

VULNERABILITY ASSESSMENT OF ILLICIT TRADE IN TOBACCO PRODUCTS IN ROMANIA

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1. INTRODUCTION

Romania is one of the EU countries most affected by the illicit trade in tobacco products, being the second one after Poland; its state budget is annually deprived of 650 million euro. It means that for every rising percent of ITTP, the budget misses 40 million euro/year. Thus, between 2010 and 2016, Romania lost almost 4.8 billion euro. The industry also registers a significant annual loss as their market share is affected by the illegal trade. For instance, in 2016, the industry has lost up to 37 million Euro in profits¹ because of the illegal trade. Thus, tobacco industry is highly involved in anti-smuggling campaigns and research. The industry pays roughly 3 billion Euro yearly to the Romanian state budget as taxes (excise, VAT, taxes and contributions on salaries), but their market share is affected by consumption of illegal products (around 18% of total consumption in 2017). Consequently, in Romania, the industry is very active in communicating and monitoring of illegal market. The illicit trade is intense at the borders with Ukraine and Moldova. The tobacco industry in Romania supports a national household survey on a bi-monthly basis with regard to the illegal cigarettes trade. The raw data of the survey are provided to all the companies in the market and also to law enforcement bodies. The main results are presented to the general public in conferences, on the Internet and with the occasion of other public events. The custom survey does not cover the make yourself/roll yourself cigarettes and the cigarettes transit from Romania to Western Europe.

One major debate in Romania relates to tobacco consumption, its effects on health, and the prohibition of smoking in all enclosed public places. According to a survey, in 2016, when the smoking in enclosed public places was prohibited by law, 70% of the citizens approved the measure while 30% were against it². Also, in the same survey, approximately 30% of the respondents declared they are smokers. The illicit trade in tobacco products is a sub-theme mostly connected with state budget revenues, public health arguments against illicit trade being perceived less urgent by the public. The main concerns of the citizens about black market of cigarettes are the state budget being deprived by the tax loss (50% of the respondents) and the revenue for the organised crime (31%). Lack of quality control of illicit cigarettes was on the third place on the list of concerns (for only 27 % of respondents)³. Romanian citizens also perceive that smuggling is not on the top 4 sources of revenue of organised crime. The main sources of revenue are perceived to be illegal drugs, prostitution/human trafficking, illicit trading in firearms and counterfeiting of goods. The main reason for smoking illicit cigarettes is cheap price (58% of the respondents) and effortless availability (12%). Approximately 20% of the respondents declared they would not buy illegal cigarettes⁴.

State authorities (customs, police and DIICOT) are also highly involved in anti-smuggling operations, reporting weekly cases of cigarettes seizure and organized crime networks disbandment. Nevertheless, the level of illicit market in Romania (18.3% of total consumption in November 2017) is double in size comparing it with the EU average (9%).

Romania has a long tradition of smuggling during communist time when basic consumption goods were scarce. Smuggling was also a prosperous business in the 90's when the main organised crime groups consolidated.

This report was conducted in the context of the project «The ITTP along the Balkan route: addressing institutional gaps and corruption», funded by a Philip Morris International Management SA grant program. The broad aim of the project is

¹ The figure is estimated taken into consideration the net profits of all the companies active in the market in 2016, namely 1003 million lei (222 million euro) and applying 16.7% (the estimate of the illicit market in 2016). The exchange rate is 4.4908 lei/1 euro - 2016 annual average rate (<http://www.bnr.ro/Cursul-de-schimb-3544.aspx>).

² The survey was conducted by Inscop Research and ordered by "Adevărul" newspaper. The research has been conducted in the period 21-28 march 2016. Source: <https://www.agerpres.ro/social/2016/04/04/sondaj-pestre-70-dintre-romani-sunt-de-acord-ca-fumatul-sa-fie-interzis-in-toate-spatiile-publice-10-09-15>

³ European Commission: Special Eurobarometer 443 - Illicit tobacco trade, Romania fact sheet, July 2016. Source: https://ec.europa.eu/anti-fraud/public-perception-illicit-tobacco-trade_en

⁴ Idem

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to elaborate and advocate for evidence-based policy and institutional measures that would address existing institutional gaps enabling the proliferation of ITTP as organized crime, as well as measures to reduce the corruption pressure and corrupt practices among law enforcement and revenue agencies.

The report is based on public information (ex. activity reports of public authorities, media reports, international reports, legislation) and interviews with tobacco experts. The above-mentioned sources are quoted in the footnotes and data interpretation lies with the authors.

2. LEGAL AND POLICY ENVIRONMENT

The main act regulating the tobacco industry is Law no. 201/2016 on the establishment of conditions concerning the manufacturing, presentation and marketing of Tobacco and related products. The law controls:

- a. manufacture, presentation and marketing of tobacco products and related products by regulating the use of ingredients, tobacco product emissions and related reporting obligations, maximum levels for tar, nicotine and carbon monoxide for cigarettes;
- b. labelling and packaging, including the health warnings which must appear on the unit packets of tobacco products and on any external packaging, the traceability and the security features applicable to tobacco products;
- c. the ban on the placing on the market of tobacco for oral use;
- d. cross-border distance sales of tobacco products;
- e. notification of new tobacco products;
- f. placing on the market and labelling of certain products which are similar to tobacco products, namely electronic cigarettes and refillable bottles and products for smoking.

Other relevant legislation is the Law no. 349/2002 on the prevention and combating of the effects of tobacco consumption. It establish measures for prevention and combat the tobacco products consumption through smoking restriction in closed public spaces, through labelling the tobacco packages and by educational and information campaigns for general public with the main aim to protect the health of smokers and non-smokers from smoking harming effects.

Another regulation is represented by Law no. 236/2003 which organises raw tobacco market. This law describes the complete tobacco's route, from raw state to fine cigarette. It starts with the delivery operations from local producers to first-processing units, regulates the associations and cooperation among producers, authorization of first-processing units and quality standards and, therefore, it supervises and controls the production of tobacco products. The law also includes financial support for raw tobacco producers.

The Tax Code⁵ includes provisions for tobacco products and for producers. The income from farming and cropping tobacco from a surface below 1 ha is considered non-taxable income⁶. All processed tobacco (cigarettes, cigarillos, and smoking tobacco) is considered excisable product⁷ with the exception of that used exclusively for scientific testing and quality controlling⁸. The Tax Code provides also the responsibilities of authorized warehouses and importers for the destruction of confiscated processed tobacco⁹. In respect to criminal liability, the law considers a crime holding outside a fiscal warehouse or selling on Romanian territory of excisable products without being labelled or labelled inappropriately or with false labelling above the limit of 10,000 cigarettes, 400 cigarillos of 3 grams, 200 cigarillos larger than 3 grams, and over 1kg of smoking tobacco¹⁰. What is below the above mentioned limits is considered an offence subject to fine and confiscation¹¹. It is also a crime the production of processed tobacco outside an authorized fiscal warehouse¹².

The Customs Code¹³ is also relevant for the policy discussion. In the crimes section, it defines smuggling as introduction into or removal from the country, by any means, of goods through places other than those established for customs

⁵ Law no. 227/2015;

⁶ Article 105 of the Law no. 227/2015;

⁷ Article 266, paragraph 1, letter 7 and article 354 of the Law no. 227/2015; Annex 5 of the Tax Code provides the amount of excise for 1,000 cigarettes until 2022. Thus, the excise duty is expected to increase from 439.94 lei in 2017 to 485.72 lei in 2022 (10.4% expected increase over 5 years span).

⁸ Article 398 of the Law no. 227/2015;

⁹ Article 431 of the Law no. 227/2015;

¹⁰ Article 452, paragraph 1, letter h - with imprisonment from one year to 5 years;

¹¹ Article 449, paragraph 2, letter k (Law no. 227/2015) – the offences are sanctioned by a fine from 20,000 lei to 100,000 lei, confiscation of products and, in case of legal persons, suspension of trading of excisable products for a period of 1-3 months. The fine is reduced to half of the minimum fine if it is paid in two days.

¹² Article 452, paragraph 1, letter a - with imprisonment from 2 years to 7 years.

¹³ From 10 aprilie 2006

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control¹⁴. Collecting, holding, producing, transporting, taking over, storing, handing over, or selling of goods to be placed under a customs procedure knowing that they are smuggled or intended to be smuggled is also assimilated to smuggling¹⁵. Subtraction from customs control of goods placed under a customs regime, while being in a place set for customs control is also considered smuggling if the customs value of the goods is greater than 20,000 lei (4,378 Euro¹⁶) in the case of products subject to excise duty such as tobacco products¹⁷. It also a crime to subtract goods from customs control twice a year even if the customs value of smuggled goods is less than 20,000 lei, for products subject to excise duties¹⁸. Subtraction from customs control of goods subject to excise duty with a customs value lower than 20,000 lei is considered an offence to be sanctioned by a fine and confiscation of the goods¹⁹.

In case of tobacco products, especially cheap whites, establishing customs value may be difficult. The general rule is that custom value is determined by the price actually paid or payable for the goods²⁰. As cheap whites do not have an identifiable producer and there are no documents for those goods, the customs value may be hardly determined by comparing with identical or similar products. In this case the European regulation²¹ prescribes the determination on the basis of the data available in the customs territory of the Union. The Romanian Customs authority uses an evaluation database²². While this database is not publicly available, a repealed regulation may shed some light into the matter: high quality cigarettes 1 Euro/pack, medium and lower quality cigarettes 0.5 Euro/pack²³. Observers complain that customs value is very subjective when it comes to cheap whites and clearer rules must be developed²⁴. In a recent case, Romanian Border Police evaluated 79,980 smuggled cigarettes (3,999 packages); brand "Compliment Blue", as having a customs value of 40,000 lei (8,756 Euro)²⁵. In another case, 3,000 smuggled cigarette packs brand "Ashima" were evaluated to 34,200 lei (7,486 Euro)²⁶. Thus, there is a lack of consistency between customs and tax regulations as related to criminal liability. It is not a crime to smuggle into Romania up to 2,000 packs of cigarettes (40,000 cigarettes), while at the same time, it is a crime to hold 500 smuggled packs (10,000 cigarettes). The discretion in determining the customs value and the permissive regulation makes smuggling by natural persons less risky. An individual may have several successful trips with up to 2,000 smuggled packs until caught, and even if caught it is profitable to pay the minimum fine and get the goods confiscated²⁷. Inside Romania, it is even harder to identify smugglers as they split the goods – a regular low level distributor has only several pack in his/her hands, the rest being hidden in bushes or cars²⁸.

Another law under debate is the Emergency Ordinance no. 54/2010 on some measures to combat tax evasion. The Ordinance regulated the duty-free shops, among other provisions. In the explanatory note of this Ordinance, the Government claimed that in 2009 duty-free shops were responsible for 40% of cigarette smuggling on Romanian territory and 93% of the receipts for the purchase of cigarettes in this type of shops were false. Also, the contribution to the state

¹⁴ Article 270, paragraph 1 of the Customs Code - shall be punished by imprisonment from 2 to 7 years and the prohibition of certain rights.

¹⁵ Article 270, paragraph 3 of the Customs Code

¹⁶ The exchange rate is 4,5681 lei/1 euro - 2017 annual average rate (<http://www.bnr.ro/Cursul-de-schimb-3544.aspx>).

¹⁷ Article 270, paragraph 2, letter a) of the Customs Code

¹⁸ Article 270, paragraph 2, letter b) of the Customs Code

¹⁹ Articles 653 and 653¹ of Government Decision no. 707/2006 on the approval of the Regulation for the application of the Customs Code of Romania. The fine is set from 5.000 lei to 10.000 lei in case of goods subject to excise duty such as tobacco products. The vehicle used to commit the offense is seized until payment of the fine. If the vehicle used to commit the offense is modified for the purpose of dissimulation of goods, it is confiscated. The fine is reduced to half of the minimum fine if it is paid in two days (article 28 of the Government Ordinance no. 2/2001).

²⁰ Article 2 of the technical norms regarding the determination of the customs value for goods entered in Romania by natural persons approved by the Ministry of Finance Order no. 1975/2010.

²¹ Art. 74, paragraph 3 of the EU Regulation no. 952/2013 on EU Customs Code

²² Article 11 of the Ministry of Finance Order no. 1975/2010

²³ Ministry of Finance Order no. 1076/2006 – repealed in 2010.

²⁴ Interview with tobacco expert

²⁵ <https://www.politiadefrontiera.ro/ro/garda-de-coasta/i-aproximativ-4000-pachete-cu-tigari-de-contrabanda-descoperite-de-politistii-de-frontiera-constanteni-10910.html> The customs value per pack is 10 lei (13.11.2017).

²⁶ <https://www.politiadefrontiera.ro/ro/iasi/i-3000-pachete-tigari-de-contrabanda-transportate-pest-frontiera-cu-calul-10838.html> The customs value per pack is 11.4 lei (02.11.2017)

²⁷ Interview with tobacco expert

²⁸ Interview with tobacco expert

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budget of these companies was insignificant, the operations not being economically reasonable²⁹. Thus, by Emergency Ordinance no. 54/2010, the duty-free shops were strictly regulated: 100.000 USD euro authorization tax per shop, maximum selling quantities per person for cigarettes and other products, restriction of fiscal benefits. The effects of the Ordinance have been positive as the smuggling by duty-free shops stopped³⁰. Although being in force, Emergency Ordinance no. 54/2010 has to be approved or disapproved by Parliament, but in the last 7 years it has been blocked in the Chamber of Deputies' committees. In February 2017, the Government informed Parliament that it does not support anymore the Emergency Ordinance no. 54/2010 and ask to be repealed³¹. Repealing the Ordinance will put in force the former regulation and cigarettes smuggling is expected to boost again through duty-free shops³².

The last draft legislation with impact on cigarettes illicit market is the proposal to award 15% of the amounts recovered by tax authority to the public sector employees who contributed to the recovery³³. Such a measure has been applied before the year 2000, when customs control teams used to receive 10% of the value of the products they confiscated³⁴. This measure has been repealed after 2000 because detecting smuggling is a regular assignment for customs employees who already receive a monthly salary.

Beside legal framework and law enforcement, there is an entire public and inter-institutional debate about tobacco consumption and its effects. Obviously there are debates in Parliament about smoking and tobacco products, likewise the civil society advocated against smoking and its negative consequences on health. So, currently, the Romanian Parliament has several legislative proposals on the agenda. Despite the disagreement on the predictability of legislation, the industry cooperates with the Government on countering illicit trade. Such cooperation was considered necessary by the Competition Council that recommended to the Romanian Government the establishment of a regional working group on countering illicit trade³⁵. The cooperation also included the use of available anti-smuggling funds from the EU agreements with tobacco producers³⁶, from which Romanian Ministry of Finance bought 250 cars in 2015³⁷.

The main stakeholders involved in combating illicit trade in tobacco products are Romanian Border Police, General Police Inspectorate, DIICOT, and Customs General Direction/National Customs Authority – DGV/ANV, Romanian Gendarmerie, Local Police forces, NGOs and civic groups. National Customs Authority had a turbulent history in the past 5 years. In 2013, ANV lost legal status and transformed into a direction within ANAF³⁸, 120 mobile control teams being disbanded, including canine-assisted teams³⁹. Previously, ANV was a structure with legal status within ANAF, under the Ministry of

²⁹ <http://www.cdep.ro/proiecte/2010/500/90/2/em592.pdf>

³⁰ Interview with tobacco expert

³¹ http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=11413

³² <http://romanioliberal.ro/economie/business/un-canal-pentru-contrabanda-cu-tigari--redeschis-de-psd-dupa-sapte-ani--se-pregateste-redeschiderea-magazinelor-duty-free-444075>

³³ Emergency Ordinance on Some Budgetary Measures and Amending Some Normative Acts - Published on 27.12.2017 on <http://www.mfinante.ro/pagina.html?categoriebunuri=proiecte-acte-normative&pagina=acasa&locale=ro&menu=Transparenta>

³⁴ <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-contrabanda-cu-tigari-o-veche-problema-696709>

³⁵ Article 2 of the Competition Council Order no. 609/11.12.2014 : "In order to ensure the principles of competition and, in order to avoid market imbalances, it is decided to set up a recommendation to the Romanian Government for the creation of a regional anti-illicit cigarette trade group formed on the one hand by representatives of the Romanian authorities with specific attributions in the field, namely the Ministry of Public Finance, the National Agency for Fiscal Administration, the General Customs Directorate, the Ministry of Internal Affairs, The General Police Inspectorate, the Romanian Gendarmerie, the Local Police, as well as similar authorities from Moldova, Ukraine, Bulgaria and Serbia and, on the other hand, from representatives of the cigarette companies in order to identify short, medium and long term measures, reducing the impact of illicit trade, implementing and monitoring their implementation".

³⁶ "EU member states and the Commission entered into agreements with tobacco producers Philip Morris International (PMI) in 2004, Japan Tobacco in 2007, British American Tobacco (BAT) in 2010 and Imperial tobacco in 2010 in which they agreed to pay a collective total of \$2.15 billion to the EU and the member states in return for the EU dropping legal procedures against them for loss of duties caused by illegal trade in cigarettes (PMI agreed to pay \$1.25 billion over 12 years, and the rest was contributed by the other three). 90% of the revenue from these deals goes to member states and 10% to the EU budget, as own resources". Source: <http://www.europarl.europa.eu/news/en/press-room/20160303IPR16929/cigarettes-meps-oppose-renewing-eu-anti-smuggling-deals-with-tobacco-firms>

³⁷ Interview with tobacco expert

³⁸ Emergency Ordinance no. 74 of June 26, 2013 on some measures for the improvement and reorganization of the activity of the National Agency for Fiscal Administration, as well as for the modification and completion of some normative acts

³⁹ <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-contrabanda-cu-tigari-o-veche-problema-696709>

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Public Finance. In the last ANV annual report (2012), it is mentioned that ANV had 8 regional directions and 42 county directions⁴⁰. The main anti-smuggling activity indicators were severely affected by the 2013 reform: the number of seized cigarettes dropped to half comparing with the previous year, the value and the number of fines dropped by 36% and 27% respectively.

Table 1: Customs activity indicators

Year	2011	2012	2013	2014	2015	2016
No. of fines	7,429	7,619	5,606	3,622	4,218	5,414
Value of fines million lei	36.0	46.6	29.9	27.8	21.9	24.0
Value of fines million Euro	€8.4	€10.4	€6.7	€6.2	€4.9	€5.3
Value of seized assets million lei	113	116.4	94.8	28.5	168.8	77.7
Value of seized assets million Euro	€26.6	€26.1	€21.4	€6.4	€37.9	€17.3
No. of seized cigarettes	71,692,370	49,749,783	27,775,137	62,594,259	69,524,456	20,155,935
No of employees	3,007	NA	NA-	2,432	NA	2,600

Sources: ANAF statistical bulletin, ANAF annual activity reports 2011-2016⁴¹

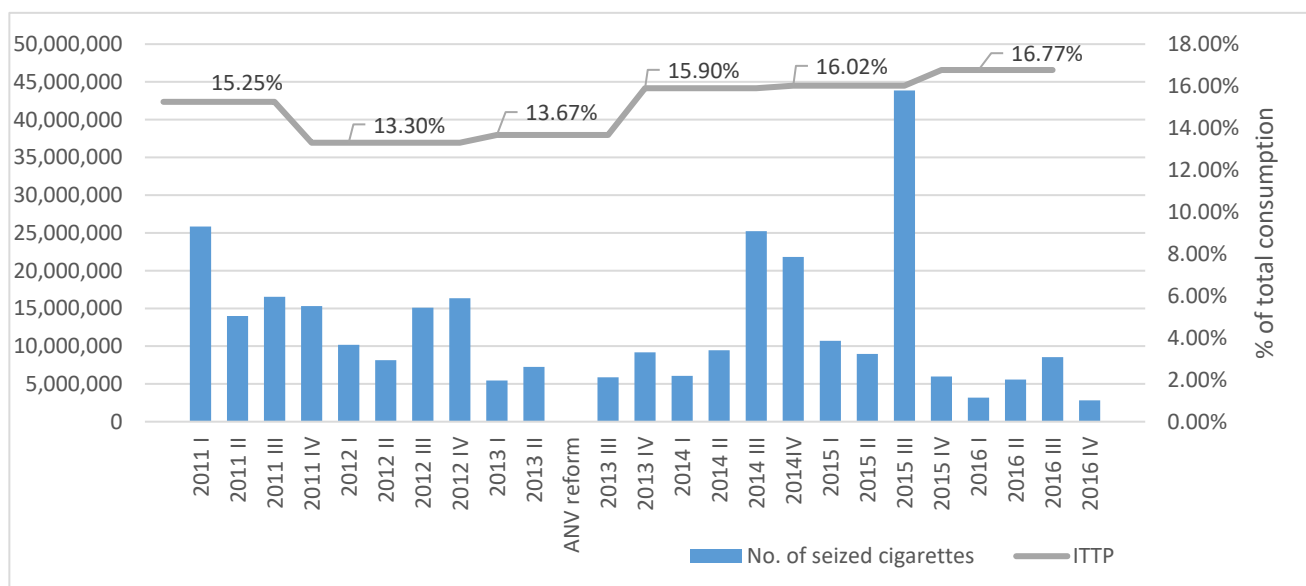


Figure 1: No. of cigarettes seized in each trimester and annual average illegal trade

The mobile and canine-assisted teams were re-established in September 2016 as part of a plan to fight cigarette smuggling⁴². After the 2013 ANV reform, the illicit trade raised from 11.8 % of total consumption in July 2013 (the ANV reform time) to 17% in July 2014 and 19.2% in January 2015⁴³.

⁴⁰ https://www.customs.ro/assets/pdf/info-publice/1127_Raport%20de%20performanta%20pentru%20anul%202012.pdf

⁴¹The reports are published on ANAF website:

https://www.anaf.ro/anaf/internet/ANAF/despre_anaf/Strategii_ANAF/Rapoarte_studii/lut/p/a0/04_Sj9CPYkssy0xPLMnMz0vMAfGjzOI9DD3MPlwsjLwMglycDByN_UNcXX2MDS0sDPQLsh0VATuTMU0!/

⁴²https://www.customs.ro/assets/pdf/customs/anv/Informare%20publica/Autoritatea_Vamala_anunta_reoperationalizarea_echipelor_canine.pdf

⁴³ Novel Research data

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A report from April 2017, indicates confiscation of 27 million of cigarettes (22.500 packages) which worth more than 20 million lei⁴⁴. In March, 2017 the biggest capture from the last five years has been recorded in Constanta Sud-Agigea Harbour (approximately 1400 boxes⁴⁵ which worth more than 11 million lei). Also in March, 2017 the level of smuggling decreased with 2% (15.2%) compared with the end of 2016. Consequently state budget received more money from the legal market. Starting with July, 2017 Romanian Border Police joined BAT campaign. Since this Border Police joined “*Stop Contrabanda*” (Stop Smuggling) campaign, it declared the confiscation of 50 million cigarettes, 320 perpetrators identified, and 100 seized vehicles used for smuggling which worth approximately 35 million lei. Romanian Border Police is the one of the most important institutional actors in the fight against illicit traffic with tobacco products. It reported confiscation of 25 million of cigarettes packages throughout 3 years span (2014-2017)⁴⁶.

Philip Morris International developed a financing programme (Philip Morris Impact), through which it finances 32 international projects for fighting against ITTP networks, investing 100 million dollars. Among the beneficiaries of the PMI actions, Romanian Police receives funds to purchase patrolling and detecting equipment of illicit tobacco products, as well as human resources training in order to improve the police knowledge about criminal practices.

National Agency for Fiscal Administration (ANAF) initiated in 2017 an intensive campaign against illicit trafficking with tobacco called SCUT Operation⁴⁷. The operation consists of controls at the border, on the roads (road traffic) and in marketplaces. During these controls ANAF uses mobile canine assisted teams composed of inspectors from Customs General Division (DGV) and Romanian Border Police. Such campaigns are intended to have a dissuasive effect and respond to the alarming rising of tobacco smuggling in Romania, above the EU average. The latest reports suggest that smuggled cigarettes make 18.3% of the market in Romania⁴⁸. According to statistics, Romania has a high rate of daily smokers of cigarettes: 20.5 % from the persons aged 15 and over⁴⁹.

DIICOT has the legal mandate to investigate smuggling committed by organised crime groups⁵⁰. For the crimes not involving an organised crime group, the investigation is conducted by regular prosecutor’s office. ANAF customs division (former ANV) report from time to time the number of criminal complaints submitted. Thus, in 2016 there were reported 314 complaints⁵¹, while in 2012, ANV reported 35 complaints⁵². DIICOT reported that the main priority is human trafficking, drugs and cybercrime, the economic crimes such as smuggling being on a lower priority⁵³. Nonetheless, DIICOT reported that the complex smuggling files with impact on the economic and financial sector will be finalized and treated with celerity⁵⁴. DIICOT has to cover the entire organized crime spectrum in Romania but it lacks resources: equipment, software/data bases, appropriate headquarter etc. (for instance, a prosecutor has 100 files per year on average, being able to finalize only half of them)⁵⁵.

⁴⁴ <http://stopcontrabanda.ro/>

⁴⁵ Explanations on the terms used: 1 box = 50 cartons; 1 carton = 10 packs; 1 pack = 20 cigarettes

⁴⁶ IGPFF Press Release, 05 July 2017: <https://www.politiadefrontiera.ro/ro/main/i-politia-de-frontiera-se-alatura-campaniei-stop-contrabanda-initiata-de-british-american-tobacco-9733.html>

⁴⁷ ANAF Press release, 07.02.2017: https://static.anaf.ro/static/3/Anaf/20170207152812_cp_142_07,02,2017.pdf

⁴⁸ November 2017 – Novel Research data. See also: Diana Mesesan, 26 Oct 16, Cigarette Smuggling Reaches New Peak in Romania, <http://www.balkaninsight.com/en/article/romania-s-tobacco-black-market-reaches-new-record-high-10-25-2016>

⁴⁹ Source: http://ec.europa.eu/eurostat/statistics-explained/index.php/Tobacco_consumption_statistics

⁵⁰ Article 11, paragraph 1, letter a) of the EO no. 78/2016: irrespective of the quality of the person, DIICOT has mandate to investigate the following crimes if the crimes were committed as part of an organized crime group - “*the crimes provided by Law no. 86/2006 on the Customs Code of Romania, as amended and supplemented*”.

⁵¹ ANAF 2016 annual report, p. 14

⁵² ANV 2012 annual report, p. 6

⁵³ DIICOT 2015 annual report, p. 38

⁵⁴ DIICOT 2014 annual report, p. 52 and DIICOT 2016 annual report, p. 7

⁵⁵ Source: Interview with tobacco expert and 2016 DIICOT annual report 2016, p. 11

3. LICIT MARKET OVERVIEW

Legal tobacco industry contributes with approximately 1% to Romanian GDP and it is the second contributor after oil sector⁵⁶. According to Ministry of Finance in top 10 contributors to the Romanian state budget in 2012 there are 3 tobacco producers: BAT (second place, 5.6 billion lei), PMI (fifth place, 1.9 billion lei) and JTI (ninth place, 1.3 billion lei). In the top 10 there are 5 oil companies, 1 energy company and the National Bank of Romania⁵⁷. Also, in 2015 top 1000 companies considering their turnover, BAT is on 7th place, JTI on 28th place and PMI on 45th place⁵⁸. In the export structure of Romania, tobacco products represent 20% of the “*food, beverage and tobacco*” export category, reaching almost 1 billion Euro yearly⁵⁹.

The biggest tobacco market players in Romania are British American Tobacco, Philip Morris International and Japan Tobacco International forming oligopoly market as their aggregate turnovers represent 95% from Romanian tobacco market, without taking into account the illicit market⁶⁰. Each market player has two major divisions: production and distribution. Each company cooperates with several major wholesale distributors⁶¹: Aquila (Imperial Tobacco)⁶², Interbrands Marketing & Distribution (BAT and Philip Morris)⁶³, Punctual Comimpex (BAT, JTI, Philip Morris, and China Tobacco Hongta Hering)⁶⁴, Simba Invest SRL (Philip Morris)⁶⁵, Amigo&Intercost (Philip Morris, BAT, and JTI)⁶⁶.

In the 2011-2016 periods the retail prices of cigarettes increased by 35-40%. On the Romanian legal market there are approximately 150 brands of cigarettes, top 5 most consumed brands being Kent (BAT), L&M (PMI), Marlboro (PMI), Pall Mall (BAT) and Winchester (JTI)⁶⁷. A price analysis of this 5 top brands in the period 2011-2016 indicate an increase in price from 2.43 Euro/pack in 2011 to 3.22 Euro/pack in 2016 (for Winchester), from 2.64 Euro to 3.45 Euro (Kent). The weighted average price for a pack of cigarettes in 2016 was 15.194 lei (3.38 Euro) comparing with 11.1863 lei (2.63 Euro) in 2011 (35.8% increase)⁶⁸.

British American Tobacco is the biggest tobacco market player in Romania with 54% market share and the biggest producer, too. Its best bought product is Kent, with 26% market share and according to BAT more than 1 cigarette from 2 is produced by their company⁶⁹. Their main brands are Kent, Dunhill, Lucky Strike, Pall Mall, Rothmans and Vogue.

BAT Romania has in its portfolio 3 divisions with different tasks and attributions in providing tobacco products on the market, having 1.899 employees, in 2016:

- I. British American Tobacco Romania Trading S.R.L (8.178 million lei turnover in 2016 and 674 employees)⁷⁰;

⁵⁶ Source: <https://www.sfin.ro/actualitate/tutunul-a-ajuns-cel-mai-exportat-produs-agricol/>
<http://www.rador.ro/2016/01/25/industria-tutunului-este-al-doilea-mare-contribuabil-la-bugetul-de-stat-al-romaniei-dupa-sectorul-petrolier/>
<https://www.money.ro/al-doilea-sector-mare-contribuabil-la-buget-amenintat-de-contrabanda/>

http://www.bursa.ro/tabac-2014-bat-romania-al-doilea-contribuabil-la-bugetul-de-stat-232689&s=print&sr=articol&id_articol=232689.html

⁵⁷ <https://www.digi24.ro/stiri/economie/topul-contribuabililor-la-buget-omv-petrom-lider-detasat-48129>

⁵⁸ <http://www.piatafinanciara.ro/top-1000-companii-dupa-cifra-de-afaceri-pe-2015/>

⁵⁹ Source: <http://www.zf.ro/companii/retail-agrobusiness/exportul-de-tigari-s-a-apropiat-pentru-prima-data-de-1-mlrd-euro-dupa-un-galop-constant-odata-cu-aderarea-la-ue-in-zece-ani-exporturile-au-crescut-de-zece-ori-15534798>

⁶⁰ Competition Council Order no. 609/11.12.2014, paragraph 12

⁶¹ <http://www.zf.ro/companii/top-10-distribuitori-de-bunuri-de-larg-consum-11752480/>

⁶² <http://www.aquila.ro/partenerii-nostri/distributie/>

⁶³ <http://sarkisgroup.com/>

⁶⁴ Source: <http://www.zf.ro/companii/punctual-comimpex-cluj-face-510-mil-lei-din-distributia-de-tigari-cafea-si-cartele-telefonice-16685304>

⁶⁵ <http://simbainvest.ro/parteneri/>

⁶⁶ <http://amigointercost.ro/52~ro~.html>

⁶⁷ Source: http://www.economica.net/cele-mai-vandute-marci-de-tigari-din-romania_66809.html

⁶⁸ Source: Ministry of Finance - <http://www.mfinante.ro/accizetaxe.html>

⁶⁹ Source: <http://www.capital.ro/british-american-tobacco-a-cumparat-aproape-40-dintr-o-fabrica-din-bosnia-pentru-244-milioane-dolari.html>

⁷⁰ Ministry of Finance: <http://www.mfinante.ro/infocodfiscal.html>

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- II. British American Tobacco Romania Investment SRL. It runs the factory where tobacco and associated products are processed and produced. The factory was established in 1997 and it is the second most important factory of the BAT Group in Europe and one of the most performant production units at global level. Its production capacity is 24 billion cigarettes/year, exporting 45% from production to 35 countries⁷¹. In 2016 its turnover was 225 million lei and it had 578 employees;
- III. British American Shared Services Europe (BASSE). BASSE represents the distribution network of BAT with a turnover of 278 million lei in 2016 and 647 employees, generating indirectly another 20.000 jobs at country level.

British American Tobacco has announced future investments for new equipment and for developing their factory in Ploiești. The investments are estimated to 21 million euro/year, for the next five years⁷². The rise of production capacity in Romania is connected with closing down of the factory in Germany, taking over of BulgarTabac from Bulgaria and transferring part of production to Ploiesti factory, as a process of optimization at the group level. BAT is the main cigarettes producer in Romania. The new investments are concentrated also on innovative smoking technology- Neopods- a hybrid tobacco product⁷³. BAT estimated that these investments will have an overall economic impact of 9 billion euro, including the new jobs created and the future taxes to the state budget⁷⁴.

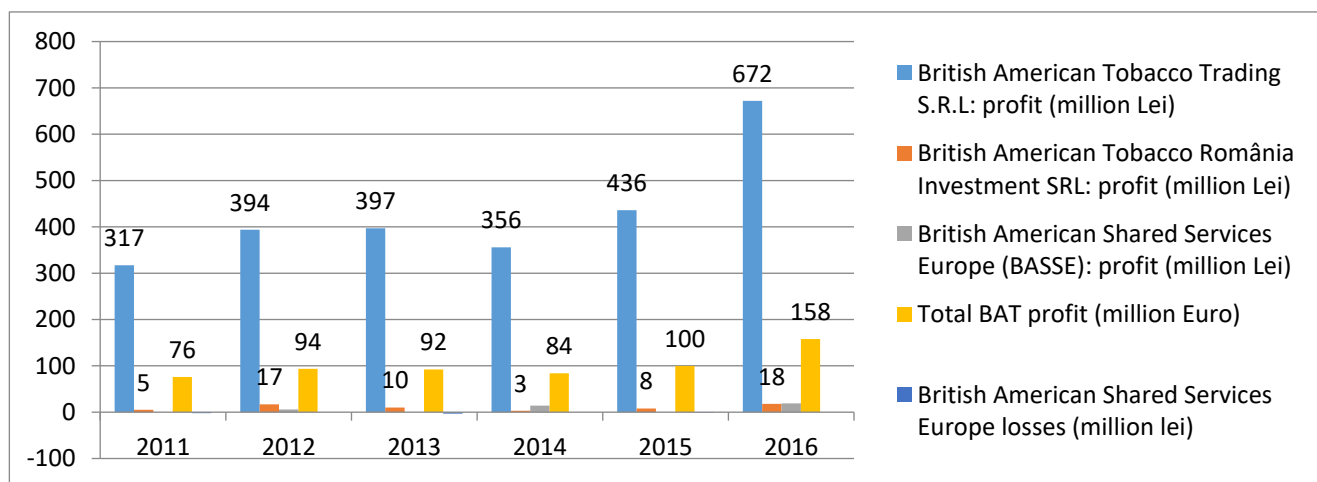


Figure 2: BAT profit and loss 2011-2016

Philip Morris International is the second market player in Romania producing 40 brands of cigarettes among which the most important are Marlboro, Parliament, Virginia Slims, Philip Morris, Next, L&M, Chesterfield, Assos, Red & White, IQOS, HEETS. PMI Group holds in Romania 2 divisions, both of them having 872 employees in 2016:

- I. Philip Morris Trading S.R.L. This unit represent the distribution platform of PMI in Romania with a turnover of 2.235 million lei and 178 employees, in 2016;
- II. Philip Morris Romania S.R.L. This unit represent the factory where is processed and produced the tobacco and associated products. The factory was established in 1997 in Otopeni, Ilfov County. Its production capacity is about 25 billion cigarettes/year, exporting 80% of production in 2017 to more than 15 EU member states, most

⁷¹ The number of countries is expected to increase to 40 countries in the next years

⁷² Source: <http://www.9am.ro/stiri/Business/306655/british-american-tobacco-anunta-investitii-de- peste-60-de-mil-de-euro-in-fabrica-de-la-ploiesti-in-2017.html>

⁷³ Source: <https://www.profit.ro/povesti-cu-profit/retail/british-american-tobacco-liderul-pietei-romanesti-de-profil-cu-brandul-kent-va-cumpara-reynolds-american-pentru-49-4-miliarde-dolari-devenind-cel-mai-mare-producator-listat-la-bursa-16548359>

⁷⁴ Source: <https://www.sfin.ro/actualitate/tutunul-a-ajuns-cel-mai-exportat-produs-agricol/>

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important export country being Italy. In 2016 its turnover was 215 million Lei and had, on average, 674 employees.

Philip Morris International announced on July, 2017 future investments for technological improvement of the factory because it currently has production capacity just for traditional cigarettes⁷⁵. PMI Group intends to focus the investments on IQOS technology (electronical devices which just heat the tobacco without smoke emanations or ash). IQOS technology is the result of a 3 million dollar research and PMI's factory in Romania is expected to be the third which can produce it alongside the factories in Germany and Italy. According to PMI, IQOS will significantly reduce the harmful effects of smoking and the predictions indicate an increase rate of IQOS smokers. Technological improvement stage is expected to be completed in 2020. Until 2018 PMI estimates a production capacity of about 100 billion *Heets/HeatSticks* and setup of 300 new jobs. PMI is one of the biggest global market players in tobacco industry holding 6 out of 15 top tobacco brands spread in 180 markets and the group is involved in development and trading of potential reduced-risk products (RRP's). On April, 10 2017 the Prime Minister of Romania declared its gratitude towards PMI future investments and market development initiatives, Romania being the third PMI's chosen pilot market for investments due to friendly business climate and favourable research environment⁷⁶. Also, PMI Romania has been awarded as Top Employer in Romania in March, 2017 for its work conditions for employees on the basis of evaluation indicators as career development opportunities, selective incentives and benefits⁷⁷.

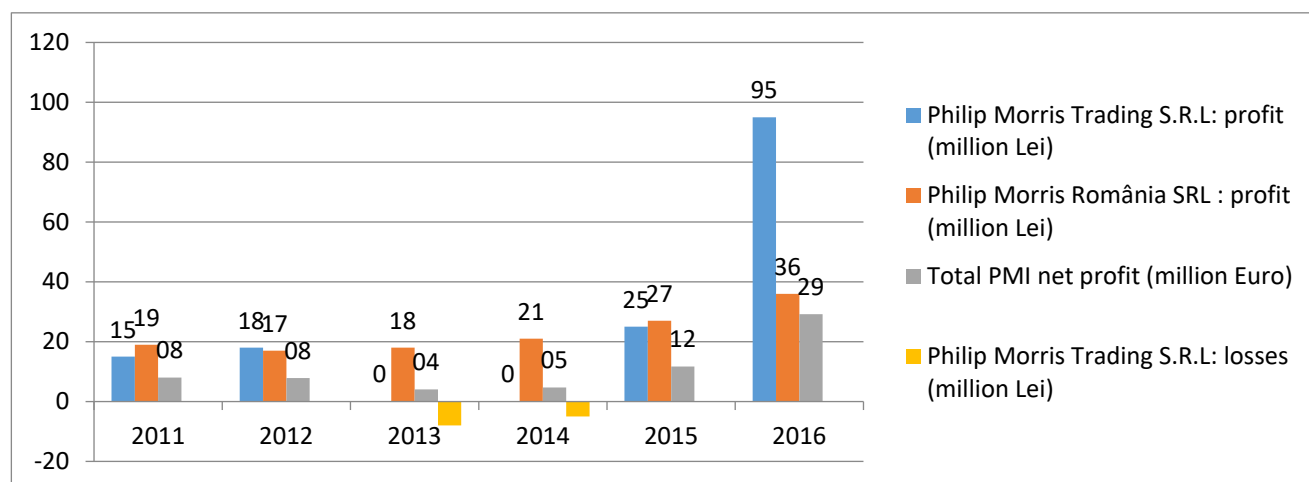


Figure 3: PMI profit and loss 2011-2016

Japan Tobacco International is the third biggest market player in the tobacco industry in Romania, being the first international tobacco company established in Romania. Its main distributed cigarettes brands are Winchester, Winston, Benson & Hedges, Glamour, Camel, Sobranie, LD, Monte Carlo, More, Mevius, Natural American Spirit, Silk Cut. JTI Romania holds 2 divisions with 1025 employees:

- I. J.T. International Romania S.R.L. This unit represents the distribution platform of JTI in Romania with a turnover of 3.608 lei and 706 employees in 2016;
- II. JTI Manufacturing S.A. This second division represents the factory where tobacco and associated products are processed and produced. In 2016, 75% of JTI's production was exported while in 2007 the exports represented only 5%. In 2012, JTI started to export to 45 countries from EU, South America and Asia. In 2016, JTI's turnover

⁷⁵ Source: <http://www.mediafax.ro/economic/philip-morris-extinde-capacitatea-de-productie-a-fabricii-de-tigarete-din-otopeni-13121817>

⁷⁶ Source: <http://www.mediafax.ro/politic/premierul-sorin-grindeanu-catre-philip-morris-international-salutam-investitiile-care-creeaza-noi-locuri-de-munca-16228126>

⁷⁷ Source: <http://www.bizlawyer.ro/stiri/tranzactii/philip-morris-a-primit-certificarea-top-employer-pentru-romania>

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was 754 million lei and it had, on average, 319 employees. Since 2009, JTI's regional activities are coordinated from Bucharest. In terms of corporate social responsibility, Japan Tobacco International finances cultural projects, charity work and development initiatives in local communities.

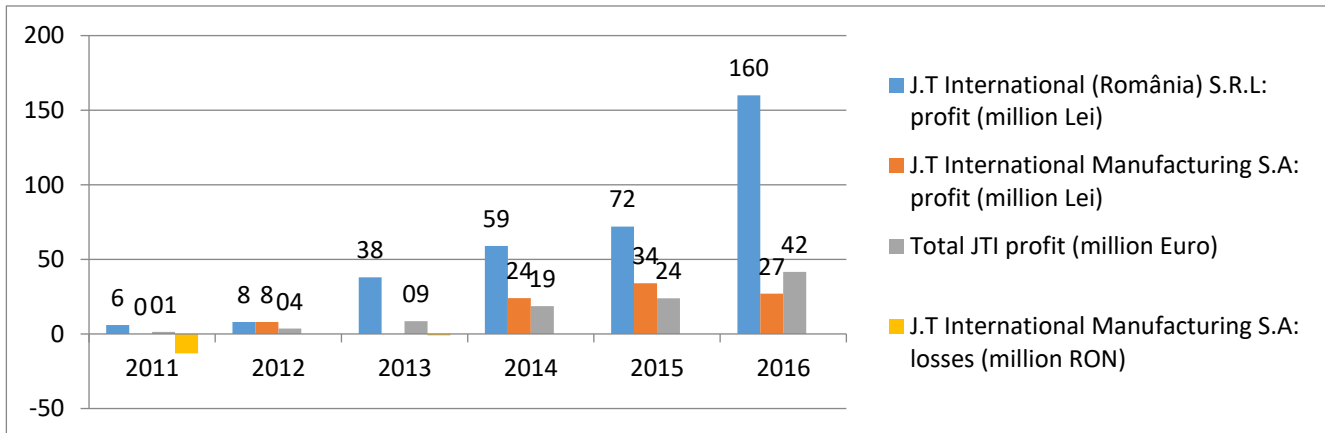


Figure 4: JTI profit and loss 2011-2016

The rest of the players in the Romanian tobacco market share the last 5%, but are relevant for the discussion about the illicit market.

China Tobacco International is a Chinese state-owned company and the Romanian subsidiary was established in 2007. Its most important cigarettes brands are Dubao, Golden Monkey, D&B, Most, Dune, Danube, Dublina, Regina and the sources of tobacco are mainly from Zimbabwe, Brazil, Argentina (flue-cured tobacco), USA (burley tobacco), UE (non-tobacco materials). China Tobacco International Europe Company S.R.L covers both production and distribution; having a turnover of 49 million lei and 176 employees in 2016 (their factory is established in Buzau). It average annual production capacity is about 4.5 billion cigarettes and exports to Middle East, Balkan states, North Africa and North Korea. The Chinese group invested 40 million dollars in Romania⁷⁸. The Romanian subsidiary's activities against smuggling could not be assessed⁷⁹.

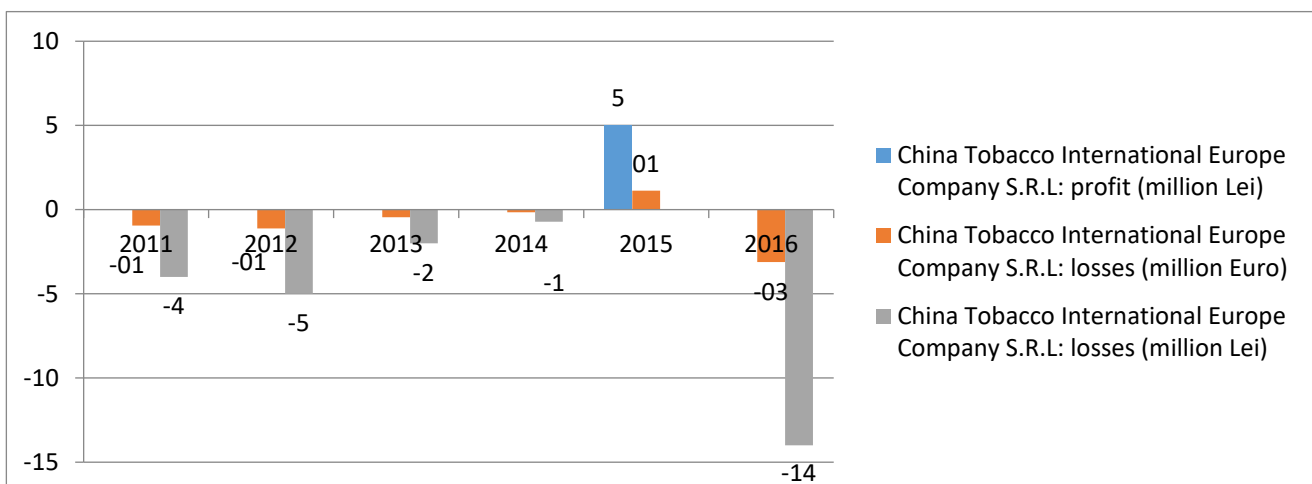


Figure 5: CTI profit and loss 2011-2016

⁷⁸ Source: <http://doingbusiness.ro/financiar/raport/756865/china-tobacco-international-europe-company-srl/>
<https://www.ctiec.cc>

⁷⁹ No response to emails.

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Imperial Tobacco Distribution Romania S.R.L was established in 2016 in Romania and it distributes brands like Davidoff, West, JPS, Gauloises Blondes, Golden Virginia. The turnover was about 238 million lei and it has 47 employees (data for 2016).

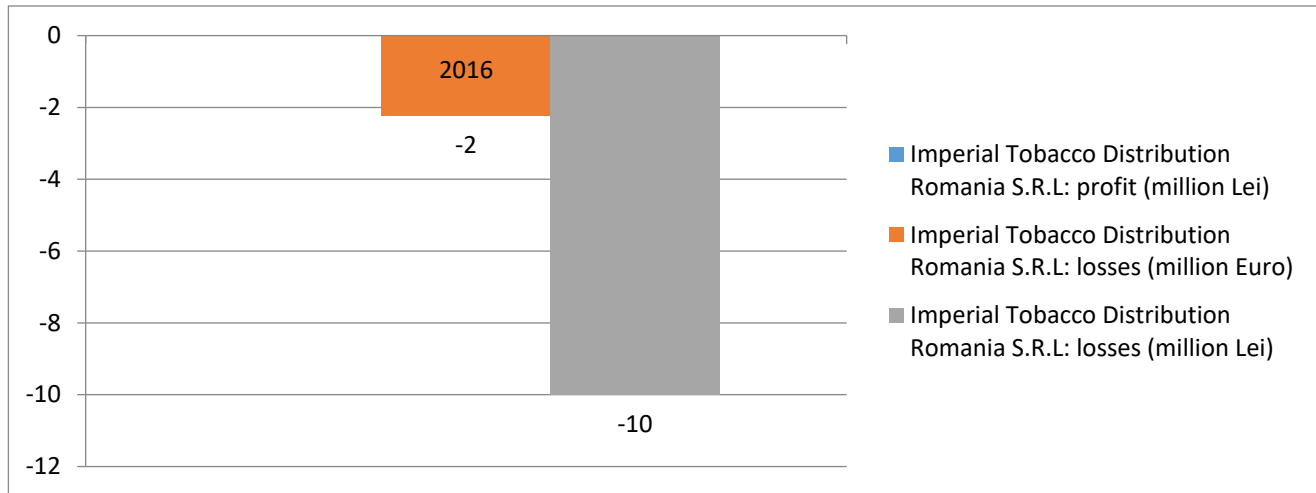


Figure 6: IT profit and loss 2016

Tobacco Trading International RO S.R.L is a firm specialized on cigars, pipe tobacco, wrapped up cigarettes and smokers accessories. Its turnover was about 6 million lei and 15 employees, in 2016.

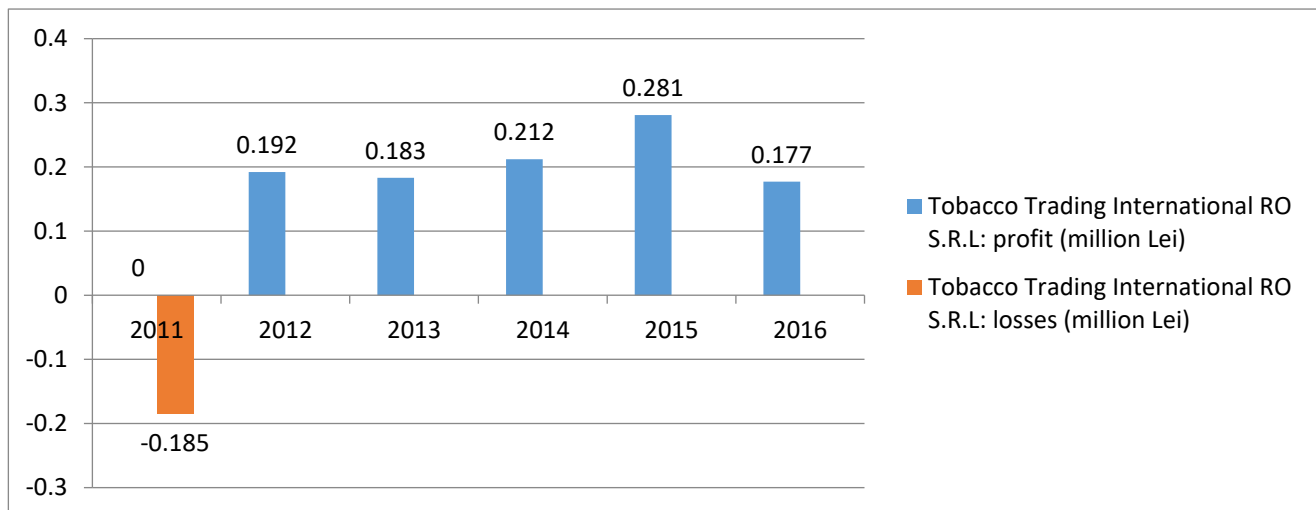


Figure 7: TTI RO profit and loss 2011-2016

Rom-Ital is the only first processing raw tobacco unit in Romania and has over 300 contracts and collaboration agreements with Romanian private tobacco farmers. The turnover was about 6 million lei and it has 67 employees (data for 2015).

The tobacco subsidy is attractive to farmers, even if both the culture itself and the wholesale may cause problems. The tobacco farmers benefit from a National Transitional Aid - ANT 4, amounting to 2,011 euro / ha⁸⁰. Romania's tobacco

⁸⁰ <http://agrintel.ro/78988/cultura-care-renaste-primeste-subventie-pestre-2-000-de-euroha-si-suprafetele-sunt-in-crestere/>

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crops have dropped drastically over the last 25 years⁸¹. Main cigarettes producers in Romania use imported tobacco. Raw tobacco is also sold on black market in Romania because of the immense price variation (10-20 Lei/kg on black market, while authorized processing companies offer only 1.7 Lei/kg)⁸².

According to DIICOT and Romanian Border Police, a significant amount of raw tobacco used for illicit cigarettes in Romanian illegal factories comes from Bulgaria and Greece, passing the border under the cover of furniture sawdust label.⁸³

Table 2: The evolution of tobacco production in Romania 2007-2016

Category	unit	1990	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Cultivated Area	thousands ha	35	1,1	1,2	0,9	1,5	1,7	1,3	0,9	0,9	0,7	1,0
Medium production	Kg/ha		1.025	1.916	1.842	1.939	1.524	1.066	1.442	1.643	1.448	1.741
Total production	thousands tons		1,1	2,4	1,6	3,0	2,6	1,3	1,4	1,4	1,1	1,75
Unmanufactured tobacco imports	thousands tons		-	-	-	-	31	28,65	26,15	34,18	39,48	37,67
Unmanufactured tobacco exports	thousands tons		-	-	-	-	1,4	2,2	1,8	1,8	2,2	1,6

Source: Romanian Ministry of Agriculture estimates⁸⁴ and Romania's Statistical Yearbook, National Institute of Statistics, Eurostat

The statistics about consumption of tobacco and associated products indicates that 5 million packs of cigarettes are daily smoked in Romania. According to a national study from January 2016 coordinated by Romanian Institute for Evaluation and Strategy (IRES)⁸⁵, in Romania there are 5 million smokers, including 4.4 million daily smokers. If we convert these numbers in percentages applicable to the entire population, Romania has:

- 75% non-smokers (higher score in countryside/rural areas);
- 18% daily smokers (higher score for men from urban area, 18-35 years old);
- 7% occasional smokers;

The average Romanian smokers' expenses represent 5% of the monthly budget, meaning an average expense of 94 lei/household for tobacco and cigarettes.

⁸¹ <http://jurnalul.ro/bani-afaceri/economia/tutunarii-romaniei-dupa-era-carpati-si-marasesti-705017.html>

⁸² http://www.bursa.ro/tabac-2014-cornelia-leticai-asociatia-organizatia-profesionala-pe-filiera-tutun-cultivarea-tutunu...&s=print&sr=articol&id_articol=232682.html

http://www.economica.net/cati-bani-face-ioan-niculae-din-tutun_82108.html

<https://www.libertatea.ro/stiri/tutunul-de-romania-industria-pe-care-guvernul-n-o-fumeaza-1628145>

⁸³ <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-cine-profit-a-de-pe-urma-fabricilor-ilegale-de-tigari-763072>

⁸⁴ <http://www.madr.ro/culturi-de-camp/plante-tehnice/tutun-si-hamei.html>

⁸⁵ The study has been conducted during January 21-25, 2016. There is a multi-layered, probabilistic, representative nationwide study, and interviews were conducted using the CATI method. The maximum tolerated error is $\pm 2.2\%$. Sources: <http://www.researchromania.ro/2016/02/un-sfert-dintre-romani-sunt-fumatori-si-cheltuie-pana-la-100-de-lei-pe-saptamana-pentru-tigari/>

<http://www.hotnews.ro/stiri-esential-20756016-studiu-ires-fumatul-romania-sfert-din-adultii-din-romania-declara-fumatori-4-din-10-incercat-lase-ultimul-numar-mai-mare-fumatori-mediul-urban-randul-barbatilor-varste-intre-18-35-ani.htm>

<https://www.agerpres.ro/comunicate/2017/09/18/comunicat-de-presa-initiativa-2035-prima-generatie-fara-tutun-a-romaniei-13-02-05>

<http://www.ziare.com/vlad-voiculescu/ministrul-sanatatii/fumatul-ucide-42-000-de-romani-in-fiecare-an-echivalentul-a-200-de-avioane-prabusite-1435533>

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Taking into consideration the smokers (25%), the spending patterns are:

- 26% spend between 1-30 lei/weekly;
- 5% spend between 31-50 lei/weekly;
- 30% spend between 51-100 lei/weekly.

The data on the expenditures for tobacco and associated products may be organized by different criteria: region, urban-rural, household type, educational level, age and gender of smokers. The data presented below represent average monthly expenditures by households or smoker (National Institute of Statistics – “Coordinates of living standards in Romania”, 2016)⁸⁶.

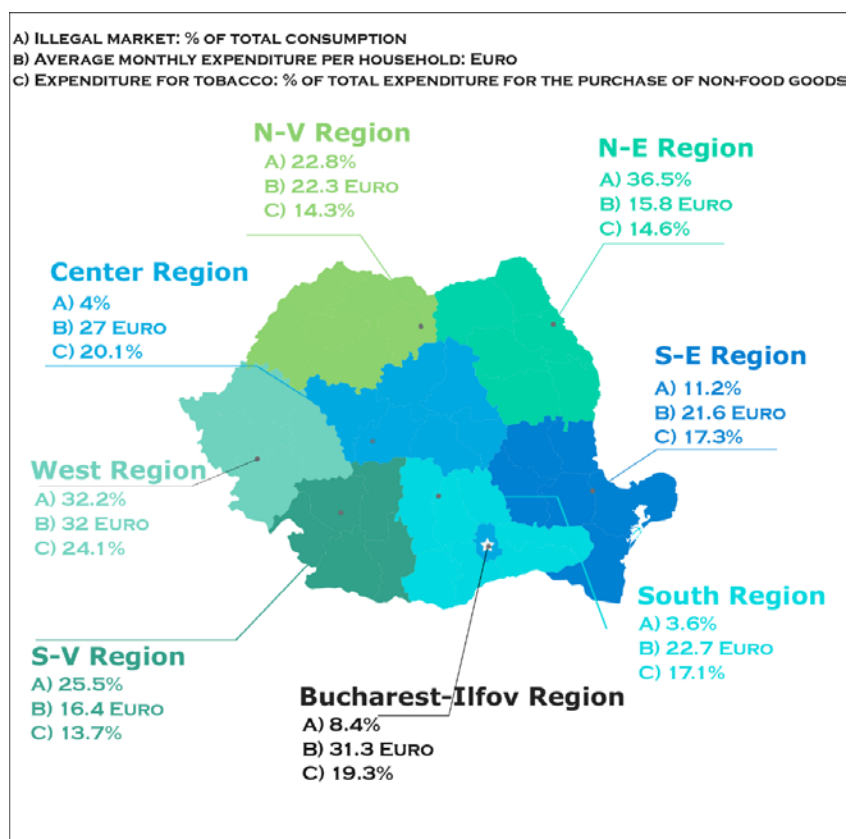


Figure 8: Tobacco consumption patterns

- 1) Regions: The average monthly expenditure per household is higher in West Region of Romania (144.16 lei/month/household) and Bucharest-Ilfov Region (140.95 lei), whereas lower rates are registered in S-V Oltenia Region (74.09 lei) and N-E Moldavia Region (71.1 lei). According to this study the expenditures tend to decrease from 2015-2016, even if the prices of cigarettes increased. This may be explained by an increase of supply by illicit market or a decrease in the number of smokers/pattern of smoking. The expenditure for tobacco and associated products represent a large portion of total expenditure for the purchase of non-food goods: 24.1 % (West Region), 19.3% (Bucharest-Ilfov Region), 13.7% (S-V Oltenia Region) and 14.6 % (N-E Moldavia Region).

⁸⁶The study covers the period January-December 2016.

http://www.insse.ro/cms/sites/default/files/field/publicatii/coordonate_ale_nivelului_de_trai_in_romania_2016.pdf p. 68, 230-231 Other sources taken into consideration: http://adevarul.ro/economie/stiri-economice/ce-fumeaza-romanii-harta-consumului-tutun-regiuni-infografie-1_576bfab45ab6550cb8399719/index.html

- 2) Environment (rural/urban areas): Tobacco monthly expenditures are larger in urban areas (125.45 lei/19.3% of total expenditure for the purchase of non-food goods) comparing with the rural ones (76.66 lei/14.3%).
- 3) Head of household's occupational status: Employees spend more on tobacco monthly (156.25 lei/20% of total expenditure for the purchase of non-food goods) then other categories such as autonomous workers (86.57 Lei/15.3%), farmers (69.17 lei/ 16.2%), unemployed individuals (83.70 lei/ 21.1%), or retired individuals (63.71 lei/ 13.4%).
- 4) Education level: Individuals having higher education (147.81 lei/16%) spend more on tobacco than those having secondary school (94.55 lei/ 17.9%) or primary school (45.58 lei/13.5% of total expenditure for the purchase of non-food goods).
- 5) Age: Individuals in category 25-34 yrs. spend more each month on tobacco on average (138.90 lei) than the other age groups: 35-49 yrs. (128.59 lei), 50-64 yrs. (119.68 lei), 15-24 yrs. (101.21 lei), 65+ yrs. (56.30 lei).
- 6) Gender: men (118.69 lei/month) spend more on tobacco than women (65.63 lei/month).

Based on the data collected, the study concludes that the ardent smokers are most likely men from urban areas, especially in or around Bucharest or in the West region, employed⁸⁷, young (25-34 yrs.), their household being composed of fewer people than the rest of the households. The most cautious smokers tend to be women from rural areas, especially from Moldavia and Oltenia, retired or farmers, at an older age (over 65 yrs.), their households being composed of more persons than the rest of the households. Generally speaking, Romanian monthly expenditures allocated for tobacco and associated products have a high share in non-food expenditure, namely 15-20%.

The identified patterns of smoking are⁸⁸: 8% smoke more than 1 pack/day; 8% smoke 16-20 cigarettes/day; 49% smoke less than 1 pack/week; 49% smoke more than 1 pack/week.

The smokers tend to prefer the following brands Kent (24%)⁸⁹, Pall Mall (23%), and Winston (13%). Regarding the perception about quitting smoking, 1/5 intend to quit smoking in one month, more than a quarter does not intend to quit smoking (18-35 years old category, urban), and 70% declare they are not affected by images posted on cigarettes packs.

The legal industry invested in a traceability system able to record legal cigarettes⁹⁰. The new traceability and security features proposed by European Commission require recording cigarettes movements throughout the supply chain (from the manufacturer to the last level before the first retail outlet). The new Track & Trace system must be in place by 20 May 2019 for cigarettes and roll-your-own tobacco, and by 20 May 2024 for all other tobacco products⁹¹. The industry in Romania considers the new Track & Trace system inefficient as most of the illegal cigarettes in Romania are cheap withes from outside EU⁹² and costly as production equipment will need to be adjusted⁹³.

The main vulnerability concerning the legal market is the cooperation of local manufacturers against illicit trade and transparency of their operations.

⁸⁷ that means they have an recurrent income and they afford to spend part of it on cigarettes

⁸⁸ <https://www.agerpres.ro/sanatate/2017/06/08/o-treime-dintre-romani-sunt-fumatori-studiu--15-05-00>

⁸⁹ BAT best bought product is Kent, with 26% market share

⁹⁰ Source: Interview with tobacco expert

⁹¹ European Commission: https://ec.europa.eu/health/tobacco/tracking_tracing_system_en

⁹² <http://www.amosnews.ro/contrabanda-de-tigari-piata-neagra-creste-alarman-noiembrie-2017-12-20>

⁹³ <https://www1.agerpres.ro/economie/2017/11/19/producatorii-de-tigari-nemultumiti-de-noile-planuri-ale-ue-privind-trasabilitatea-pachetelor-11-41-01>

4. THE ILLICIT TOBACCO MARKET

Romania is one of the EU countries most affected by illicit trafficking in tobacco products, being on the second place in the EU, after Poland⁹⁴. The level of illicit market in Romania (18.3% in November 2017) is double in size comparing it with the EU average (9%)⁹⁵. As a consequence, the Romanian's state budget is annually deprived by 650 million euro. Every percent in rising of illicit market means 40 million euro/year in taxes lost to the state budget. So throughout 2010-2016 periods, when the illicit market share was 27%, Romania lost at least 4.8 billion euro. In 2017, Romanian authorities captured almost 150 million illicit cigarettes which worth 80 million lei, representing only 3% of the illicit market⁹⁶. Almost 60% of the illegal cigarettes in Romania are cheap withes, 19% having Moldavian origin and 17% Ukrainian origin⁹⁷.

In 2016, DIICOT had 588 files involving customs crimes, 303 files being registered during the year. Form this bulk, DIICOT finalised 164 files, but only 17 files finalized with indictments⁹⁸. In the last 7 years, the customs crimes evolution indicates a decrease trend in the number of files and the perpetrators. This is consistent also with the sociological data on the illicit consumption. Nevertheless, in 2014-2015, the trend reversed.

Table 3: Prosecutions of smuggling and the level of illicit market in the total consumption

Customs crimes	2010	2011	2012	2013	2014	2015	2016	2017
No. of files DIICOT	1,052	695	435	463	563	788	588	667
No. of files finalized with indictments DIICOT	63	42	25	15	24	40	17	25
No. persons indicted DIICOT	190	223	277	149	162	330	212	237
No. of files General Prosecutor's Office	275	727	879	764	960	1,263	1,154	2,472
Level of illicit market	27.5%	15.2%	13.3%	13.6%	15.9%	16%	16.7%	16%

Source: DIICOT annual report, General Prosecutor's Office annual report⁹⁹ and Novel Research Data.

The data from the National Police reveal also a decrease of illicit market in 2011-2013 periods and a rise in smuggling beginning with 2014.

Table 4: Smuggling crimes solved by the police and crimes solved by the Prosecutor's Office through police declined jurisdiction

Categories of infringements investigated by police/ Year	2010	2011	2012	2013	2014	2015	2016
Smuggling and import - export infringements	839	692	614	686	1,038	1,422	1,293

Source: National Institute for Statistics, Tempo online service, JUS109B indicator

⁹⁴Source: http://adevarul.ro/economie/stiri-economice/regiunile-romaniei-fost-capturate-celemai-multe-tigari-contrabanda-2017-1_5a310c175ab6550cb826e779/index.html

<http://www.radardemedia.ro/care-sunt-regiunile-romaniei-unde-au-fost-capturate-cele-mai-multe-tigari-de-contrabanda-2017/>

<https://www.profit.ro/stiri/social/autoritatile-romane-au-capturat-aproape-150-milioane-de-tigari-de-contrabanda-top-ul-regiunilor-cu-cele-mai-mari-capturi-17467662>

<http://www.capital.ro/piata-neagra-cele-mai-mari-capturi-de-1.html>

<http://m.bursa.ro/bat-tigari-de-contrabanda-in-valoare-de-23-milioane-de-lei-capturate-in-timpul-verii-09000335>

⁹⁵ Source: Novel Research and KPMG

⁹⁶ Source: <http://jurnalul.ro/bani-afaceri/economia/piata-neagra-a-tigarilor-lasa-o-gaura-de-650-mil-euro-statului-744085.html>

<https://www.news.ro/eveniment/autoritatile-romane-au-capturat-in-prima-jumatate-a-anului-aproape-75-de-milioane-de-tigari-de-contrabanda-in-valoare-de-45-de-milioane-de-lei-1922400003012017081117125267>; <http://www.capital.ro/fiecare-a-6-a-tigara-fumata-in-romania-provine-din-contrabanda.html?&page=2>; <https://www.sfin.ro/actualitate/comunicate-de-presa/top-8-regiuni-ale-romaniei-unde-au-fost-capturate-cele-mai-multe-tigari-de-contrabanda-in-2017/>

http://www.economica.net/autoritatile-romane-au-oprit-aproape-150-de-milioane-de-tigari-de-contrabanda-sa-ajunga-pe-piata-neagra--in-2017_147513.html

<http://cursdeguvernare.ro/studiu-novel-record-absolut-in-nord-est-cota-pietei-negre-a-tigaretelor-pesto-50.html>

⁹⁷ <http://faracontrabanda.ro/statistici-campanii/> (data for January 2017)

⁹⁸ DIICOT annual report 2016, p. 19

⁹⁹ General Prosecutor's Office 2016 annual report (p. 123)

The main vulnerability concerning the legislative landscape is the political priority of Romanian government towards repealing duty-free legislation. If approved, the repeal will determine an increase of illicit supply. There are also gaps in legislation that are exploited by perpetrators (loose definition of customs value when it comes to cheap wifes). The law enforcement agencies have a limited capacity to cover all the cases in a reasonable time and lenient and inconsistently applied penalties are not an effective deterrent¹⁰⁰. In the marketplaces there are cheap distribution networks available consisting of disadvantaged individuals (poor education, jobless) from poor, peripheral neighbourhoods. They are known to the law enforcement authorities, but tolerated. Such networks deliver the products to individual smokers searching for lower prices, not very interested on quality¹⁰¹.

Routes and hotspots

The region most affected by cigarettes smuggling is Nord-Est region, which borders Ukraine and Republic of Moldova. In 2017, the Nord-Est region reached a high level of smuggling (37%), with a 9.3% decreasing compared to November 2016¹⁰². The smuggling route through Ukraine and Moldova is the most relevant. Romania has 2000 km of border with 3 non-EU countries- Ukraine, Republic of Moldova and Serbia. This large border area offers enough opportunities to smugglers as surveillance procedures are difficult to undertake and implement because of the rocky landscape (especially the Ukraine border) as well as the constant's capacity of perpetrators to develop new smuggling techniques. In the case of Moldova's border, the smugglers developed scuba diver, fisherman or boatman abilities. Beside these routes, the perpetrators use modified trucks to pass unnoticed and have similar devices as border authorities, such as drones and infrared devices¹⁰³.

In 2014, average incidence of illicit trafficking with tobacco products was 15.9% while Nord-Est, Vest and Sud-Vest regions had the highest smuggling rate, namely 28.4% and 26%. In the next year the illicit tobacco market share registered 16% and that means with 75% more than EU mean value (10%) and again, regions with the highest rate of smuggling being the northeast, west and south-west (37.4%, 23.1% and 23.6%). The majority of packs had Ukrainian (17%), Republic of Moldova (13.9%) and Serbia (2.8%) stamps. In the same year, authorities in cooperation with tobacco industry destroyed 660.000 cigarette and 75 kilograms of tobacco which totally worth about 2 million dollars from which 80% would have been taxes to state budget.

In 2016, Romania registered the highest rate of illicit trade in tobacco products in the last 5 years, almost 4.41 billion illicit cigarettes being smoked. This represents 10% of 48 billion illicit cigarettes smoked in the EU¹⁰⁴. The average rate of illicit trafficking in tobacco products was 16.8%. Again, the most vulnerable regions to tobacco smuggling were Nord-Est region (46.9%) and Sud-Vest (27.8%)¹⁰⁵. At the beginning of 2017 the average rate continued to decrease to 16.2%. The decreasing tendency was registered also in regions having highest smuggling rate, in northeast was about 37.6% and 24.6% in south-west¹⁰⁶.

Another identified illicit tobacco hotspot is Constanta Harbour where cigarettes constantly are smuggled in while authorities meet procedural shortcomings and surveillance protocol is harder to implement¹⁰⁷. There are no specific or

¹⁰⁰ SUN report, p. 141 – "law enforcement report seeing the same individuals returning to C&C smuggling again and again"

¹⁰¹ Interview with tobacco expert

¹⁰² Source: <http://www.faracontrabanda.ro/statistici.php>

<http://faracontrabanda.ro/statistici-campanii/>

Novel Research data

¹⁰³ Source: interview with tobacco expert

¹⁰⁴ Source: <https://www.news.ro/social/studiu-romanii-fumeaza-10-din-tigarile-de-contrabanda-din-ue-romania-este-a-sasea-piata-europeana-pentru-tigarile-de-contrabanda-1922404307012017071017074588>

<http://www.ziare.com/viata-sanatoasa/fumat/romanii-fumeaza-10-la-suta-din-tigarile-de-contrabanda-traficate-la-nivelul-uniunii-europene-1472515>

¹⁰⁵ this scores being registered at the end of 2016

¹⁰⁶ Source: <http://www.faracontrabanda.ro/statistici.php>

¹⁰⁷ Source: interview with tobacco expert

constant time periods when the cigarettes loads reach Romanian market through Constanta, but when it happens the market is flooded with illicit tobacco and the consumption on legal market cigarettes tend to decrease as smokers tend to buy smuggled cigarettes¹⁰⁸. For example on March, 2017 customs personnel from Agigea Harbour discovered 1.400 boxes with 14 million Asia-origin cigarettes boarded on a Thai flag ship. According to authorities the cargo's estimated value was about 2.5 million euro and the final destination would have been Bucharest. This was the biggest smuggled cigarettes seize of the last 5 years¹⁰⁹. Legal imports of cigarettes that transit Constanta harbour and Romania are also a concern as some of the trucks do not reach the destination countries, being unloaded in Romania¹¹⁰.

Another recent hotspot is the border with Bulgaria as the new bridge Calafat-Vidin has been opened in 2013. The south of Romania is supplied with illegal cigarettes by the Turkish trucks that transit Bulgaria¹¹¹. Greece and Turkey are the countries with the highest ITTP penetration in the Eastern Europe ITTP hub¹¹². Around of 1% of the illicit market is supplied from Serbia, probably by so called "ant smuggling", specific to the border regions.

The police use a non-conventional tool to measure the smuggling level: tracking black market prices once every 3-4 days. If prices decrease, smuggled cigarettes are considered available in larger quantities (an undetected transport being implied). If prices increase, smuggled cigarettes are considered scarce (failed smuggling operations being implied)¹¹³.

Enabling factors

From 2008 until 2010 Romanian illicit cigarettes market raised from 13% up to 36%¹¹⁴ and this phenomenon has been encouraged by the large price differences between cigarettes from Romania and those from Ukraine and Republic of Moldova. Beside this, some stakeholders complain about the laxity of security measures at borders. Romanian authorities bought 15 high-tech scanners (3 scanners for Constanta customs bought in 2012 for 5 million euro¹¹⁵, the first scanner was bought in 2008 for Albița, Republic of Moldova border¹¹⁶) from MB Telecom¹¹⁷ but the funds allocated to maintenance and insurance are scarce and the scanners seldom work¹¹⁸. In June 2017, ANAF identified only one functional scanner out of 15 and several irregularities in the maintenance contracts and filed a complaint to the Prosecutor's Office¹¹⁹. Previously, in June 2016, DNA started an investigation against the owner of MB Telecom, Mr. Mircea Tudor, who allegedly paid 6 million lei (1.3 million euro) in bribes to secure contracts with customs authorities¹²⁰. According to procurement data website, in 2007-2014 periods, MB Telecom had 93 contracts with ANV having a total value of 68 million euro¹²¹.

Other factor supporting smuggling is the change of legislation in 2015 in Republic of Moldova. The customs code of Republic of Moldova legalized duty-free shops in Transnistria separatist region¹²². In 2016, 23 duty-free shops were functional in Republic of Moldova out of 9 in Transnistria¹²³. As Transnistria is not a tourist destination, the duty-free

¹⁰⁸ Source: interview with tobacco expert

¹⁰⁹ Source <http://stirileprotv.ro/stiri/actualitate/cea-mai-mare-captura-de-tigari-de-contrabanda-din-ultimii-cinci-ani-la-constantina-unde-trebuia-sa-ajunga-transportul.html>

¹¹⁰ Interview with tobacco expert

¹¹¹ Interview with tobacco expert

¹¹² Transcrime-The Eastern Balkan Hub for Illicit Tobacco, 2016

¹¹³ <https://republica.ro/zsunt-cam-tari-nu-vi-le-as-recomanda-eu-n-am-fumat-niciodata-din-astea-jin-ling-castigurile-si-riscurile>

¹¹⁴ Source: Novel Research

¹¹⁵ Source: <https://www.replicaonline.ro/scanere-de-pesto-200-de-miliarde-pentru-vama-constantina-cumprate-de-la-o-firma-agreata-de-sri-85740/>

¹¹⁶ Source: <http://www.ziare.com/vaslui/albita/primul-scanner-robotizat-din-romania-la-vama-albita-626671>

¹¹⁷ <http://www.mbtelecom.ro/Produse>

¹¹⁸ Source. Interview with tobacco expert

¹¹⁹ Source: https://static.anaf.ro/static/3/Galati/20170614100645_2017.06.15_02_comunicat_presa_braila.pdf

¹²⁰ Source: <http://www.pna.ro/faces/comunicat.xhtml?id=7492>

¹²¹ Source: <http://www.hotnews.ro/stiri-esential-21394348-baiatul-destept-din-tehnologia-securitate-roboscan-aeria-mircea-tudor-exista-sansa-inchid-aici-fac-totul-elvetia-castigat-romania-contracte-statul-valoare-560-milioane-lei-ultimii-9-ani.htm>

¹²² <https://www.mold-street.com/?go=news&n=3720>

¹²³ <http://www.allmoldova.com/ro/news/magazine-duty-free-amplasate-contrar-prevederilor-ue-si-legalizate-in-transnistria>

shops are allegedly used for smuggling, information indicating that only three such duty-free shops imported along one year 4 billion cigarettes, the consumption for entire Romania, for two months¹²⁴. The imported cigarettes do not reach destination, being unloaded in the transit countries. Nevertheless, the Head of Custom Authority from Republic of Moldova claim that many illicit cigarettes loads were stopped before entering into Romania. He claims that there is a decreasing trend in smuggling from Republic of Moldova to Romania because the number of seized cigarettes doubled in 2016¹²⁵.

Another concern is the implication in smuggling and trafficking of ordinary citizens who transport very often small amounts of illicit cigarettes in order to not be prosecuted. Also, people living near borders help smugglers by providing shelter or storage for illegal cigarettes¹²⁶. Thus, another form of supply for the OCGs is to buy large quantities of cigarettes from individual carriers (natural persons that do daily visits across border to bring consumption goods). In 2013, according to the border police, in only one customs point with Serbia (Porțile de Fier 1) there were registered 1300 individuals crossing the border daily (sometimes two or three times a day) to bring into Romania goods such as cigarettes and alcohol¹²⁷. Beginning with 2013, the regulation in Romania changed, weekly quantity limits per person being imposed instead of per crossing ones (for instance two packs of cigarettes per week, per person instead of two packs per crossing, per person)¹²⁸. Despite these harsh measures, this method continues to be used and sometimes even 5 individuals leave in a single car across the border to bring in cigarettes, above the allowed limit but below the crime limit. Even if they are caught and fined once in ten trips, this activity is still profitable¹²⁹. In all Romania's neighbouring countries, except Hungary, a cigarette pack costs less than in Romania, for example in Ukraine is less than 5 lei, Moldova less than 7 lei, Bulgaria and Serbia is less than 12 Lei¹³⁰. Representatives of local authorities are also involved in smuggling. For instance a mayor was sentenced in 2017 for smuggling, being involved in a group along other 36 persons¹³¹.

Corruption of custom personnel is another enabling factor. Those who are asked about this phenomenon tend to externalize the responsibility and the guilt and declare that they never took bribe or other substitute forms or gifts. Despite the dominant custom staff's statements, in the period 2011-2014, National Anticorruption Directorate (DNA) prosecuted 276 customs policemen¹³². In late 2016, Directorate for Investigating Organised Crime and Terrorism (DIICOT) arrested 18 customs officers at Stamora-Moravita (Serbia border) for facilitating illegal trade¹³³. This was the third large file in Stamora-Moravita after, in two previous operations, 69 and 41 policemen were prosecuted. Practically each year, entire customs structures are sacked while newcomers doing the same illegal actions.

Custom officers consider that the OCG's leaders are hard to sentence because they are not involved on the ground, lower level members being red-handed. The crime groups afford to offer large bribes or contribute to electoral campaigns in exchange for protection and hints. Another enabling factor is the perception of these crimes because often the

¹²⁴ Interview with tobacco expert and <https://anticoruptie.md/en/investigations/economic/ukraine-moldova-transnistria-golden-triangle-of-smuggling>

¹²⁵ In the same conditions and same personnel as in 2015; Source: <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-contrabanda-cu-tigari-o-veche-problema-696709>

¹²⁶ Source: interview with tobacco expert

¹²⁷ Jurnalul. Ro, „Restricții la granița non-UE. Românii pot aduce doar o dată pe săptămână țigările, băuturi alcoolice și alimentele din Serbia, Ucraina și Moldova”, 17.11.2013 - <http://jurnalul.ro/stiri/observator/restrictii-la-granita-non-ue-romanii-pot-aduce-doar-o-data-pe-saptamana-tigarile-bauturi-alcoolice-si-alimentele-din-serbia-ucraina-si-moldova-655602.html>

¹²⁸ National Agency for Fiscal Administration's Order no. 3477/2013 on the definition of the occasional character of passing into Romania of goods contained in the personal luggage of travellers coming from a third country. The order was repealed and replaced by Order no. 1888/2016 having similar provisions.

¹²⁹ Interview with tobacco expert

¹³⁰ Source: http://adevarul.ro/moldova/economie/cat-muncesc-moldovenii-pachet-tigari-1_515ba7b500f5182b857ae13b/index.html

¹³¹ Source: <http://botosaninews.ro/314895/eveniment/primar-botosanean-condamnat-intr-un-dosar-de-contrabanda-cu-tigari/>

¹³² Source: <http://www.pna.ro/comunicat.xhtml?id=2158> and <http://www.pna.ro/comunicat.xhtml?id=2177> and <http://www.pna.ro/comunicat.xhtml?id=2209>

¹³³ Source: <https://www.agerpres.ro/justitie/2016/06/01/18-politisti-de-la-vama-stamora-moravita-retinuti-de-procurorii-diicot-10-03-16>

perpetrators are not considered public menace and get suspended sentences or civil penalties, therefore many of them go back in business. Even if convicted, the average penalty is three years prison time.¹³⁴

Organized crime groups work as a job provider for poor communities (for instance rural border ones) where people do not have access to labour market and the state does not provide public goods. Such groups exploit institutional vulnerabilities and involve poor people in their operations who in turn offer loyalty and protection.¹³⁵

Methods

Romanian authorities acknowledge that the northern and eastern border areas are the most vulnerable. For example, a single truck can carry about 1000 boxes of illicit cigarettes. This means at least 1.350.000 euro lost to the state budget¹³⁶. Romanian authorities seem motivated to fight smuggling and cooperate with each other, but once the cigarettes loads breach the border, it is difficult to stop it into Romania as perpetrators operate in connected networks. The perpetrators change very often the markets, warehouses and delivery routes and so the cigarettes arrive to easily replaceable low-level sellers who are costly to identify and sentence. In some cases, lawful courier services were being employed for the shipment of cigarettes within Romania. Local police forces of municipalities have the capacity to identify such low level sellers. For instance, local police from district 6 Bucharest reported that a person has been identified selling 120 packs of illicit cigarettes in a marketplace¹³⁷. According to a survey, illicit cigarettes are offered in the street (83% of the respondents who have been offered black market cigarettes to buy or smoke), in ordinary shops (9%), and in bar or restaurants (4%)¹³⁸. According to several case studies, illicit cigarettes were sold using the store owned by the perpetrators. Separate accounting was used, the illicit sales being recorded on two regular notebooks. In some regions controlled by OCGs, local shop owners are imposed a quota of illicit cigarettes to sell weekly in order to be allowed to operate¹³⁹.

International reports suggest that OCGs operating in Romania are highly inventive in their methods of concealing illicit cigarettes: cigarettes hidden in trucks or freight train transporting timber, hollowed-out logs or sawdust, in consignments of cement, brown wrapping paper and Xerox paper¹⁴⁰. An organized crime group specialized in smuggling cigarettes from Serbia operated under the cover of a construction company¹⁴¹. Using two trucks registered in Serbia and Serbian drivers, the company was officially engaged in brick transport – 4-5 times per week. In fact, illicit cigarettes from Montenegro (25-35 packs) were hidden inside specially built compartments (under the floor and inside the tank) and smuggled into Romania.

Cigarettes smugglers are helped by the inhabitants of villages from the border proximity, especially in the northern (Maramureş, Satu Mare) and eastern regions (Sculeni, Albiţa). For villagers, complicity into smuggling is the only way of income thus they collaborate with organized crime, sometimes obstructing police investigations even with violent attacks. One of the most impenetrable area for customs officers is the mountainous area with high altitudes from Maramureş at the Ukrainian border, so the smugglers exploit this vulnerability. Authorities identified smugglers passage but nevertheless they cannot fully manage the situation because of bumpy relief and villagers' complicity. The carriers (one of

¹³⁴ <https://republica.ro/ztrece-tirul-printre-munti-ca-un-sarpe-lung-riscul-castigurile-si-puscarea-carausului-in-reteaua-underground>
<https://republica.ro/zsunt-cam-tari-nu-vi-le-as-recomanda-eu-n-am-fumat-niciodata-din-astea-jin-ling-castigurile-si-riscurile>
<https://www.libertatea.ro/stiri/tigari-de-contrabanda-fumul-ieftin-si-ilegal-tras-in-piept-de-romani-1865028>

¹³⁵ <https://republica.ro/reteaua-underground-cat-castiga-sefii-din-umbra-ai-unei-operatiuni-care-costa-romania-600-de-milioane>
<https://republica.ro/ztrece-tirul-printre-munti-ca-un-sarpe-lung-riscul-castigurile-si-puscarea-carausului-in-reteaua-underground>

¹³⁶ <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-contrabanda-cu-tigari-o-veche-problema-696709>

¹³⁷ <http://www.primarie6.ro/politistii-locali-sector-6-au-prins-un-tanar-care-vindea-tigari-de-contrabanda-in-crangasi/>

¹³⁸ European Commission: Special Eurobarometer 443 - Illicit tobacco trade, Romania fact sheet, July 2016. Source: https://ec.europa.eu/anti-fraud/public-perception-illicit-tobacco-trade_en

¹³⁹ Interview with tobacco expert

¹⁴⁰ SUN report, p. 141.

¹⁴¹ Criminal decision no. 270/A/31.10.2012, Timisoara Court of Appeal

supplying chain link) transport the boxes during night time, at 2000 metres height counting on intuition and climber skills.¹⁴²

Another way of smuggling is performed by transportation or travel companies. The latter case shows that cigarettes smuggling is done in the limelight because bus drivers distribute the cigarettes to the all passengers so as to enclose into legal parameters of transportation. Those who transport goods hide the cigarettes among other deliverables. In Constanța Harbour, for example, the cigarettes are smuggled usually by „cover method” (*metoda capac*), meaning that cigarettes boxes are hid inside the official loading.¹⁴³

In the east at Republic of Moldova border, the smugglers need scuba diving and swimming skills. The cigarettes are crossed through the water, dragged with fishing tools or carried with boats. On the shore the boxes are taken by a local who knows the area and usually transported with carts to not attract the attention. In case of emergency, the criminals use traffic diversions, road traps to lose tracks. According to a smuggler testimonial, in 5 minutes are crossed over Danube about 30.000 packages with a ski jet or high speed skimmers. Then the load is carried to nearby local warehouses¹⁴⁴ while a team oversee the area with special devices, also communicate each other via a coded language. From warehouses to markets are changed about six cars to whom they change frequently the registration numbers.¹⁴⁵

In October 2017, DIICOT disbanded three OCGs involved in cigarettes smuggling and active in 8 counties. Anatolea Ciumac, allegedly one of group leaders, is a former K1 fighter and he was intensely promoted in Romanian media as a controversial celebrity¹⁴⁶. He was pre-emptively arrested on October, 27 and released on November 2. Most perpetrators are not even pre-emptively arrested as it is not a social danger involved. An investigation involves many structures so low-level distributors receive only financial penalties.

The OCGs develop relationships at political and law enforcement level receiving protection¹⁴⁷. In the past there were allegations of involvement of military, intelligence and police personnel in smuggling activities¹⁴⁸. There is a perception that law enforcement and criminal sector often collude¹⁴⁹. One characteristic of the OCGs is poly-criminality, whereby dealing in multiple commodities simultaneously¹⁵⁰.

Tobacco producers have incentives to reduce smuggling of their own products as they may face legal actions and undermine their market share in profitable countries.

OCG's are pyramidal structures built on a set of rules and hierarchical relations: the group leader(s) establish and coordinate transactions, on the next layer, carriers and middlemen take and store the smuggled boxes, regional warehouses distribute further to local ones and finally, the illicit cigarettes arrive to the lowest level layer of the group, cheap jacks from the markets. Usually the carriers, middlemen and depositaries are poor persons, easily dispensable,

¹⁴² <https://www.digi24.ro/special/campanii-digi24/romania-furata/cele-mai-transportate-tigari-din-romania-nimeni-nu-stie-cine-unde-si-in-ce-conditii-sunt-fabricate-730103>

¹⁴³ <https://republica.ro/reteaua-underground-cat-castiga-sefii-din-umbra-ai-unei-operatiuni-care-costa-romania-600-de-milioane>
<https://republica.ro/ztrece-tirul-printre-munti-ca-un-sarpe-lung-riscul-castigurile-si-puscarii-carasului-in-reteaua-underground>

¹⁴⁴ underground warehouses, located in forests or even under animal stalls Source:<https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-cine-profit-a-de-pe-urma-fabricilor-ilegale-de-tigari-763072>

¹⁴⁵ <https://republica.ro/reteaua-underground-cat-castiga-sefii-din-umbra-ai-unei-operatiuni-care-costa-romania-600-de-milioane>

¹⁴⁶ <https://www.agerpres.ro/justitie/2017/10/27/tolea-ciumac-retinut-de-diicot-pentru-contrabanda-cu-tigari-12-18-53>

¹⁴⁷ Interview with tobacco expert

¹⁴⁸ <http://evz.ro/coruptie-in-armata-si-mai-cadre-anchetate-pentru-contrabanda.html>; <http://www.emaramures.ro/coruptie-politie-dna-a-trimis-in-judecata-13-inculpati-pentru-contrabanda-cu-tigari-de-pesto-2-milioane-de-euro/>; <http://jurnalul.ro/special-jurnalul/tigareta-ii-contrabanda-pe-aeroportul-otopeni-124408.html>; <http://evz.ro/luptator-antiterorist-contrabandist-fost-angajat-sri-prins-cu-masina-burdusita-cu-tigari-1056821.html>; <http://www.aradon.ro/seful-serviciului-cabinet-din-cadrul-ipj-arad-retinut-procurorii-au-gasit-pesto-500-de-pachete-de-tigari-la-el-acasa/1854689>

¹⁴⁹ Interview. For instance, allegedly the most prominent organized crime godfather In Romania may be under the law enforcement/state protection.

¹⁵⁰ SUN report, p. 140.

being changed very often or reactivated after 1-2 months. As the middlemen happen to get used with the criminal methodology and group mechanism, many of them try to develop their own crime groups.¹⁵¹

The perpetrators use children to supervise the border police patrols and inform smugglers about their routes, especially at the Ukrainian border. According to law enforcement reports on smuggling operations, the carriers and cheap jacks take the smallest piece of the pot, namely 5%, then middlemen (transporters, warehouses, and drivers) have a 10% slice and finally the leaders take „the lion’s share”, namely 75%. Another border police research show that distributors, warehouses, supervisors and cheap jacks take 10%, (approximately 60-90 million euro/year), the carriers take between 15%-20% (approximately 90-120 million euro/year) and the rest goes to leaders¹⁵² (about 300 million euro/year).¹⁵³

A constant phenomenon in Romania during the analysed period is the establishment of illegal cigarettes factories by domestic or transnational OCGs. The factories are located in old discharged warehouses from isolated or hard to reach areas. The industrial equipment is imported from the former Soviet Union states as scrap (worn-out) iron. Regularly, the production equipment is disassembled and installed in other location to avoid police detection. Such a factory may produce 50 cigarettes packs/minute¹⁵⁴. In 2010 the authorities identified two illegal cigarettes factories in Vaslui and Teleorman counties¹⁵⁵. In 2013, another illegal cigarettes factory was closed. In May 2017 Romanian authorities uncovered an illegal factory located in a basement in Bucharest, the raw tobacco needed for the factory being purchased online¹⁵⁶.

Romania is also a source country for smuggled cigarettes. The cigarettes from Romania are smuggled mostly to United Kingdom (UK) by road-transport (trucks and coaches), air transport (cigarettes hidden inside baggage¹⁵⁷) and water (for instance Port of Dover was used to smuggle cigarettes hidden inside furniture¹⁵⁸). According to the EU regulations, there are no limit for cigarettes and alcohol transport on EU territory, but according to UK regulations EU citizens have to provide explanations for transport above 800 cigarettes¹⁵⁹.

¹⁵¹ <https://republica.ro/zsunt-cam-tari-nu-vi-le-as-recomanda-eu-n-am-fumat-niciodata-din-astea-jin-ling-castigurile-si-riscurile>

<https://republica.ro/reteaua-underground-cat-castiga-sefii-din-umbra-ai-unei-operatiuni-care-costa-romania-600-de-milioane>

<https://republica.ro/ztrece-tirul-printre-munti-ca-un-sarpe-lung-riscul-castigurile-si-puscarii-carausului-in-reteaua-underground>

¹⁵² journalistic reports reveal that locals and custom officers indirectly suggest that OCG’s leaders are public servants or high officials (mayors, County Councils chiefs). Some rumours indicate that the smuggling artisan would be even Ukrainian state which encourage these activities. Chief Commissioner of Border Police from Sighetu Marmatiei assert that among leaders would be Ukrainian political figures.

<https://republica.ro/reteaua-underground-cat-castiga-sefii-din-umbra-ai-unei-operatiuni-care-costa-romania-600-de-milioane>

¹⁵³ <https://republica.ro/zsunt-cam-tari-nu-vi-le-as-recomanda-eu-n-am-fumat-niciodata-din-astea-jin-ling-castigurile-si-riscurile>

<https://republica.ro/ztrece-tirul-printre-munti-ca-un-sarpe-lung-riscul-castigurile-si-puscarii-carausului-in-reteaua-underground>

¹⁵⁴ <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-cine-profit-a-de-pe-urma-fabricilor-ilegale-de-tigari-763072>

¹⁵⁵ <http://www.mediafax.ro/social/fabrici-ilegale-de-tigarete-in-teleorman-si-vaslui-7713456>

¹⁵⁶ http://adevarul.ro/news/eveniment/fabrica-ilegalade-tigari-subsolul-blocului-1_5923e2d65ab6550cb85d3d77/index.html

<http://www.stirilekanald.ro/fabrica-de-tigarete-la-subsolul-unui-bloc-din-capitala-presedintele-asociatiei-de-proprietari-a-pus-bazele-afacerii-ilegale-chiar-sub-bloc-16996448>

¹⁵⁷ <https://www.yorkshirepost.co.uk/news/romanian-pair-caught-smuggling-9-000-cigarettes-into-yorkshire-1-8917691>

<https://www.express.co.uk/news/uk/742527/romanian-lorry-driver-jailed-smuggling-million-cigarettes-mouldy-bread>

<http://www.diasporaro.com/cum-aduc-romanii-tigari-in-uk/>

¹⁵⁸ <https://www.digi24.ro/special/campanii-digi24/romania-furata/romania-furata-cine-profit-a-de-pe-urma-fabricilor-ilegale-de-tigari-763072>

¹⁵⁹ https://europa.eu/youreurope/citizens/travel/carry/alcohol-tobacco-cash/index_ro.htm

<https://www.gov.uk/duty-free-goods/arrivals-from-eu-countries>

<https://londra.mae.ro/node/350>

https://www.angliamea.ro/despre_anglia/transport_calatorii/limite-privind-importul-de-bunuri-in-marea-britanie-le-cunosti-155

CONCLUSION AND RECOMMENDATIONS

The main vulnerabilities and threats come from the legal and institutional environment and form illicit market itself. There is also an overall social acceptability of purchasing illicit cigarettes, perpetrators are not seen as dangerous as other types of criminals as *“they make an honest buck, they do not harm anyone”*¹⁶⁰. Ordinary citizens along OCGs are involved in cigarettes smuggling and there are social networks of low-level distributors all over the country, involving disadvantaged individuals (poor education, jobless) from poor, peripheral neighbourhoods.

Also, legal stores are used in sale of illicit packs. Rural poorer areas seem more affected by illicit trade than the urban ones. The response of authorities is weak as legal framework allows for interpretations, penalties are applied inconsistently and they are lenient, law enforcement and customs lacks capacity (example, not functional scanners at borders) and corruption is generalized. Sometimes law enforcement and intelligence representatives are part of smuggling networks or they are just bribed to turn a blind eye. The main vulnerability concerning the legislative landscape is the political priority of Romanian government towards repealing duty-free legislation. If approved, the repeal will determine an increase of illicit supply.

Main cause for the high level of illicit trade in cigarettes in Romania rests on inconsistency efforts of authorities against the illicit market and the lack of an integrated strategy at the decision-making level. The state response is undermined by corruption and OCGs infiltration at political, law enforcement and administrative level.

Policy recommendations for Romanian authorities:

1. Develop transparent criteria for calculation of customs value of cheap whites and synchronize the legal provisions of Tax Code with those of Customs Code;
2. Ensure there is no legislation gap in regulating duty-free shops to be exploited by OCGs;
3. Develop a consultation system with all the stakeholders before initiating draft legislation affecting cigarettes smuggling's level;
4. Continue to develop the capacity of customs directions: functional mobile teams, functional scanners, transparent procedure;
5. Communicate relevant statistics concerning recovery of proceeds of smuggling;
6. Develop communication campaigns on the health risks of illegal cigarettes (for instance radioactive contamination, chemical contamination, recycled tobacco from landfills);
7. Develop regional cooperation initiatives with neighbouring countries, involving also civil society.

Taking into consideration the identified vulnerabilities and recommendations, we consider necessary to continue the research of illicit tobacco market and modus operandi as well as information dissemination at regional level. The prevention and combating of cigarettes smuggling has to be integrated into a broader anti- crime strategy at national level able to put together institutional actors, business environment and civil society.

¹⁶⁰ Interview with tobacco expert

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