CONSUMER CHOICE CENTER

# ILLICIT TRADE

## IS DANGEROUS FOR CONSUMERS

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# INTRODUCTION

## ILLICIT TRADE IS DANGEROUS FOR CONSUMERS

Illicit trade is a severe and growing threat to our societies. Through smuggling and counterfeit products, governments and legal businesses are being undermined, and consumers are being exposed to poorly made and unregulated products.

According to the United Nations Office on Drugs and Crime, transnational organized crime of illicit trade is a business worth USD 870 billion. In this policy paper, we address some of the main problems illicit trade creates for consumers. To prevent the growth of Illicit Trade and the related risks for consumers, our policy recommendations to EU Member States are:

- Member States should moderate tax policies to ensure that tax regimes do not create demand for more harmful illicit alternatives to these products. Proposals that aim to increase indirect taxes such as VAT and excise duties might reduce the consumption of legal products and shift consumer behavior towards the black market.
- Member States should promote and not block initiatives from the private sector to make brands harder to fake. Branding and brand promotion should be encouraged as the most trusted way of presenting quality and confidence to consumers. Recent proposals to limit and ban branding and advertising do the opposite and enable illicit trade.

- Member States should increase the existing penalties for illicit trading practices to better protect consumers from health and safety risks. Stiffer penalties will reduce incentives to commit illegal acts. Traffickers of illegal goods often prey upon vulnerable and disadvantaged consumers. This harms society writ-large, also depriving governments of essential tax revenues that could limit development initiatives;
- Regulatory policies and tax policies promoted by the Member States concerning consumer goods should facilitate international trade and promote transparency and predictability to encourage economic growth and development. The core of these policies should take into consideration consumer interests in the exchange of goods and services;

It's not just luxury goods that are counterfeited or smuggled and sold illegally. Medicines, cosmetics, and electronics are also found on the black market. Anything in high demand is attractive to counterfeiters and smugglers.

Fashion items and electronics are among the most counterfeited products worldwide. Counterfeit materials don't just harm industry and retailers, but also consumers who are faced with increased risks. In January 2020, a cargo ship went up in flames due to shipping containers filled with counterfeit lithium batteries, which were supposed to be sold in Europe. This risk is exceptionally high for consumers. That's why consumers should demand smart regulations that help distinguish between illegal products and legitimate ones, while at the same time protecting consumer choice.

# ILLICIT TRADE
## IN MEDICINE

Fraudulent medicines are one of the most deadly forms of illicit activities. Incorrectly manufactured drugs present particular dangers for patients. These types of medicines could contain the wrong dose of active ingredients or none at all, or have  a completely different component make-up that could render the medicine ineffective.

All kinds of medicines — both branded and generic — can be made illegally. These range from ordinary painkillers to “lifestyle” medicines, such as those taken for weight loss and sexual dysfunction, and lifesaving medicines, including those for the treatment of cancer and heart disease.

Counterfeit drugs that are meant to be life-saving are especially dangerous for consumers. Attempted treatments of certain types of diseases using fake medicines and fake products leave the patient vulnerable to the conditions they are supposed to cure.

Counterfeit medicines also make some of the world’s most dangerous diseases challenging to treat by contributing to drug-resistant development strains.During the recent Covid-19 pandemic, many counterfeit face masks for both citizen and medical professional use were shipped from China to Europe, only found to be completely ineffective later.

Our policy suggestions are the following:

- Increase the IP protection of medicines and medical supplies
- Allow consumers to access legal online pharmacies across the EU
- Mutual recognition of EMA and FDA licensing

# ILLICIT TRADE
## IN TOBACCO PRODUCTS

Cigarettes are among the most illegally trafficked goods in the world. The global black market for tobacco products is large and growing. The illicit tobacco trade value is higher than the illegal trade in oil, wildlife, timber, arts, cultural property, and blood diamonds combined.

According to European Union Anti Fraud Office (OLAF), cigarette smuggling and other illicit trade forms in tobacco products cause an estimated EUR 10 billion loss to the EU and national budgets every year.

These activities both damage public health and have been proven to finance organized crime. The Italian Minister of Health Care estimated that the value of illicit trade of tobacco products in Italy gives organized crime double the revenue they generate from selling cocaine and heroin.

Moreover, the black market of tobacco targets vulnerable groups in society, undermining strategies for the effort of harm reduction products.

A report conducted by Frontier Economics estimates that between 2 and 2.6 million jobs have been lost globally due to the counterfeiting of a wide range of consumer products.

In the legal supply chain, manufacturers, suppliers, distributors, retailers and consumers are all affected by illicit trade.

Manufacturers suffer considerable financial losses, and long-term damage to their brands, which they have invested time and money to build. Distributors and retailers lose because reduced demand for licensed products leads to fewer sales. Small retailers lose not only cigarette sales, but also other items adult smokers usually buy when in their shops. Consumers are impacted because illicit tobacco products are produced in unsafe environments and using unsafe products.

These can cause different health issues, such as the vaping related health epidemic in the United States in 2019.

Throughout 2019, multiple lung injuries and fatalities in the United States were linked to vaping devices. At first, regulators believed it was traditional store-bought vaping products causing harm, but additional studies later revealed that the injuries were mostly caused by illicit cannabis vaping cartridges that had been mixed with Vitamin E Acetate, causing persistent lung injuries, according to the CDC. Those products were bought and sold on the black market, and not in legal establishments. You can read more in our paper here.

Additionally, illicit smuggled products can be more easily acquired by underage consumers, who should not use tobacco or nicotine products.

Independent experts and government authorities agree that the illicit tobacco trade, by operating outside official and regulated channels, provides easy access to tobacco products to youth.

To prevent these risks, Member States should apply two only measures:

1. Reject the plain packaging strategy. It has been demonstrated that plain packaging of tobacco products has increased the presence of illicit tobacco in all the countries which implemented it.
2. Limit taxation, and do not increase taxation, on tobacco products. Tax increases incentivize consumers to purchase illegal products and make black market alternatives more attractive.
3. Do not impose additional bans on marketing and advertising of tobacco products to ensure that consumers can freely access information about them.

# ILLICIT TRADE
## IN AGRICULTURE

In this chapter, we would like to analyse the effects of illicit trade in the agricultural sector. While they are naturally occurring incentives for illicit trade in all sectors, we feel that illegal activities in the farming sector are not only results of stringent agricultural policies, particularly in the realm of biotechnology, but are also extremely harmful to consumers' health.

## Fraudulent import of organic food

The popularity of organic food products is a noticeable trend. Consumers who are more health-concious seek out organic food, and in markets such as Germany, specialised supermarket chains provide organic-only products to willing customers. However, the consumer demand for product descriptions matching their content is not necessarily fulfilled, particularly in the realm of organic production.

Fraudulent importation of organic food, or illicit trade of organic foodstuffs, describes products that are inaccurately labelled as organic, or for which the adequate control mechanisms have not been in place.

In its 2019 report titled "The control system for organic products has improved, but some challenges remain", the European Court of Auditors found structural problems with the control system of organic food trade, despite controls being implemented in 1991. In a section on the communication on non-compliance, the ECA writes:

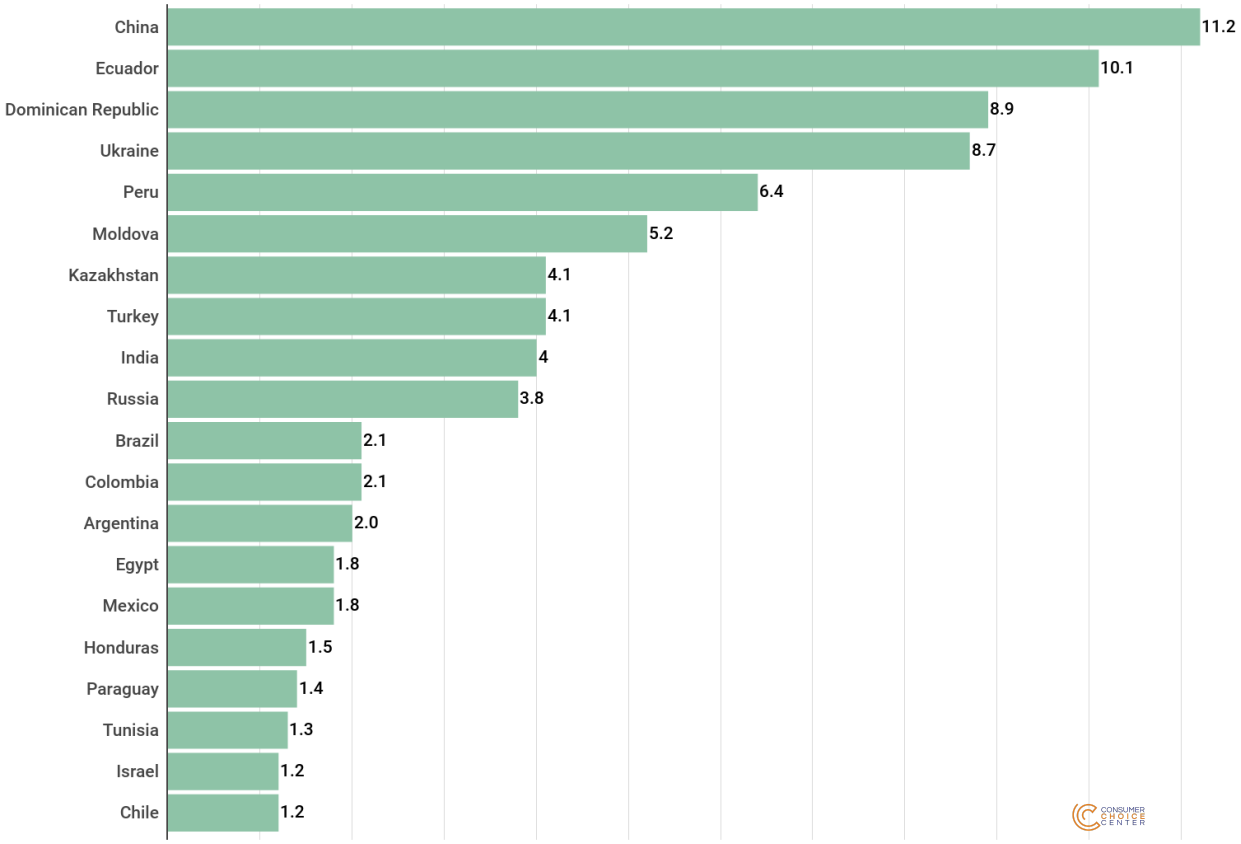
*"In Bulgaria, we found that some control bodies notified the competent authority about certain types of non-compliances only through their annual reporting. The competent authority did not notice this during its supervisory activities. In Czechia, we found that on average control bodies took 33 days in 2016 and 55 days in 2017 to report a non-compliance affecting the organic status of a product to the competent authority."*

The report also notes that non-compliance communication delays are 38 calendar days on average in the European Union, while existing regulations stipulate that reporting should happen without delay. This means that non-compliant organic products, i.e. fraudulent organic trade, continues a month on average in the legal circulation of the European single market, before being flagged to consumers. **We believe that if the European Union and its member states are serious about quality control and consumer information and protection, they need detection and reporting mechanisms that outperform the speed of postal package delivery.**

The ECA also notes that member states were delayed in their reporting to the European Commission by an average of 4 months and that 50% of all analysed reports were missing information.

China is the largest exporter of organic food to the European Union (based on weight, 2018 figures, from ECA report, see below). With significant difficulties concerning quality control of a large range of products originating from China, we believe that EU institutions must prioritise the authenticity of these food imports.

**Graph 1. Largest Exporters of Organic Food to the EU**




Source: ECA Report

Other worrying and key takeaways from the ECA's report:

- Many products still could not be traced back to the original agricultural producer;
- The traceability exercise resulted in a number of additional findings that are detrimental to the reliability of the control system, such as:
  - Wrong origin of the product in the organic label;
  - Incomplete inspection report of the control body, providing little assurance on a large number of production and processing units in different third countries;
- There is no scientific test for determining whether a product is organic. "Maintaining and justifying consumer confidence in products labelled as organic" depends on the capacity of the control and certification system to reduce the likelihood of operators not complying with the relevant standards;
- Fraudulent imports are particularly originating from China, Hong Kong, India, Turkey, Ukraine, Kazakhstan, Moldova, Russia, and the United Arab Emirates;

The European Commission has set up a mechanism of electronic approval for import of organic foodstuffs, integrated into the Trade Control and Expert System (TRACES). This is part of the Action Plan for the Future of Organic Production in the European Union. With the roadmap laid out by the Farm to Fork strategy and a considerable increase in organic food production, the Commission should ramp up the use of its system by utilising the qualified electronic seal in TRACES for backing up certificates of inspection. Additionally, improved definitions are necessary to bring the expectations of consumers closer to the reality of the organic food sector.

As organic food increases in popularity, paired with the political will to increase its consumption, bad actors are seeking to profit off of the goodwill of consumers.

**We need to avoid the exploitation of the readiness of consumers to pay more for organic products and guarantee accurate and reliable information by reinforcing regular checks, particularly of third-country importers.**

# ILLICIT TRADE
## IN PESTICIDES

European institutions, particularly on the legislative level of the European Parliament, constantly debate and seek to regulate the use of crop protection tools. The catalogue of available products is getting thinner every year, which has been criticized by farmers.

However, making chemical compounds or products illegal does not automatically rid the market of their presence. In fact, the ill effects of prohibition apply to the agricultural sector to the same extent as it does to other areas of consumption.

**In 2018, the European Union Intellectual Property Office stated that €1.3 billion are lost every year in Europe due to fake pesticides.** This translates to €299 million and 500 jobs lost per year in Germany, €240 million and 500 jobs each year lost in France, and €185 million and 270 jobs lost annually in Italy.

Also in 2018, EUROPOL revealed that some 360 tonnes of illegal or counterfeit pesticides had been seized in Europe, in a joint effort with the European Anti-Fraud Office (OLAF). Counterfeit pesticides, now estimated to represent 14% of the European crop protection market, pose serious health risks to consumers, as they are not subject to the rigorous safety assessments of food safety authorities. Added to that, untested products can also lead to considerable harvest lost, resulting in less food security for European consumers.

Recent numbers make the 2018 statistics pale in comparison. **In 2020, EUROPOL states that 1,346 tonnes of counterfeits, illegal, and unregulated products have been taken off the market, or the equivalent of 458 Olympic-sized pools, with a total worth of €94 million of criminal profits seized.**

In the illegal trade raids, one can also notice an uptick in seizures of illegal pesticides, which relates to non-approved products. Year after year, the European Food Safety Authority (EFSA) records the presence of non-approved pesticides in European food. As a result, there have been calls upon member states to increase their inquiries into the imports of non-approved pesticides into the European Union. In an effort to tackle this problem at its roots, **we believe that a re-evaluation, conjointly with farmers associations, of the approval of these substances is a sensible solution. If the European Union or a member states outlaw a chemical substance as a result of health concerns, yet the ban results in an uptick in illegal trade with absolutely no safety assessment, then a sensible compromise solution that takes into account the worries of producers, while respecting the safety of consumers, is in order.**

**NOTE ON ILLICIT TRADE OF FERTILISERS**

In 2012, the Danish newspaper "Politiken" published an extensive report on the prevalence of illicit trade with fertilisers, which triggered a question to the European Commission about the extent of this problem. In a written answer, the Commissioner in charge replied in July of 2012 that Berlaymont was not aware of illegal trade in this area, and assured the necessary observation and enforcement mechanism were in motion to avoid it. Given the extent of fraudulent trade with organic food, as well as the prevalent spread of fake pesticides, we believe that an investigation into the existence of illicit fertilisers in Europe is opportune.

# CONCLUSION

## ILLICIT TRADE IS DANGEROUS FOR CONSUMERS

Illicit trade is a major challenge to societies in today's globalised world. From cosmetics to medicines and cigarettes, illicit trade is putting millions of consumers across the world at risk. The scope of the problem is transnational, and, therefore, the cost of misguided policies is very high. Our policy paper lays out smart policy recommendations that we believe will have a lasting impact if endorsed as a viable strategy.

As our paper shows, the dangers of illicit trade are most apparent in the fields of healthcare, medicine, tobacco, and agriculture. Our goal should be to create and sustain the conditions under which there would be no incentive to turn to the black market. This can be achieved by reducing tax burdens, enhancing branding and marketing freedom, introducing harsher penalties for fraudulent trading practices, and ensuring transparency across the EU.

Consumer Choice Center
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