety standards expected of food products. Tobacco products are now recognized for their serious health implications, which differ fundamentally from those of food.
2. **Purpose of Consumption:** Unlike food, which is consumed to provide nutritional benefits, tobacco is consumed primarily for recreational or habit-forming purposes. The effects of nicotine, an addictive component, further distinguish tobacco from food products.
3. **Regulatory Precision:** Modern regulatory frameworks, such as the EU's Tobacco Products Directive (Directive 2014/40/EU), are designed specifically for tobacco products. These frameworks address the unique risks associated with tobacco use, such as restrictions on marketing, strict labeling requirements, emission limits, and ingredient disclosure. Classifying tobacco separately from food allows for more precise and effective regulation of these risks.

Today, most countries regulate tobacco products under dedicated tobacco control laws rather than food legislation. This shift allows for more targeted measures addressing the health risks of tobacco use, including advertising restrictions, health warnings, and sales limitations. For instance, the European Union's Tobacco Products Directive (Directive 2014/40/EU) provides a comprehensive framework for regulating tobacco products across member states.

It's important to note that while the trend has moved towards specific tobacco regulation, some countries may still have remnants of older classifications, especially for traditional or culturally specific tobacco products. However, the global movement, guided by frameworks like the World Health Organization's Framework Convention on Tobacco Control (WHO FCTC), encourages nations to adopt comprehensive tobacco control measures distinct from food regulations.

In the EU, tobacco products are therefore no longer classified as food products. This change was codified through specific legislation that addresses the production, sale, and labeling of tobacco products distinctly from food, ensuring that tobacco regulation aligns with public health goals rather than dietary standards.

Since the use of tobacco products is inherent in some members of society, such regulation is necessary. Within the limits of the Slovak legal order, Act No 335/2011 Coll. on Tobacco Products and Act No 89/2016 Coll. on the Production and Sale of Tobacco Products and Related Products and on Amendments and Additions to Certain Acts play a key role in this respect.

The original legislation defining tobacco products was contained in Act No. 152/1995 Coll. on Foodstuffs, the text of the Act in force until 31.10.2011. Although the legal regulation of tobacco products was contained in the Food Act, the Act itself did not define tobacco and tobacco products as food [1]. Tobacco products under the Act were products intended to be smoked, chewed, snuffed and sucked if they were even partially made from tobacco, whether generically modified or not [2]. Thus, the legal definition was based on the product's origin, i.e., tobacco, and in light of current trends in tobacco product use, the then legal definition of tobacco products would not have been sufficient. Therefore, the legislator adopted Act No 335/2011 Coll. on Tobacco Products, which defined tobacco products as a separate category outside the scope of the legal regulation of the Food Act. The adoption of the new legislation reflected both the requirements of the European Union in terms of Regulation (EC) No 764/2008 of the European Parliament and of the Council of 09.07.2008 laying down procedures relating to the application of certain national technical rules to products lawfully placed on the market in another Member State [3] and [4]. At the same time, a legal amendment was also necessary due to the implementation of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28.01.2002 laying down procedures in food safety, according to which tobacco products cannot be classified as food.

By adopting the Tobacco Products Act, the Slovak Republic thus proclaimed compliance with the condition of alignment of national legislation with Community law. It defined a legal definition of tobacco products, which, paradoxically, remained unchanged from the original legislation. The law introduced the methodology for registering tobacco products, the manufacturing process and the associated responsibility for their quality, the marketing process, the form of packaging, the labelling of tobacco products, storage, transport and the sale itself. It can therefore be concluded that the legislation mentioned above only regulates certain concepts and institutes about tobacco products in a very general way. At the same time, it also defines certain legal offences in the field of tobacco products for which the competent public administration authority may impose a fine of between EUR 100 and EUR 2 000 [5].

Act No. 89/2016 Coll. provides more specific legal regulations on producing and selling tobacco products and related products. In the authors' opinion, it can be considered the completion of the process of approximation with the Community law in the field of tobacco products, as it clearly defines individual tobacco products and other related products, as well as their components, or reflects the current trends in the use of tobacco or smokeless and smokeless tobacco products [6].

The legislation also introduced maximum emission levels for tar, nicotine and carbon monoxide, with *de lege ferenda* considerations envisaging a gradual reduction taking into account the toxicity and addictiveness of individual tobacco products [7]. It can, therefore, be concluded that the law clearly and comprehensively regulates all the circumstances relating to the manufacture of tobacco products about the content of tobacco products, as well as their packaging itself, with the obligation to warn of health warnings or unambiguous identification of e-cigarettes. At the same time, the law obligates manufacturers and importers of tobacco products to submit notifications to the Slovak Trade Inspection Authority of all new categories of tobacco products they wish to place on the market no later than six months before the planned placing [8]. Here one can point to the legislator's willingness to adapt the standards for the marketing of new uses of tobacco products, which have escalated rapidly in recent times (e.g. e-cigarettes, vaporizers, chewing tobacco, etc.).

No legislation in the Slovak legal order negatively regulates the concept of a tobacco product. In other words, we only know the legal definition of a tobacco product. However, what can be considered an illicit tobacco product is nowhere explicitly laid down. Therefore, it is only by analogical deduction that we can conclude that an illicit tobacco product is any product, whether smoke or smokeless, as defined and named in the laws as mentioned earlier, which does not comply with the parameters laid down by those laws for the manufacture, packaging, distribution and sale of the tobacco product itself.

2. The presence of nicotine in foods and regulatory restrictions on added nicotine

In general, foods with added nicotine are not legally available due to the strict regulations surrounding nicotine as a controlled substance. Adding nicotine to foods or beverages is typically prohibited, as it would pose significant health risks and increase the potential for addiction. Regulatory bodies like the U.S. Food and Drug Administration (FDA) and the European Food Safety Authority (EFSA) closely monitor and restrict the use of nicotine, allowing its inclusion only in regulated products, such as smoking cessation aids (e.g., nicotine gum, patches, lozenges) rather than in general food items.

However, there have been instances of nicotine-infused products marketed as novelties or supplements, though they are often quickly removed from the market due to regulatory concerns. Examples include:

Nicotine Beverages: Some companies have attempted to market nicotine-infused drinks, but these are generally not approved and often face regulatory action.

Nicotine Gum and Lozenges: Though not conventional food products, these items contain nicotine for smoking cessation purposes. They are classified as therapeutic products rather than food and are available only through regulated channels.

Due to the health risks associated with nicotine, especially outside controlled therapeutic uses, nicotine-infused food products are not legally permitted in most regions, and any attempt to sell such products would typically be met with strict regulatory actions.

Nicotine, commonly associated with tobacco plants, is also naturally present in trace amounts in certain edible plants belonging to the Solanaceae family, including tomatoes, potatoes, eggplants, and peppers. While nicotine in these foods occurs naturally, the concentration is exceedingly low, making typical dietary exposure harmless. However, regulatory bodies are vigilant about the addition of nicotine to food products, given its addictive properties and potential health risks.

3. Natural sources of nicotine in foods

Nicotine concentrations in edible plants vary but remain minimal compared to the levels found in tobacco. For example, tomatoes (*Solanum lycopersicum*) and potatoes (*Solanum tuberosum*) contain approximately 2–7 nanograms of nicotine per gram [9]. Eggplants (*Solanum melongena*) and bell peppers (*Capsicum annuum*) also contain trace nicotine levels, though still at non-addictive, biologically insignificant concentrations [10]. These naturally occurring traces do not pose a health risk, as the nicotine content is far below the threshold that could trigger dependence or adverse health effects [11].

4. Health implications and comparisons to tobacco exposure

Nicotine, an alkaloid compound, is known for its stimulating and addictive properties. In tobacco, nicotine concentrations are in the milligram range per gram, vastly exceeding the nanogram quantities found in vegetables [12]. Consequently, the dietary intake of nicotine from vegetables is negligible and unlikely to influence health similarly to tobacco products. For instance, the amount of nicotine in a single cigarette can be thousands of times higher than what one would consume from an entire meal containing these vegetables. Thus, these dietary sources contribute to overall nicotine exposure minimally and do not carry the health risks associated with smoking or other forms of nicotine intake [13].

5. Regulatory frameworks for nicotine-infused foods

In recent years, regulatory bodies such as the U.S. Food and Drug Administration (FDA) and the European Food Safety Authority (EFSA) have restricted the addition of nicotine to foods or beverages due to its pharmacological effects and addiction potential (FDA, 2016). Under current regulations, nicotine may only be added to certain products, specifically those intended for smoking cessation, such as nicotine gum, patches, and lozenges, which are available as over-the-counter or prescription products designed to help reduce nicotine dependence [14].

Attempts to introduce nicotine-infused foods or beverages have generally been met with regulatory action. For instance, nicotine-infused drinks were briefly marketed but quickly pulled from the market due to safety concerns and the potential for abuse [15]. The FDA, in particular, has emphasized that any product intended to deliver nicotine to the body outside of approved cessation products is likely to be classified as either a drug or a tobacco product and thereby subject to stringent approval processes [16].

6. Public health and consumer safety concerns

The restriction on nicotine addition to food products aligns with public health goals to reduce the prevalence of nicotine addiction and its associated health consequences. Nicotine, when ingested or absorbed outside regulated therapeutic contexts, can elevate heart rate and blood pressure, and has been associated with adverse cardiovascular outcomes, particularly in nicotine-naive individuals [12]. Moreover, easy access to nicotine-infused foods or beverages could increase the risk of accidental poisoning, particularly among children, and contribute to a rise in nicotine addiction, complicating public health efforts to reduce smoking and nicotine dependence [11].

7. Emerging trends in nicotine food products

The nicotine product market has undergone significant transformation in recent years. While combustible tobacco use has seen a general decline in response to public health campaigns and regulatory action, interest in non-combustible nicotine products has risen. These alternatives range from nicotine replacement therapies (NRTs) such as gums and lozenges, to new consumer products aimed at providing a recreational nicotine experience without the harms associated with smoking. Chewing gums, chewing tobacco, and nicotine pouches have thus become areas of interest both for consumers and researchers.

7.1 Shift toward non-combustible and oral nicotine products

With increased awareness of the health risks associated with smoking, consumer interest has shifted toward oral and non-combustible nicotine products. This shift is supported by studies suggesting that smokeless and oral nicotine products may offer a less harmful alternative for nicotine intake compared to smoking [17]. While traditional chewing tobacco remains a staple in certain markets, new entrants like nicotine pouches, which contain synthetic nicotine without tobacco, are gaining popularity. These products are marketed as "tobacco-free" alternatives that provide nicotine satisfaction without the health risks linked to tobacco-specific nitrosamines, which are carcinogenic compounds found in tobacco [18].

7.2 Growth in nicotine chewing gums and lozenges for recreational use

Traditionally, nicotine gums and lozenges have been used as part of smoking cessation programs. However, recent trends indicate a growing segment of consumers using these products recreationally rather than for quitting. This trend has prompted new formulations and flavors aimed at enhancing consumer experience, such as mint, fruit, and coffee-flavored gums and lozenges. Studies have shown that younger adults and former smokers increasingly use these nicotine products not as a means to quit smoking but as a way to manage stress, focus, and social interactions [19]. As these products are seen as more discreet and socially acceptable than smoking or

vaping, demand is expected to grow, especially among younger demographics seeking alternatives to traditional nicotine intake methods.

7.3 Advances in synthetic nicotine for food products

The development of synthetic nicotine, produced without tobacco leaves, is a significant innovation in the industry. Synthetic nicotine is chemically identical to tobacco-derived nicotine but is free from the contaminants associated with tobacco processing. This nicotine source has gained popularity for use in gums, lozenges, and nicotine pouches, which are often marketed as "tobacco-free" [20]. The appeal of synthetic nicotine products lies in their regulatory flexibility, as they often bypass tobacco-specific regulations. However, the lack of specific regulatory guidelines for synthetic nicotine has raised concerns among health authorities, prompting calls for stricter oversight [21].

7.4 Regulatory challenges and public health concerns

Despite growing consumer interest, nicotine-infused food products face substantial regulatory hurdles. Most countries regulate nicotine as a controlled substance due to its addictive nature and health risks. For instance, the European Union and the U.S. Food and Drug Administration (FDA) restrict nicotine use in food products, permitting it primarily in regulated smoking cessation aids like nicotine gums and patches [16]. Health authorities are cautious about nicotine food products due to concerns over accidental ingestion, potential toxicity in children, and the risk of addiction [12]. These risks have led some countries to ban certain nicotine-infused products entirely, while others impose age restrictions and labelling requirements.

In response to rising nicotine food products, the FDA has emphasized the need for regulatory measures that address both tobacco-derived and synthetic nicotine, ensuring that any product marketed with nicotine meets safety standards [21]. European countries have also adopted similar policies, aiming to prevent the normalisation of nicotine use among non-smokers, especially minors.

7.5 Market expansion and innovation in flavours and product types

As nicotine consumption methods diversify, manufacturers are experimenting with new product categories and flavours to attract a broader audience. Nicotine-infused products now include flavoured gums, dissolvable lozenges, and pouches, as well as emerging categories such as nicotine mints and candy-like products. Flavours are tailored to appeal to young adults, with fruity, mint, and even dessert-inspired options available. While these innovations cater to consumer preferences, they have sparked concerns about attracting underage users. Studies indicate that flavour variety may increase the appeal of nicotine products among adolescents and young adults, potentially leading to the initiation of nicotine use [22].

To counter these concerns, some jurisdictions are considering flavour restrictions on nicotine products similar to those applied to flavoured tobacco products. For instance, certain states in the U.S. have implemented bans on flavoured vaping products, and similar measures could extend to oral nicotine products if evidence of youth uptake persists [23].

7.6 The role of public health campaigns and consumer education

Public health campaigns continue to play a critical role in informing consumers about the risks of nicotine use. Campaigns targeting non-smokers and young adults emphasise that while some nicotine products may reduce harm compared to smoking, they are not without risk. Education on the addictive nature of nicotine, particularly in products marketed as "tobacco-free," is essential to prevent non-smokers from initiating use [24].

Additionally, researchers highlight the importance of differentiating between products designed for smoking cessation and those marketed for recreational use, as consumer awareness of these distinctions remains low [14].

8. European cooperation in the investigation of illicit tobacco products

As mentioned in the introduction of the first chapter, the community needs rules to function, which will determine the limits of the behaviour of the incorporated entities. This model of functioning also reflects the functioning of the Slovak Republic and the other Member States within the European Union. The European Union is a very specific association of several states that cooperate in all spheres of life and try to raise the standard of living in each member country by taking joint steps. To this end, the so-called free flow of goods and services within the individual Member States was also established, which was achieved by establishing the Schengen area as one of the fundamental pillars. Establishing the Schengen area has virtually eliminated all border controls between Member States (and non-member states). Here, the scope for the importation of illicit tobacco products is created. If importers or smugglers manage to get illicit tobacco products into a transit country, further

interception of illicit tobacco products is difficult. We discussed the various harmful consequences in the introduction to this paper.

Based on available statistics, the overall consumption of tobacco products is on a downward trend. This is also reflected in the downward trend in the consumption of illicit tobacco products. France has the highest proportion of illicit tobacco products consumed, while the Slovak Republic has the lowest proportion [25].

9. OLAF

In order to protect public finances, the European Union has set up the European Anti-Fraud Office ("OLAF"). Established in 1999, OLAF's main purpose and mission is to investigate corruption and abuse of power within the institutions of the European Union, including fraud involving the budget of the European Union. Smugglers deliberately attack the European Union's revenue to circumvent the obligation to pay administrative (including taxes) and customs duties by promoting and developing a black market in counterfeit goods. This very conduct about illicit tobacco products falls within OLAF's investigative remit [26].

Eradicating tobacco smuggling is one of OLAF's core activities. According to statistics for 2023, OLAF helped seize 616 million illicit tobacco products worldwide, more than half of which were seized at the European Union's external borders. OLAF's investigative and interception activities have prevented more than €151 million in tax losses in the Member States of the European Union [27].

9.1 Agreements providing for measures to combat illicit tobacco products

To streamline the interception and subsequent prevention of the smuggling of illicit tobacco products, the European Union (through the European Commission), together with the Member States, has concluded multilateral agreements with global trading companies. These agreements aim to strengthen cooperation in the fight against illicit tobacco products.

One such agreement is dated 15.07.2010 between the entities above and British-American Tobacco (Holdings) Limited (which includes tobacco products such as Lucky Strike, Dunhill, Camel, glo, Vuse, Velo and others). This is a reciprocal agreement whereby the parties have expressed an interest in cooperating in the fight against illicit tobacco products, whereby trade in illicit tobacco products not only harms national or European economic interests but also harms the economic and other civil interests of manufacturers and distributors of tobacco products. Under the Agreement, a procedure has been agreed between the signatories according to which, if a Member State sees a tobacco product that meets the characteristics of an illicit or counterfeit tobacco product in quantities of at least 50 000, it will notify OLAF, which will then contact British-American Tobacco (BAT). BAT shall then, in cooperation with the competent authority of the Member State which has secured the seizure, inspect the seized samples to determine the origin of the cigarettes and whether they are genuine or counterfeit. BAT shall subsequently notify OLAF of the check results. Suppose it is found that BAT's tobacco products are genuine but not legally distributed. In that case, BAT undertakes to provide compensation equal to the amount of taxes and duties that would have been paid at the time of seizure in the Member State [28].

Another of the agreements relating to the fight against illicit tobacco products is the Cooperation Agreement of 27.09.2010 between Imperial Tobacco Limited ("ITL") the European Union and the Member States. The content of this agreement is very similar in principle to the agreement concluded with BAT, but what is interesting is the concept of ITL's financing of the fight against illicit tobacco products, whereby ITL sends funds annually to the other parties to the agreement to be used for the elimination of the illicit trade in tobacco products [29]. There is thus a clear interest, not only on the part of public law entities but also on the part of private law legal entities, in eliminating the trade in illicit tobacco products to the greatest extent possible.

9.2 Authorities "fighting" the illicit tobacco trade in the Slovak Republic

In the conditions of the Slovak Republic, the Criminal Office of the Financial Administration plays a major role in the fight against illicit tobacco. The Financial Administration of the Slovak Republic is a body of the State administration of the Slovak Republic in the field of taxes, fees and customs. According to Act No 35/2019 Coll. on Financial Administration and Amendments and Additions to Certain Acts, the Financial Administration of the Slovak Republic consists of the Financial Directorate of the Slovak Republic, customs offices, tax offices and the Criminal Office of the Financial Administration. The Criminal Office of the Financial Administration shall exercise its jurisdiction throughout the territory of the Slovak Republic. The Criminal Office carries out a number of important tasks, but in the fight against illicit tobacco products the most important is in particular that it carries out customs surveillance in agreement with the authorities of other States by secret escort of a delivery or other covert means of surveillance if there is a reasonable presumption that the consignment contains narcotic drugs,

psychotropic substances, their precursors, substances with anabolic or other hormonal effect, tobacco, tobacco products, protected plant species, protected animals and specimens of species of wild fauna and flora for which the relevant authorisation has not been issued, or any other item for the possession of which an authorisation is required, goods suspected of being in breach of tax or customs legislation, items intended for the commission of a criminal offence or items derived from a criminal offence, or where an international treaty so provides, in order to identify persons involved in the handling of the consignment; where the information thus obtained is intended to serve as evidence in criminal proceedings, the procedure shall be based on the legislation on international cooperation between judicial authorities in criminal matters [30].

OLAF was mentioned earlier in this article. In connection with the implementation of the obligations arising from Article 325 of the Treaty on the Functioning of the European Union, the protection of the financial interests of the European Union in the Slovak Republic is ensured and coordinated in accordance with Section 24(4) of Act No. 575/2001 Coll. on the organisation of government activities and the organisation of central state administration, Act No. 528/2008 Coll. on assistance and support from European Community funds, as amended, Act No. 292/2014 Coll. on assistance and support from European Community funds, and Act No. z. on the contribution from the European Structural and Investment Funds and on amendment and supplementation of certain acts and Act No. 121/2022 Z. z. on contributions from the European Union funds and on amendment and supplementation of certain acts, as amended, the Department of the National Office for OLAF (hereinafter referred to as "ONÚ OLAF") [31] was established as a coordinating office for the fight against fraud, which is an organisational unit of the Control Section of the Office of the Government of the Slovak Republic. The role of the OLAF National Office is to coordinate legislative, administrative and operational activities to ensure the protection of the EU's financial interests and, to this end, to cooperate closely with the authorities and institutions of the Slovak Republic involved in the system of such protection [32].

International treaties and, not least, national legislation play an important role in the fight against the illicit tobacco trade. To streamline action to intercept and prevent the smuggling of illicit tobacco products, the European Union (through the European Commission), together with the Member States, has concluded agreements with global trading companies aimed at strengthening cooperation at the level of the fight against illicit tobacco products, which have already been described above, but only two are currently in force, namely BAT and ITL. The aim of these agreements is that the Slovak Republic, through its authorities, primarily the Criminal Office of the Financial Administration, carries out seizures of cigarettes from a particular tobacco company, and if it discovers that the seizures are not genuine, it informs the company, which then sends money to the Member States, and therefore also to the Slovak Republic, at regular intervals.

As an example, in 2022, three vehicles were donated by Philip Morris Slovakia s.r.o. Slovak Republic. Cooperation with the tobacco company has already proved useful in 2019, when the Criminal office of the Financial Administration received five new vehicles from the tobacco company [33]. The value of these vehicles was for EUR 100.000,-. For the Slovak Republic, this cooperation is beneficial because, thanks to such partnerships, the Financial Administration of the Slovak Republic annually increases border controls and, last but not least, the supervision of the production and movement of tobacco products on the territory of the Slovak Republic, while the efforts of our authorities supervising the movement of tobacco products are precisely to eliminate their illegal movement. The Slovak Republic contributes not only to the protection of the interests of the Slovak Republic as such, but also to the protection of the interests of the European Union. In the case of the donation of new motor vehicles as a result of cooperation between the Slovak authorities and international tobacco companies, it can be said that the new motor vehicles can contribute even more effectively and quickly to the detection of illegal activities with tobacco products, and therefore to the prevention of leakages, whether from the state budget or the European budget. As mentioned in the introduction, the illicit trade in tobacco products is not only a threat (whether security, economic or health) to the country itself but also to the European Union.

The Annual Report 2023, prepared by the OLAF National Office in cooperation with the Working Group on Communication under the Steering Committee for the Protection of the Financial Interests of the European Union in the Slovak Republic, provides information on the cooperation of the OLAF National Office with OLAF, on the cooperation of network partners, on the activities of the OLAF National Office and other network partners in the field of the financial interests of the European Union, on the training activities of OLAF and other network partners, on information and awareness-raising activities on the protection of the European Union's financial interests, on the issue of press releases and on examples from the practice of network partners, and thus in particular on cases handled by the National Criminal Agency, the Financial Directorate of the Slovak Republic, the Antimonopoly Office of the Slovak Republic and the Supreme Audit Office of the Slovak Republic.

The report above for 2023 [34] informs that the Financial Administration of the Slovak Republic participated in the following joint customs operations BELLEROPHON, NOXIA, EMPACT IPCCGC OA 3.8, DEMETER IX and EMPACT/EUROPOL, in which OLAF played an important role. Operation NOXIA, coordinated by

OLAF, took place in spring 2023 and targeted deep sea containers in EU and Asian ports to prevent the smuggling of hazardous substances such as illegal waste, illegal pesticides, cigarettes, tobacco and other illegal products. In 2023, a grant application was successful, which resulted in implementing the International Training for Customs Officers project to combat excise fraud - mineral oils, tobacco (cigarettes) and traceability of tobacco products using the Track & Trace system. The training in question is aimed at combating excise fraud in the field of cigarettes, tobacco and mineral oils and traceability of tobacco products using the Track & Trace system to contribute to increasing the effectiveness of mobile customs surveillance and tax surveillance and to respond to new trends in the perpetration of excise fraud (tobacco, cigarettes, mineral oils). The report concludes with a description of the cases the Directorate General of Finance deals with.

Two cases were described in the annual report regarding the fight against illicit tobacco products. The first case concerned an illegal cigarette business worth more than EUR 782.000,-. In May 2023, armed officers of the Criminal Office of the Financial Administration carried out several house searches and searches of other premises, including motor vehicles, in the Trnava Region and in the Košice Region under the name of "Fešák", uncovering an organised group of dealers in illegal cigarettes. These interventions prevented further possible evasion of excise duties on tobacco and tobacco products. More than 6 million cigarettes from various brands such as Marble, Winston, Kent, Kent Core, Compliment Violet, Marlboro Red, Richmond, Austin, Marlboro Gold, and Rothmans were seized. Consumer packs of 20 cigarettes were not marked with a valid Slovak control mark. It was also possible to seize cash from criminal activity of approximately EUR 312.000,-, 5 cars and two trucks and a cigarette filler. Many properties, including land, with an estimated value of approximately EUR 715.000,- were seized. A total of 6 persons were detained. The documented and preliminarily assessed damage amounted to at least EUR 782.416,-.

The second case involved a successful cross-border cooperation that brought about the dismantling of a cigarette gang. As in the first case, armed officers of the Criminal Office of the Financial Administration detected an organised group with cross-border reach while operating in eastern Slovakia in May 2023, codenamed "The List". Several searches of premises were carried out, and two cigarette production lines were discovered in an agricultural building, one active and the other ready for assembly and further production of illegal cigarettes. In addition, they seized 7.3 million illegal cigarettes, 791 kilograms of tobacco, 152 kilograms of cut tobacco, mobile phones, cigarette manufacturing components and photo tapes used to protect the building and the entrance to the premises. Seven persons (6 citizens of Belarus and 1 citizen of Poland) were arrested directly during the commission of the offence. The preliminary estimate of the damage that should have been caused to the State by this illegal activity is EUR 1 million. As the organised group was also active on the Czech Republic, Poland and Austria territory, the Criminal Office of the Financial Administration carried out the case in cooperation with Czech and Polish colleagues. Czech customs officers managed to detain 13 persons, with the estimated damage amounting to EUR 4.6 million. In Poland, 17 suspects were detained, and the estimated damage amounted to EUR 16.7 million. This brings the total number of detained persons to 37.

As for 2022, an interesting case is the discovery of the illegal production of cigarettes for EUR 6.200.000,- [35] and [36]. Armed officers of the Criminal Office of the Financial Administration detected it in an action codenamed Plavec, in which they carried out several searches of non-residential premises in various industrial areas and a house search in Košice. Nearly 100 armed officers of the Financial Administration were involved in the action, and police forces were also involved. Under the code name "Swimmer", the armed officers arrested 20 persons directly at the scene of the crime. This is a historic seizure in terms of the amount of damage to the state. Excise duty evasion on tobacco and tobacco products was estimated at up to EUR 6.2 million, the largest seizure since 2018. In terms of the amount of damage, this is the largest ever seizure since 2018. The total amount of tobacco and tobacco products excise duty evaded amounts to EUR 6.2 million.

Action "Garage" [37] revealed more illegal cigarettes in 2024. This action targeted illegal cigarettes in the east of Slovakia and resulted in almost 520 thousand pieces of seized cigarettes. The total damage quantified in excise duty on tobacco amounted to EUR 84.515,87.

The above cases are only one of many actions taken to detect illegal trade in tobacco products in the Slovak Republic. The published results of the raids undoubtedly show that the Slovak Republic is effectively combating the illicit trade in tobacco products.

We mentioned at the outset that in the case of illicit trade in tobacco products, i.e. when it is detected, it goes hand in hand with criminal liability for the offences committed. Related to this is the Protocol for the Eradication of Illicit Trade in Tobacco Products [38], which entered into force on 25 September 2018. For the Slovak Republic, under the Protocol in force, they shall, in accordance with Article 4, in particular, adopt and implement effective measures aimed at controlling or regulating the supply chain of goods covered by this Protocol in order to prevent, deter, detect, investigate and prosecute illicit trade in such goods and, to this end, shall cooperate with each other, adopt any necessary measures, in accordance with their national legislation, to enhance the

effectiveness of their competent authorities and services, including customs and police authorities responsible for the prevention, deterrence, detection, investigation, prosecution and eradication of all forms of illicit trade in goods covered by this Protocol, cooperate closely with each other in accordance with their respective national legal and administrative systems in order to enhance the effectiveness of law enforcement in combating illicit conduct, including the offences provided for under Article 14 of this Protocol. Following the adopted Protocol, each Party shall ensure that any violation is subject to appropriate criminal, civil or administrative proceedings and to effective, proportionate and dissuasive penalties. Each Party shall take such legislative and other measures as are necessary to render the conduct in question unlawful under its domestic law. Possible breaches may, in the conditions of Slovak law, be seen mainly in the form of committing administrative offences and incurring administrative liability or criminal offences and criminal liability. However, it should not be forgotten that the qualification of an act as a criminal offence takes precedence over the qualification of an act as a misdemeanour (administrative offence).

The transposition of Article 14 of the Protocol for the Eradication of Illicit Trade in Tobacco Products introduced the offence of manufacturing tobacco and tobacco products into the Criminal Code. Given the nature of the offence, the legislator chose to incorporate it into the pre-existing offence of manufacture of alcohol. According to Section 253 of the Criminal Code, this offence is committed by whoever, without a permit, produces alcohol, tobacco or tobacco products in large quantities or whoever, without a permit, possesses or puts into circulation alcohol, tobacco or tobacco products produced in large quantities, shall be punished, unless it is an act more severely punishable. At the same time, it is equally punishable to unlawfully make or possess a device for the production of alcohol, tobacco or tobacco products.

In addition to the offence mentioned above, the Slovak Criminal Code [39] also regulates the offence of violating the regulations on state technical measures for marking goods. This offence is committed by a person who, in contravention of a generally binding legal regulation, handles control marks, control tapes or other control technical measures for marking goods for tax purposes or for other purposes provided for by law to cause damage to another or obtain an unjustified benefit for himself or another, or who imports in contravention of a generally binding legal regulation, exports, transports, has transported, puts into circulation or possesses goods without control marks, control strips or other technical control measures to mark them for tax purposes or for other purposes provided for by law. However, the above only describes the basic facts of the offence. It is the second indent of the offence related to handling such goods (in our case, tobacco products). The object of the criminal offence of violation of the regulations on state technical measures for the marking of goods under Section 279 of the Criminal Code is the interest of the State in controlling the movement of goods subject to excise duty, and value added tax and, if the goods have been imported from a third country outside the European Union, customs duty, and on the other hand, the interest of the State in the revenue from these taxes and customs duties. An amount equal to the sum of the tax mentioned above and customs duties, which the tax subject would otherwise have been obliged to pay under the law, constitutes, within the meaning of the first sentence of Article 124(1) of the Criminal Code, damage to the revenue part of the State budget of the Slovak Republic [40]. The control measures shall designate alcoholic beverages (spirits) and tobacco products. It should be noted, however, that the concurrence of this offence with the offence of tax and insurance fraud under Section 276 of the Criminal Code, as well as the concurrence of this offence with the offence of damaging the financial interests of the European Union under Sections 261 to 263 of the Criminal Code, is excluded.

CONCLUSION

The illicit trade in tobacco products poses a significant threat to the global economy, undermining the financial and social stability of nations while compromising public health and security. This illegal market deprives governments of essential tax revenues and funds transnational criminal networks that destabilise regions and harm the collective interests of European Union (EU) member states and the EU. The proliferation of illicit tobacco products conflicts with public health objectives, placing added strain on healthcare systems and obstructing efforts to reduce smoking rates. In light of the evidence presented, Slovak legislation demonstrates an appropriate and adaptive response to the evolving challenges in combating the illicit tobacco trade. This conclusion is supported by the proactive role of the Criminal Office of the Financial Administration, which effectively collaborates with international bodies such as the European Anti-Fraud Office (OLAF). The office's international engagement and strategic interventions highlight Slovakia's commitment to upholding EU-wide standards in this critical area of public and economic interest. The paper also confirms that the Criminal Office's cooperation with OLAF significantly enhances the enforcement framework against illicit tobacco products. However, findings indicate that Slovakia's dual regulation of tobacco products introduces complexities, creating an impression of inconsistency that may hinder effective enforcement and regulatory clarity. To streamline operations and improve legislative transparency, it is recommended that the Slovak government consider consolidating the regulations

governing the definition, manufacture, distribution, and sale of tobacco products into a unified legal framework. This approach would likely strengthen the enforceability of laws, reduce bureaucratic redundancy, and facilitate a more coordinated response to the illicit tobacco trade, benefiting both Slovakia and the broader EU community.

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