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## **Provisional situation report on trafficking in contraband cigarettes**

Report lead contractor **Freie Universität Berlin (Germany)**  
Report author/s **Klaus von Lampe**

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Project coordinator Petrus C. van Duyne  
Project lead contractor Tilburg University



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## 1. Introduction

### 1.1. Purpose of the report

This report has a dual purpose. On one hand it aims at providing an assessment of the cigarette black market in Northwest Europe, based on a review of open source data. On the other hand, it serves to tentatively explore the possibilities for a comprehensive and meaningful assessment of the organized crime situation in this particular sector.

As an assessment of organized crime, this report aims at

- describing, to the degree possible, the situation of the cigarette black market by determining the make-up (social background, gender, ethnicity etc.), size and structure of criminal collectives operating in these sectors, their activities and modus operandi, their interrelations with legal economic, governmental and social structures, and any developmental trends;
- evaluating, to the degree possible, the relevance of criminal networks and criminal organizations in the cigarette black market, by comparing the empirical findings with plausible and empirically grounded theoretical assumptions about the social consequences of specific manifestations of criminal structures and criminal activities;
- comparing the cigarette black market with regard to the relevance of criminal structures to the three other sectors under examination by the “Assessing Organised Crime” research project: drug trafficking, alien smuggling and human trafficking.

As an assessment of the possibilities for a comprehensive and meaningful assessment, this report aims at

- highlighting deficiencies in the analysis emanating from contradictory, inconclusive and incomplete data and unsubstantiated theoretical assumptions;
- making tentative propositions on how deficiencies in the data base and conceptual framework can be overcome.

### 1.2. Methodology

#### 1.2.1. Data base

This report is based on a systematic review of open source material. Open source data were identified in a collaborative effort by four researchers from four countries (Belgium, Germany, the Netherlands, and the UK)<sup>1</sup> using different search strategies in each country.

In Germany, four weekly news magazines<sup>2</sup> were systematically analyzed for the time period 2000 until early 2005. In addition, apart from a general internet search, various online archives of German newspapers were searched covering varying time spans.<sup>3</sup> Finally, press

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<sup>1</sup> Maarten van Dijck, Rob Hornsby, Karen Verpoest and the author of this report.

<sup>2</sup> Printed versions of “Der Spiegel”, “Die Zeit”, “Focus”, and “Stern”.

<sup>3</sup> “BZ” (Berlin), “Berliner Kurier”, “Hamburger Abendblatt”.

reviews covering a broad range of domestic newspapers were provided by the German customs service agency Zollkriminalamt (ZKA) for the time period 2003 until early 2005 and by the German association of cigarette manufacturers (VdC) for the time period 2004 until early 2005. The latter institution also granted access to other open source documents contained in its archive.<sup>4</sup>

In Belgium, a general online search and a search of an online archive of Belgian newspapers was conducted. In the Netherlands, similarly, a general internet search and a search in the electronic archives of NRC Handelsblad were used to retrieve open source information.

In the United Kingdom, online research was conducted of a number of British broad-sheet newspapers including <http://www.guardian.co.uk>, [www.timesonline.co.uk](http://www.timesonline.co.uk) and [www.telegraph.co.uk](http://www.telegraph.co.uk). Government reports were generally accessed via the ‘Hansard’ Houses of Parliament stationary office at [www.parliament.the-stationery-office.co.uk](http://www.parliament.the-stationery-office.co.uk) and from the House of Commons Home Affairs Committee at [www.publications.parliament.uk](http://www.publications.parliament.uk).

### **1.2.2. Geographical scope**

The subject of this report is the cigarette black market in Northwest Europe, specifically the countries from this region represented on the “Assessing Organised Crime” research project, i.e. Germany, Belgium, the Netherlands and the United Kingdom. Because of the larger amounts of material available on the situation in the United Kingdom and Germany, the report focuses primarily on these two countries. References to other regions in the EU are also made on occasion where information has become available and where this may be interesting from a comparative point of view.

### **1.3. Structure of the report**

This report is divided into five main parts. The first part discusses the type of information required to arrive at a comprehensive assessment of the cigarette black market before the background of the general discussion on organised crime. The second part provides an overview of the availability of open source data on these issues. The third and main part of this report comprises an analysis of the cigarette black market based on the available open source data. The fourth part discusses the meaning of the collected data for an assessment of the seriousness of the situation in absolute and relative terms. Finally, some tentative propositions are made for improving organized crime assessments.

This report highlights the essential components of the cigarette black market, and how they have developed in a dynamic environment in which law enforcement agencies, policy makers and cigarette manufacturers appear to be the key players. This report also underscores the importance of a broad, systematic database and exposes the fragmentary nature of the current knowledge on the cigarette black market in the countries included in the analysis.

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<sup>4</sup> The author would like to thank Astrid Pfüzenreuter (ZKA) and Prof. Wolf-Dieter Heller and Ulrike Stahlhacke (VdC) for their assistance.

## **2. The cigarette black market as organized crime**

### **2.1. Themes commonly addressed in descriptions and assessments of organized crime**

The cigarette black market has come to be regarded as a significant manifestation of organized crime (Bundeskriminalamt, 2004; Council of Europe, 2004). The purpose of this report is not to question this classification but to analyze the cigarette black market with a view to those issues that are commonly raised in discussions and assessments of what from one view or the other is believed to be organized crime.

It has frequently been noted that “organized crime” is an elusive concept that lacks a generally accepted definition. At the same time, there are recurring themes that give the debate on organized crime a rough outline and structure. These themes can be specified and classified in various ways. For the purpose of this report the following aspects will be highlighted:

- Activities (types of crime, modus operandi)
- Persons (offender characteristics)
- Interpersonal links (patterns of co-offending)
- Overarching (market/underworld) structures (supra-group power relations)
- Legal/illegal nexus (social embeddedness, causes, impacts, consequences etc.)
- Trends (dynamics over time)

### **2.2. Themes specified with regard to the cigarette black market**

Translated to the cigarette market, the following questions are addressed:

#### ***Activities***

- What is done with the cigarettes from production to illicit retail sale?
- What modus operandi is used on the various levels from (illicit) production, to smuggling, distribution, and retail sale?
- How much of it is done in terms of overall volume of the black market, the share of legally produced and counterfeit cigarettes, the relative share of different smuggling routes, the relative share of different smuggling schemes, and the relative share of different retail schemes?

#### ***Persons***

- Who is involved on the various market levels in terms of personal characteristics, social background etc?

### ***Interpersonal links***

- How are the persons involved in the cigarette black market linked to each other, if at all, in terms of patterns of cooperation and in terms of underlying ties (with or without criminal connotation: criminal fraternity, family, ethnicity etc.)?

### ***Overarching structures***

- Are there persons who exercise power over participants of the cigarette black market in the form of a market monopoly (setting prices) or a monopoly of power (regulating and taxing market participation)?

### ***Legal/illegal nexus***

- Are there any environmental factors conducive to the emergence, growth and continued existence of the cigarette black market or some of its key components (activities, persons, interpersonal links, overarching structures) in terms of causes, facilitating factors, or incentives?
- What is the role, if any, of the legal tobacco industry?
- What links exist between black market actors and other legal institutions (business, government) apart from the tobacco industry?
- Are there any consequences in terms of (positive/negative) impacts of the cigarette black market in its immediate or broader environment?
- In what way is the cigarette black market influenced by its immediate and broader environment, namely legislation and law enforcement?

### ***Trends***

- What changes can be observed with regard to the above themes?

## **3. The data**

### **3.1. Scope of the data**

The open source data that have been identified for this study cover all the above mentioned themes to some degree. However, significant differences exist in the amount and meaningfulness of the available data for each particular aspect and, strictly speaking, there is no subject for which information would be sufficient to arrive at a profound assessment.

Overall, only a very fragmented picture emerges, especially in cross-national perspective. This is not only due to a lack of data but also due to a lack of compatible data. For example, differences in the approaches to measure illegal market size make it difficult to compare the situation in the United Kingdom and Germany. While in Germany, the amount of seized contraband cigarettes is used as the key variable, in the United Kingdom, the market volume is estimated based on statistics on legal sales, consumer survey data, and surveys on cross-border shopping and smuggling (see below, 4.2.1.2.1). In addition, the available statistics on seized cigarettes in the United Kingdom do not, unlike the statistics in other European

countries, refer to the calendar year but to the 12 months period from April to March (HM Customs and Excise, 2004a: 143).

There seems to be sufficient insights to arrive at a basic understanding of the functioning of the black market, although the link between legal tobacco manufacturers and large-scale smuggling remains shrouded and the existing knowledge on smuggling techniques based primarily on intercepted contraband shipments leaves room to speculate about the existence of more sophisticated schemes that have remained undetected.

Little systematic information exists on the personal characteristics and socio-economic background of market participants. In the UK, some information is available on the social status of consumers. In Germany, some emphasis is placed on a classification of black marketeers along ethnic lines. The most detailed accounts are contained in scientific studies, which, however, are limited in scope because of the time lag and the small sample size inherent in the chosen methodology criminal file analysis.

As regards the patterns of criminal cooperation there is a stark contrast between rhetoric and concise analysis. Except for the few scholarly treatments of the subject only scant anecdotal evidence on how offenders cooperate in black market activities is available from law enforcement and media accounts.

Even less systematic evidence is available on the links between black market operators and the legal spheres of society. For the transport sector, for example, which provides an important infrastructure for cigarette smuggling, open source data suggest a broad spectrum of links, from complicity to victimization, without shedding much light on the relative importance and on the factors that potentially determine the nature of a particular link. The same is true for corrupt ties between, for instance, smugglers and customs officers. The available information is not sufficient to arrive at any conclusion about the scope and nature of the problem.

Overall, a lot of what is known in the public domain about the cigarette black market and its environment is based on anecdotal and fragmentary evidence. Except for some law enforcement statistics there is no information consistently collected over time so that it is difficult to determine trends over time, although some trends are discernible.

### **3.2. Quality of the data**

The quality of the available data is mixed in terms of reliability and validity. In many instances this is due to difficulties in obtaining good data. It is difficult to obtain data on the black market because of the clandestine nature of most of the core activities - the exception being the open sale of contraband cigarettes -, and it is likewise difficult to obtain data on some of the counterstrategies implemented by customs and police for obvious security interests. But it also seems that sometimes knowledge is poor because available data sources are not exploited to their full potential in the absence of an adequate conceptual framework. For example, investigations of smuggling operations may produce concise information on co-offending patterns once the rhetoric of “gangs” and “mafias” is replaced by a set of concepts from organization theory and network analysis.



Where data are available they tend to be of questionable reliability, especially when they are generated in law enforcement investigations and draw on informant and suspect statements. Where data are reliable, as is the case of statistics on seized cigarettes their validity for an assessment of the black market is in doubt. For example, the relatively low number of contraband cigarettes seized by German customs in the time period 2002 - 2004 (see below, 4.6.6.1) may be due to an actual decrease in the volume of the black market and a rerouting of contraband shipments destined for the UK.<sup>5</sup> But it may also be due to a shift in strategy from an emphasis on confiscation to the detection of criminal structures,<sup>6</sup> or to the restructuring of the German customs service in 2002, which entailed the closure of several regional offices and allegedly weakened the capacities of customs to tackle cigarette smuggling.<sup>7</sup>

## **4. Description of the situation**

### **4.1. Introduction**

The smuggling and illegal distribution of cigarettes is a global phenomenon that has varied greatly in shape and volume across time and space (Merriman, Yurekli & Chaloupka, 2000). In the European Union it has a long tradition in some Member States while being a more recent problem in others. Italy and Spain have been associated with a large scale cigarette black market for several decades (Barford, 1994; Koch, 1988: 52). Since the 1990s, Germany and the United Kingdom appear to have emerged as the major retail markets for contraband cigarettes within the EU, with Belgium and the Netherlands also being identified as main destination countries (Council of the European Union, 2003: 2; RILO, 2001: 10, 12-13), although their role may in fact be predominantly that of transshipment centres (Weenink, Huisman and van der Laan, 2004: 223).

The existence of the illicit trade in high-excise goods in general and cigarettes in particular is commonly explained by the high tax burden relative to the underlying value of the goods (High Level Group, 1998: 10). On the black market, cigarettes from tax-free or low-tax sources are supplied at a price below legal retail prices, providing both lucrative profits for suppliers and significant savings on the consumer side.

The illicit cigarette trade has received increasing political attention in the light of substantial losses of revenue and growing concerns that the cigarette black market is linked to “organized crime” (Bundesministerium der Finanzen, 2003: 59; Council of Europe, 2004: 30; House of Commons, 2005: 4).

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<sup>5</sup> Westfälische Rundschau, “Schwarze Kippen unter der Obstfracht”, 27 July 2003.

<sup>6</sup> Die Tabakzeitung, “Neue Strategien gegen Zigarettenschmuggel”, 4 April 2003.

<sup>7</sup> Christian Knatz, “Ist der Kampf gegen den Zigarettenschmuggel verloren?”, Ried Echo, 30 October 2004.

A number of counter-measures have been discussed and implemented on the national and supra-national levels. These include improved means for customs to detect smuggling, restrictions on the shipment of tax-free cigarette consignments, and a framework for close collaboration between customs and tobacco manufacturers.

## 4.2. Activities

### 4.2.1. Upper levels

#### 4.2.1.1. Overview of main schemes

Currently, there appear to be three main schemes by which cigarettes are supplied to the black market: bootlegging, large-scale smuggling and counterfeiting.

Bootlegging “involves the purchase of cigarettes and other tobacco products in low-tax jurisdictions in amounts that exceed the limits set by customs regulations for resale in high-tax jurisdictions” (Joossens et al., 2000: 397).

Large-scale smuggling “generally takes advantage of the ‘in transit’ system that has been developed to facilitate international trade. This system allows for the temporary suspension of customs duties, excise taxes, and VATs payable on goods originating from and/or destined for a third country, while in transit across the territory of a defined customs area” (Joossens et al., 2000: 398). These untaxed cigarettes either never leave the EU or, far more commonly in recent years, are properly exported, but only to be illegally re-imported.

Counterfeiting involves the production of fake brand cigarettes, including packaging and on occasion fiscal marks, by unauthorized manufacturers (HM Treasury, 2004).

#### 4.2.1.2. Overall volume and relative importance

There seems to be a general agreement that the extent of the illicit market as a whole and the market shares of each of the three schemes (bootlegging, large-scale smuggling and counterfeiting) are difficult to estimate<sup>8</sup> and, in fact, the estimates that have been made by various parties do differ.

The main point of controversy is the relative shares of legal cross-border and tourist shopping, bootlegging and large-scale smuggling.

#### 4.2.1.2.1. Illicit market estimates in the United Kingdom

The most ambitious attempts to measure the extent and structure of the cigarette black market, it appears, have been undertaken in the United Kingdom.

HM Customs and Excise first published estimates of the scale of excise duty fraud for cigarettes in 2001 for the year 1999-2000, using consumer survey data,<sup>9</sup> statistics on legal sales of cigarettes, and surveys on cross-border shopping and smuggling (HM Customs and

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<sup>8</sup> For a general discussion of the problem of measuring tobacco smuggling, see Merriman (undated) and Merriman, Yurekli and Chaloupka (2000).

<sup>9</sup> The General Household Survey (GHS) and the Omnibus survey by the Office for National Statistics (HM Customs and Excise, 2001a: 23).

Excise, 2001a).<sup>10</sup> These calculations resulted in estimates of the illicit share of the overall cigarette market in the UK ranging from 21 % in 2000-2001 to 15 % in 2003-2004. The estimates for the share of legal cross-border shopping range from 6 % in 2000-2001 to 9 % in 2003-2004, resulting in estimates of the overall non-UK duty paid sector of between 24 and 28 % (see table 1).

The tobacco manufacturers have tried to assess the penetration of non-UK duty paid cigarettes using regular cigarette pack collections and face-to-face consumer interviews. According to the Tobacco Manufacturer's Association, these surveys permit an assessment of the non-UK duty paid share of the overall cigarette market and the ratio between genuine and counterfeit cigarettes, but provide no basis for determining whether or not genuine non-UK duty paid cigarettes stem from legal cross-border shopping or from bootlegging. For 2003, the tobacco manufacturers estimated that 28 % of the cigarettes consumed in the UK were non-UK duty paid (House of Commons, 2005: Ev. 77, 119).<sup>11</sup>

**Table 1:** Market Shares (%) of non-UK duty paid cigarettes – HMCE estimates

	<b>2000-2001</b>	<b>2001-2002</b>	<b>2002-2003</b>	<b>2003-2004</b>
<b>Illicit Market Share</b>	21	20	15	15
<b>Cross-Border Shopping</b>	6	8	9	9
<b>Total non-UK duty paid</b>	27	28	24	24

Source: HM Customs and Excise (2004b: 16)

Within the estimated illicit market share of 15 percent in 2003-2004, HM Customs and Excise assume that large-scale smuggling dominates (House of Commons, 2005: Ev. 6). This assumption is based on seizure data, according to which large-scale smuggling accounts for the vast majority (between 70 and 80 %) of seizures (House of Commons, 2005: Ev. 107; HM Customs and Excise, 2000: 5; 2004: 18).

The tobacco manufacturers argue that Customs underestimate the scale of cross-Channel smuggling and shopping because of a focus on extra-EU container traffic (House of Commons, 2005: Ev. 76), and that, drawing on pack surveys, around 60 % of non-UK duty paid cigarettes come from markets inside the EU (House of Commons, 2005: Ev. 77, 120).

Customs estimates are also higher than those of the tobacco manufacturers in the case of counterfeit cigarettes. In 2004 it was tentatively assumed by Customs that around a quarter of the smuggled cigarette market is counterfeit (HM Treasury, 2004: 9), which would translate to about 3-4 % of the overall cigarette market. In contrast, the pack surveys conducted by the Tobacco Manufacturer's Association found 2.3 % of all reviewed packs to be counterfeit (House of Commons, 2005: Ev. 120).

<sup>10</sup> The Cross-Channel smuggling surveys are carried out at various ports and the Channel Tunnel through normal Customs checks of travellers (HM Customs and Excise, 2001a: 20).

<sup>11</sup> For an earlier estimate see DTZ Pieda Consulting (2000: 8).

#### 4.2.1.2.2. *Illicit Market Estimates in Germany*

In Germany, the main emphasis of the Customs Service has been on the amounts of seized contraband cigarettes rather than on estimates of the illicit market share (Bundesministerium der Finanzen, 2003; 2005). Estimates of the illicit market share are contained in the Customs Service's annual situation reports on cigarette smuggling, but these reports are classified for official use only and the figures contained therein are not published (Zollkriminalamt, 2004).<sup>12</sup>

The German tobacco industry, since the early 1990s, has made assessments of the non-duty-paid sector based on consumer surveys and observational studies of cross-border shopping and illicit street selling, which, however, have not been published either. In 2004, the Association of the Cigarette Industry (VdC) has begun to commission pack surveys. Like similar surveys conducted in the UK, these provide no breakdown between illicit sales and legal cross-border shopping. The surveys, which have been made public, found 9.5 % of the reviewed cigarette packs to be non-duty-paid (Verband der Cigarettenindustrie, 2005).

Another estimate of the non-duty-paid sector in Germany has been attempted by von Lampe, drawing on statistics on legal cigarette sales and on consumer survey data. Assuming that overall cigarette consumption did not decline significantly from the levels reached around 1990, he estimated a non-duty-paid market share of between 9 and 15 % for the years from 1992 until 1999 (von Lampe, 2002: 148).

No estimates are available on the share of counterfeit cigarettes marketed in Germany.

**Table 2:** Estimates of Illicit Market Shares in Selected Member States, mid 1990s

Member State	Contraband 'Market Share' in %
Austria	15
France	2
Germany	10
Greece	8
Ireland	4
Italy	11,5
Netherlands	5-10
Spain	15*
*Proportion of "blond" (i.e. Virginia) cigarettes	

Source: European Confederation of Cigarette Retailers, quoted in European Parliament (1997: 63)

#### 4.2.1.2.2. *Illicit market estimates for different European Countries*

A methodology based on legal sales figures has apparently also been used in estimates by the European Confederation of Tobacco Retailers of the illicit market shares in various EU Member States. For the mid 1990s, as table 2 indicates, the illicit market share was estimated

<sup>12</sup> Estimates are on occasion passed on to journalists, see Annekatriin Looß, "Zigaretenschmuggel in Särgen", Welt am Sonntag, 7 December 2003; Gerhard Voogt, "Jede sechste Kippe ist geschmuggelt", Rheinische Post, 9 March 2004.

at between 2 % and 15 % (European Parliament, 1997: 63; European Parliament, 1997: Hearing XIV, Pt. II; see also Joossens and Raw, 1998: 67).

#### *4.2.1.2. Illicit market estimates: tentative conclusions*

While the reviewed methodologies for the quantification of the cigarette black market do not produce accurate results by any measure, for the purpose of this report the results appear to be sufficiently consistent at least in two respects. First, the cigarette black market at least in some Member States of the European Union seems to have reached proportions that justify the attention it has received on the policy and law enforcement levels. Secondly, the different schemes by which cigarettes are put on the black market appear to be important enough in their own right so that attention cannot justifiably be focussed on just one or two of these schemes.

#### *4.2.1.3. Detailed description of activities*

##### *4.2.1.3.1. Bootlegging*

Among the countries under consideration in this report, the smuggling of duty paid cigarettes from low-tax countries has been most closely associated with Germany and the United Kingdom. In the case of Germany, the main concern since the early 1990s has been with cigarettes being smuggled from Poland and the Czech Republic, while in the United Kingdom, Cross-Channel smuggling and - to a lesser degree - smuggling by air passengers have received the most attention.

##### 4.2.1.3.1.1. The legal framework

It is important to note that the legal framework in both cases is markedly different. Whereas strict customs and tax allowances apply for travellers at the German-Polish and German-Czech borders, cross-Channel travellers may bring any amount of cigarettes to the UK as long as these cigarettes are for their own personal use.

The differences can be explained by the fact that until the EU-enlargement in May 2004 the German-Polish and German-Czech borders were external EU borders. Cigarettes could be imported free of customs duties, VAT and excise duties only if the amount per traveller did not exceed 200 cigarettes.<sup>13</sup> In Germany and a few other old Member States,<sup>14</sup> as a transitional measure under Art 24 of the Act of Accession,<sup>15</sup> these quantitative limits have remained in effect for travellers from Poland and the Czech Republic until at the latest the end of 2008 and 2007, respectively.<sup>16</sup>

In contrast, cross-Channel travellers and air passengers coming to the United Kingdom from other old Member States have been able to profit, since its introduction on 1 January

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<sup>13</sup> See Art. 4, Council Directive of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (69/169/EEC).

<sup>14</sup> Austria, Belgium, the United Kingdom, Denmark, Sweden, Finland and Ireland.

<sup>15</sup> Official Journal L 236, 23/09/2003, 40.

<sup>16</sup> Official Journal L 236, 23/09/2003, 808, 889.

1993, from the Single European Market. Under Art. 8 of directive 92/12/EEC,<sup>17</sup> products purchased and transported within the EU by private individuals for their own use are subject to excise duty only in the Member State in which they are acquired. Whether or not cigarettes are transported for private use is determined by a set of criteria, including the quantities involved. In this respect, Member States may lay down guide levels, solely as a form of evidence, that may not be lower than 800 cigarettes (Art. 9 of directive 92/12/EEC). In the United Kingdom, this level has been raised to 3,200 cigarettes in October 2002 (House of Commons, 2005: 8). Thus, there is a difference of 3,000 sticks or 15 cartons in the amounts of cigarettes that may be legally brought into the country between the situation at the British Channel and along Germany's eastern border.

#### 4.2.1.3.1.2. The bootlegging situation in Germany

As far as can be seen there are no systematic analyses available on the modus operandi and structure of bootlegging, neither for Germany, nor for the UK, nor for any other EU Member State. In Germany, a sketchy picture does emerge from a review of Customs service press releases and media reports. These indicate a broad spectrum of traditional smuggling schemes, ranging from contraband cigarettes being hidden in hand luggage or clothes of travellers,<sup>18</sup> to the use of secret compartments in cars, vans, busses and trucks, to the transport of contraband cigarettes across water borders on boats.<sup>19</sup>

While these methods have consistently been used in bootlegging, German customs believe that in recent years they have also been adopted by large-scale smugglers who had previously transported contraband cigarettes in bulk shipments concealed in container trucks.<sup>20</sup> As a result, a thorough assessment would require the distinction between bootlegging and large-scale smuggling by the type of cigarettes involved, i.e. between duty paid abroad and non-duty paid cigarettes.

#### 4.2.1.3.1.3. The bootlegging situation in the United Kingdom

In the United Kingdom, bootlegging has most closely been linked with the phenomenon of the so called "white van trade". This term refers to the smuggling of duty paid goods in light vehicles through the Channel ferry ports and the Channel Tunnel by small-scale operators who exploit cross-Channel tax differentials, especially with regard to Belgium and

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<sup>17</sup> Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Official Journal L 076, 23/02/1999, 1-13.

<sup>18</sup> Body smugglers can carry several thousand cigarettes at a time. In one case, a smuggler had 160 packs (3,200 sticks) taped to his body (Die Tabakzeitung, "Leibesvisitation: In Minuten abgesehen", 6 June 2003).

<sup>19</sup> See Die Tabakzeitung, "Särge als Tarnladung", 7 January 2005; Generalanzeiger, "Konjunktur für Zigarettenschmuggler", 28 December 2003; Hauptzollamt Frankfurt (Oder), "Mobile Kontrollgruppen des Hauptzollamts Frankfurt (Oder) beschlagnahmen fast 1 Million unversteuerte Zigarettens", press release 11 February 2005; Hauptzollamt Stralsund, "Aufdeckung von Kleinfällen weitet sich aus", press release 4 October 2004; Zollfahndungsamt Berlin-Brandenburg, "Verdacht des Zigarettenschmuggels", press release 19 January 2004; Zollfahndungsamt Dresden, "Bilanz des Zollfahndungsamtes Dresden 2004", press release 12 May 2005.

<sup>20</sup> Oberfinanzdirektion Chemnitz, "Erfolgreiche Bilanz des Zolls in Sachsen und Thüringen im Jahre 2003", press release 6 April 2004.

Luxembourg. The goods are bought ostensibly for personal use and are sold on in the UK without payment of UK duty (HM Customs and Excise, 2001b: 9; House of Commons, 2003: Q 173; Seely, 2002: 13). Beyond this general characterization no further descriptions in the direction of a more systematic analysis seem to be available.<sup>21</sup> At this point it should be noted that according to Customs, a zero-tolerance approach combined with higher fare prices has led to a sharp decline in the “white van trade” since 2000, because the likelihood of vans being stopped, seized, and destroyed, combined with rising costs, has made bootlegging in vans uneconomical (House of Commons, 2005: Ev. 62, 83).

Another manifestation of bootlegging involves EU duty-paid cigarettes which, according to HM Customs and Excise, are brought into the UK by large gangs of air passengers working as “runners” for organised groups (House of Commons, 2005: Ev. 81). Fairly large amounts can be smuggled in this way. In one operation on Christmas Day of 2004, Customs officers were deployed to a provincial airport and seized over two million cigarettes from 21 passengers coming back on a low cost flight, which amounts to about 100,000 cigarettes for each passenger (House of Commons, 2005: Ev. 53). Customs assume that smuggling gangs may have moved into air smuggling that previously have been involved in cross-Channel smuggling (HM Customs and Excise, 2003b: 15).

#### *4.2.1.3.2. Large-scale smuggling*

In contrast to bootlegging, large-scale smuggling takes advantage of the ‘in transit’ system which allows cigarettes destined for export to non-EU countries to be purchased and shipped duty unpaid. According to a Council of the European Union report, intermediary companies residing in Switzerland and Liechtenstein, in traditional tax havens, or in countries in Latin America and Eastern Europe, buy cigarettes and give instructions to ship them to customs warehouses in Antwerp,<sup>22</sup> Rotterdam or to customs free zones in Switzerland. After this, the companies figuring on paper as the purchasers give instructions for the cigarettes to be transferred to other companies and shipped by selected hauliers to warehouses in countries outside the EU. From there they are smuggled back into the EU. The multiple transactions supposedly have the sole purpose of concealing the true purchasers, whose role is to supply the smugglers (Council of the European Union, 2003: 5-6).

Several trade routes have been identified of which those involving the Baltic states and other Eastern European countries seem to have been the most important ones for the countries under consideration in this report (Council of Europe, 2004: 29; Van Duyne, 2003; RILO, 2001).

The actual smuggling takes place in principally two forms: the shipments either pass through customs inspections, or customs inspections are evaded. In the first case, the shipments are accompanied by customs forms which are either forgeries or false declarations. In the latter case, which appears to be far more characteristic for the situation in Italy and

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<sup>21</sup> For an early description of cross-Channel bootlegging see Helen Gibson, “The Gold Cliffs of Dover”, *Time*, 25 May 1998, 50-51.

<sup>22</sup> See also Chris De Stoop, “Rook zonder grenzen”, *Knack*, 28 January 2004; Stephan Verheyden, “België is Europees knooppunt van sigarettensmokkel”, *De Tijd*, 11 April 2001.

Spain than for the north western Member States, the cigarettes enter the EU outside regular channels, typically by sea (Council of the European Union, 2003: 6).

Large-scale smuggling in Germany, Belgium, the Netherlands and the United Kingdom is characterized by concealed shipments of between one and eight million cigarettes which are hidden inside or behind legal freight, including furniture, food, and timber (House of Commons, 2005: Ev. 80; RILO, 2001: 12). The concealment can take on quite sophisticated forms. In one case, discovered at Manchester Airport in 2003, cigarettes were being smuggled inside cans labelled as peas or beans. The tins contained two packets of cigarettes and a quantity of sand to make up the proper weight (House of Commons, 2005: Ev. 6).<sup>23</sup>

Large-scale smuggling may involve storage and reloading within the EU. In several cases, contraband cigarettes have been seized, for example, in warehouses in Germany and the Benelux countries where they awaited shipment to the United Kingdom or distribution to domestic illegal whole-sale dealers.<sup>24</sup>

When cigarettes are smuggled inside or behind legal freight, the storage and disposal of these goods is also part of the overall smuggling operation. In one case well documented through the detailed accounts of an insider, large storage space had to be rented for the furniture that was used for concealing the cigarettes. To make room for new shipments, furniture had to be sold on occasion.<sup>25</sup>

#### 4.2.1.3.3. Counterfeiting

Counterfeiting involves the production of fake brand cigarettes, typically also including packaging and on occasion fiscal marks, by unauthorized manufacturers (HM Treasury, 2004). The production of counterfeit cigarettes varies in the level of sophistication. According to an HM Treasury report, factories for counterfeit cigarettes could be anything from underground boltholes where the cigarettes are packed by hand to more sophisticated production lines with large-scale facilities (HM Treasury, 2004: 29).

Production also varies in the quality of the raw products and of the packaging. The packaging generally seems to be of high quality. Customs and tobacco manufacturers alike have stressed that in recent years the packaging has been produced in a way that it is difficult to distinguish counterfeit from genuine cigarette packs (HM Treasury, 2004: 41; House of Commons, 2005: Ev. 40, 50; RILO, 2001: 21). In one case, counterfeiters even used genuine packs that were obtained from the supplier of the legal tobacco manufacturer whose cigarettes were copied.<sup>26</sup>

In contrast, the tobacco used in the production of counterfeit cigarettes is regarded to be of questionable quality. Not only are counterfeit cigarettes said to on average contain higher

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<sup>23</sup> See also Manchester Evening News, "Beans means trouble", 4 October 2003.

<sup>24</sup> Openbaar Ministerie, "Zeven aanhoudingen in onderzoek naar smokkel van wapens en sigaretten", press release, 7 January 2005; Monika Jäger, "Fünf Millionen Schmuggelzigaretten entdeckt", Mindener Tageblatt online, 10 March 2004; Ernst-Wilhelm Pape, "Zoll zerschlägt Bande von Schmugglern", Westfalen-Blatt, 24 August 2004; Conrad Schormann, "Festnahme nach langer Nacht", Neue Westfälische Zeitung, 10 December 2003; Monika Semm, "Russen-Mafia droht offen mit Mord", Pressehaus Heidenheim Online, 10 December 2003.

<sup>25</sup> Der Spiegel, "Nie Fragen gestellt", 30 June 1997, 25-26.

<sup>26</sup> Hannoverische Allgemeine Zeitung online, "Zigaretten gefälscht in illegaler Fabrik", 1 March 2004.



concentrations of poisonous and carcinogenic substances like lead and cadmium (HM Treasury, 2004: 13; House of Commons, 2005: Ev. 107; RILO, 2001: 21).<sup>27</sup> The tobacco at times may also be contaminated with sand and other packing material such as bits of plastic (BBC, 2003; House of Commons, 2005: Ev. 8; Philip Morris International, 2003: 12). Still, by and large, counterfeit production requires the same raw materials as those used in the legal production of cigarettes, including tobacco, paper and filter tow for the cigarettes, and paper or cardboard and foil for the packaging (House of Commons, 2005: Ev. 39).

Depending on the location of the counterfeit production, either the raw tobacco or the manufactured cigarettes have to be smuggled into the EU. Most counterfeit cigarettes are believed to be produced in China, other countries in Southeast Asia, and countries in Eastern Europe, but production facilities have also been discovered in final destination countries, namely Belgium, Germany, and the United Kingdom (Council of the European Union, 2003: 4; HM Treasury, 2004: 29; House of Commons, 2005: Ev. 134).

#### **4.2.2. Retail level**

##### *4.2.2.1. The retail sale of contraband cigarettes in Germany*

The retail sale of contraband cigarettes in Germany is commonly associated with the street selling by Vietnamese vendors in East Germany (von Lampe, 2002). Vendors operate at fixed locations, typically outside a supermarket or a train or metro station. The transactions either take place on the spot, or orders are taken for home deliveries (Bundesministerium der Finanzen, 2003: 60).<sup>28</sup> Another form of open selling of contraband cigarettes, which has also been observed in West Germany, is the sale on flea markets.<sup>29</sup> Some legal outlets allegedly also sell contraband cigarettes.<sup>30</sup>

Finally, contraband cigarettes reach consumers through informal distribution channels that take advantage of social network ties between friends, relatives, work mates and members in athletic clubs (von Lampe, 2002: 155-156).<sup>31</sup>

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<sup>27</sup> See also Debbie Andalo, "Warning over fake cigarettes", *Society Guardian*, 15 December 2004.

<sup>28</sup> See also Michael Pagel, "Neu: Mafia liefert frei Haus", *BZ*, 6 March 2004; Jens Schneider, "Tausend Mark, der Kurs für ein Leben", *Süddeutsche Zeitung*, 18 April 2000; *Berliner Zeitung*, "Zigaretten-Mafia liefert frei Haus", 2 April 1997; *Hannoversche Allgemeine Zeitung*, "Legal, illegal: Wer zieht die Fäden beim Zigaretenschmuggel?", 6 April 2004.

<sup>29</sup> Philipp Meckert, Oliver Meyer, Peter Käsmacher, "Steuern rauf, Schwarzhändler da", *Express*, 2 March 2004; *Gießener Anzeiger*, "Schlag gegen den Zigaretenschmuggel im Raum Mittelhessen", 12 February 2003.

<sup>30</sup> Philipp Meckert, Oliver Meyer, Peter Käsmacher, "Steuern rauf, Schwarzhändler da", *Express*, 2 March 2004; *Gießener Anzeiger*, "Schlag gegen den Zigaretenschmuggel im Raum Mittelhessen", 12 February 2003; *Berliner Kurier*, "Rekordmenge: Zollfahnder entdeckten Container mit über 45.000 Stangen", 23 September 2004.

<sup>31</sup> See also Philipp J. Meckert, Oliver Meyer, Peter Käsmacher, "Steuern rauf, Schwarzhändler da", *Express*, 2 March 2004; *Berliner Kurier*, "Rekordmenge: Zollfahnder entdeckten Container mit über 45000 Stangen", 23 September 2004; *Bild*, "Gift in Schmuggel-Zigaretten", 11 September 2004; *Gießener Anzeiger Online*, "Schlag gegen den Zigaretenschmuggel im Raum Mittelhessen", 12 February 2003; *Tabak Zeitung*, "März lässt Schmuggel blühen", 26 March 2004; Horst Zimmermann, "Dunkle Geschäfte mit Glimmstängeln", *Stuttgarter Nachrichten Online*, 20 June 2003; *ZDF heute online*, "Zollfahnder heben erstmals illegale Zigarettenfabrik aus", 22 July 2003.

Similar informal distribution networks also seem to be characteristic of the situation in the Netherlands (Van Duyne, 2003).

#### 4.2.2.2. *The Retail Sale of Contraband Cigarettes in the United Kingdom*

The retail market in the UK appears to be somewhat different from Germany as street selling never seems to have been a widespread phenomenon. Street selling similar to the situation in East Germany is apparently confined to a few places, namely Holloway Road in London (HM Treasury, 2004: 32-33; House of Commons, 2005: Ev. 50).

In contrast, other forms of open selling appear to be more widespread in the UK than in Germany, such as car boot sales and flea markets. Pubs and private homes also appear to serve as important outlets for contraband cigarettes (House of Commons, 2005: Ev. 33, 50, 73; Wiltshire et al., 2001: 204).<sup>32</sup> Overall, diverse patterns have emerged that, according to HM Customs and Excise, range “from the pub hawker selling from plastic bags, to more elaborate house or warehouse-based set-ups”.<sup>33</sup> In contrast, it is believed that contraband cigarettes have largely been kept out of legal retail channels since the introduction of fiscal marks on cigarette and hand rolling tobacco packets in July 2001 (HM Customs and Excise, 2003b: 15).

Social networks are also important distribution channels in the UK. HM Customs and Excise research found that about one third of contraband cigarettes are bought from friends (HM Treasury, 2004: 33).<sup>34</sup>

#### 4.2.2.3. *Regional differences in the black markets in Germany*

Interestingly, there is evidence that the retail markets in Germany and in the United Kingdom, respectively, are not evenly distributed across the country.<sup>35</sup>

For Germany it has already been noted that the phenomenon of widespread street selling has been confined to the territory of the former German Democratic Republic with East Berlin constituting the largest local black market (von Lampe, 2002).<sup>36</sup> In the western parts of Germany, the problem is believed to be most prominent in the Ruhr region (Bundesministerium der Finanzen, 2003: 60).<sup>37</sup>

Pack surveys conducted in 2004 (see figure 1) confirm these regional concentrations with regard to non-German duty paid cigarettes, however, the differences within West Germany are not as significant as those between East and West Germany, and between the border re-

<sup>32</sup> See also Audrey Gillan, “Gangs cash in as cigarette prices soar”, Guardian, 8 May 2001.

<sup>33</sup> Retrieved from the HM Customs and Excise website on 27 May 2005 at: [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_ShowContent&propertyType=document&featurearticle=true&id=HMCE\\_CL\\_001317](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&propertyType=document&featurearticle=true&id=HMCE_CL_001317).

<sup>34</sup> See also Faisal al Yafai, “Six months for police sergeant who sold smuggled tobacco to officers”, Guardian, 1 April 2005.

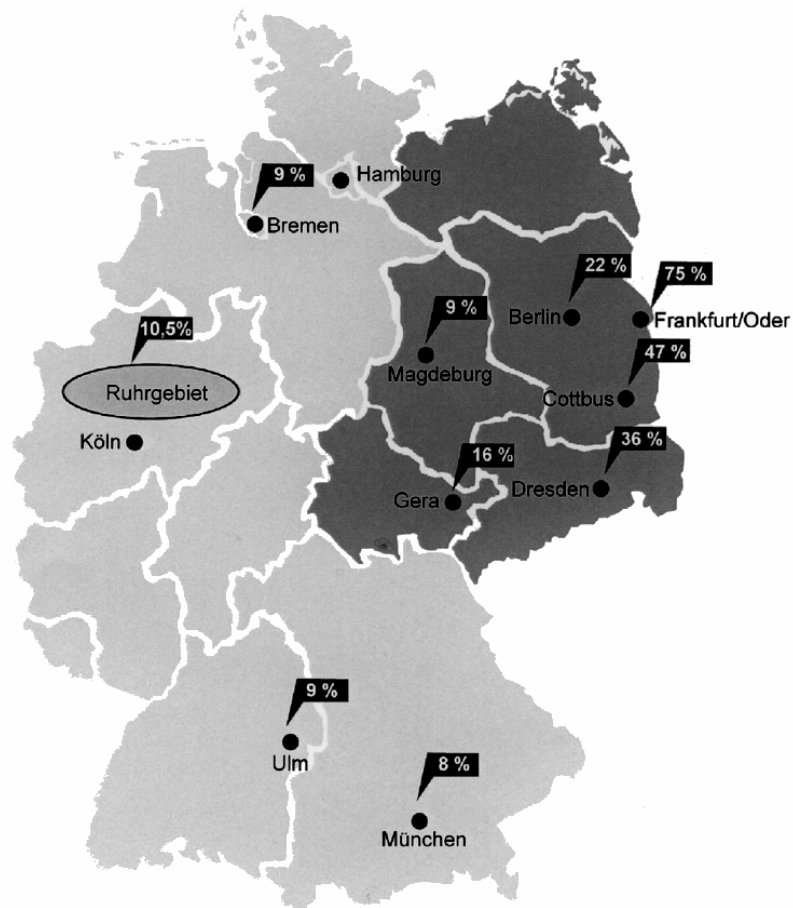
<sup>35</sup> A similar phenomenon has been observed in Italy (see European Parliament, Committee of Inquiry into the Community Transit System Hearing XIV, 18 November 1996: Part II).

<sup>36</sup> See also Hans Nibbrig, “Zigarettenmafia greift Berlin an”, Berliner Morgenpost, 2 March 2004.

<sup>37</sup> See also Horst Zimmermann, “Dunkle Geschäfte mit Glimmstängeln”, Stuttgarter Nachrichten Online, 20 June 2003; Rhein-Sieg-Anzeiger, “Raum Köln ist Hochburg der Zigaretten-schmuggler”, 1 August 1998; Westdeutsche Allgemeine Zeitung online, “Essener Zoll stoppt Millionenschmuggel”, 15 January 2004.

gions along the Polish and Czech borders and the rest of the country (Verband der Cigarettenindustrie, 2005).

**Figure 1:** Regional Differences in Non-German Duty Paid Cigarette Consumption (VdC)



Source: Field-Facts, Frankfurt/London, in Verband der Cigarettenindustrie (2005)

#### 4.2.2.4. Regional Differences in the Black Markets in the United Kingdom

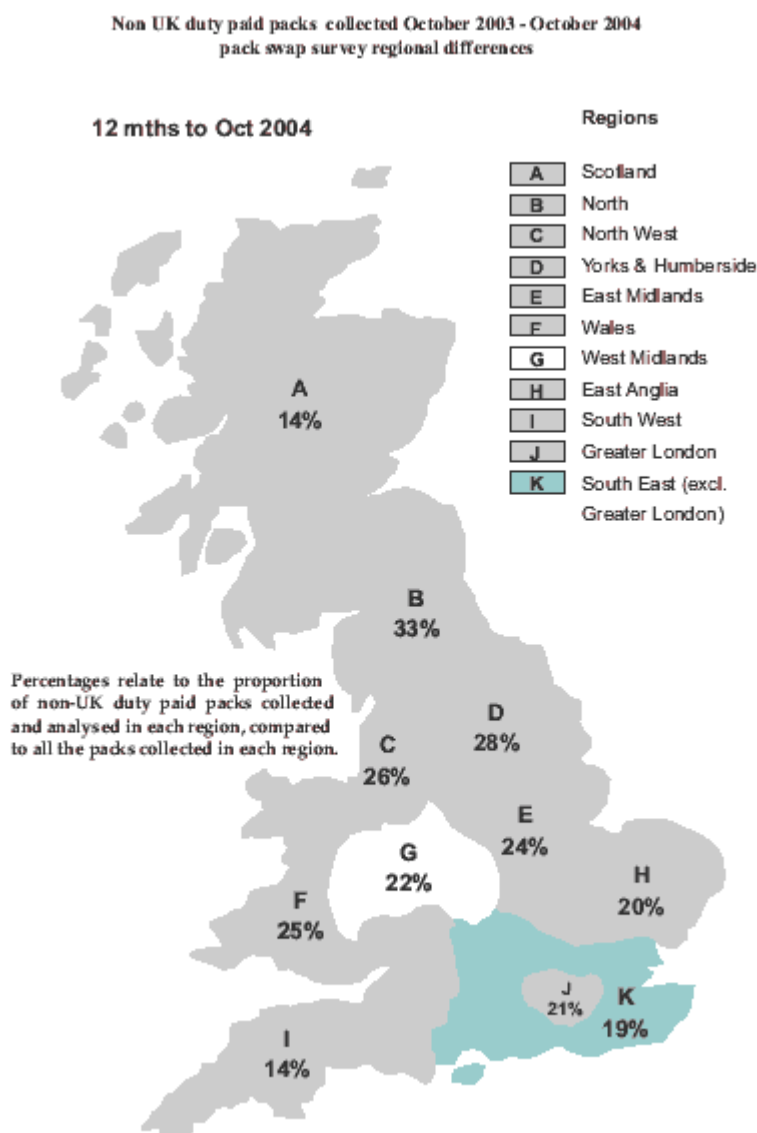
In the United Kingdom, shortly after the introduction of the single market, surveys of tobacco retailers found that losses in legal sales increased with the proximity to the channel. But they also found that awareness of smuggled products was highest in two northern cities, Newcastle and Liverpool, which was interpreted as a possible indication of organized bootlegging (Pieda, 1994:6).

More recently, pack surveys conducted in 2003 and 2004 consistently found higher shares of non-UK duty paid cigarettes in the northern parts of England and in Wales compared to the South East and South West (see figure 2). These same surveys also identify the North of England as the black market hotspot (House of Commons, 2005: Ev. 126). On the other hand,

London and the West of Scotland, which have been named as national hotspots by some observers, do not rank prominently in these surveys (House of Commons, 2003: Q 183, 184, 278).

Interestingly, differences do not only show on the national level but also on the local level. In a 2001 survey among smokers in London on the availability of smuggled cigarettes a large variation was found between the boroughs (Williams and Williams, 2002: 13).

**Figure 2:** Regional Differences in Non-UK Duty Paid Cigarette Consumption (Gallaher)



Source: Gallaher pack swap survey (House of Commons, 2005: Ev. 126)

#### 4.2.2.4. Internet sales

Retail selling has also been taking place via the internet since the 1990s. This involves the sale of duty-paid cigarettes from low-tax countries and the sale of contraband and counterfeit

cigarettes (High Level Group, 1998: 19; Joossens, 1999: 5). Offers are made on special sites or in online auctions.<sup>38</sup>

Internet sales that circumvent taxes in the consumer country are illegal even within the EU. Art. 8 of directive 92/12/EEC<sup>39</sup> provides that products purchased within the EU by private individuals for their own use are exclusively subject to excise duty in the Member State in which they are acquired, but only if the purchaser transports the products him- or herself. This is not the case when cigarettes are ordered over the internet and shipped to the consumer by the online seller (Bongartz and Lingenfelder, 2002).<sup>40</sup> Moreover, the cigarettes are typically mailed using packaging that is designed to avoid detection by customs authorities (Philip Morris International, 2004: 8-9).<sup>41</sup> Still, customs have been successful in intercepting fairly large amounts of cigarettes sent by mail. HM Customs and Excise have published a figure of 13 million cigarettes for the year 2002-2003 (House of Commons, 2005: Ev. 81).

### **4.3. Persons**

#### **4.3.1. Characterizations of black market participants in the UK**

Little systematic information is available on the individuals engaged in the various black market activities. In the United Kingdom, the existing information is largely confined to characterizations of the consumer population. According to these assessments, demand for contraband cigarettes comes primarily from the lower social strata. A 2000 report prepared for the Tobacco Manufacturers' Association found that areas with high levels of black market activity share a number of common characteristics, including higher rates of unemployment, high proportions of lone parent households, and higher rates of crime (DTZ Piedad Consulting, 2000: 16-17).<sup>42</sup> These findings correspond with the observation that smoking prevalence increases down the socioeconomic groups (HM Customs and Excise - Excise Social Policy Group, 2003: 9). Similarly, the above mentioned smoker survey conducted in London in 2001 found that more young smokers (47 % of those 16-24 years old) than smokers aged 65 and over (18 %) report buying contraband cigarettes (Williams and Williams, 2002: 14).

As regards market participants on the import, whole-sale and retail levels, no systematic assessments seem to be available. What can be found is the following statement contained in the UK Threat Assessment: "Tobacco smugglers range from casual day-trippers buying quantities of cigarettes in continental Europe and selling them to friends once back in the UK

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<sup>38</sup> Caroline van der Graaf, "Goedkope Roemeense sigaretten via internet", NRC Handelsblad, 10 January 2004; Frank Schauka, "Glimmstängel per Mausclick", Märkische Allgemeine, 16 December 2004.

<sup>39</sup> Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Official Journal L 076, 23/02/1999, 1-13.

<sup>40</sup> See also the judgement of the Court of Justice of the European Communities in the "Man in Black" case (OJ C 209 of 4.7.1998, pp. 2-3).

<sup>41</sup> Zoll, "Schlag gegen den Schmuggel", press release, 4 April 2003.

<sup>42</sup> For a discussion of the link between the cigarette black market and social deprivation, see Wiltshire et al. (2001).

(cross-channel smuggling) to serious and organised criminals smuggling upwards of eight million cigarettes at a time” (NCIS, 2003: 45). Very much in contrast to Germany, there is no connection made between the black market and certain ethnic groups.

#### **4.3.2. Characterizations of black market participants in Germany**

In Germany, participants of the black market have primarily been characterized in terms of ethnicity. In press accounts of individual cases, the nationality of offenders is stated on a regular basis, and in general descriptions it is a recurrent theme to emphasize that the supply of contraband cigarettes is largely in the hands of Eastern Europeans, mostly from Poland, and that the open retail market in East Germany is dominated by Vietnamese street vendors (Bundeskriminalamt, 2004: 30-31; Bundesministerium der Finanzen, 2003). More recently, ethnic German migrants from the former Soviet Union and Germans of Turkish decent have been named as important players in the black market.<sup>43</sup> There are, however, no statistics published that would provide a systematic overview of the ethnicity or any other personal characteristics of known cigarette traffickers.

#### **4.3.3. Characterizations of black market participants in the Netherlands**

A notable exception to the otherwise absence of systematic data on personal characteristics of black market participants is made by Van Duyne’s study of cigarette smuggling investigations in the Netherlands (Van Duyne, 2003). In 2002, he analyzed the 52 files on cigarette smuggling accumulated by the national Central Excise Unit (CEU) since 1999. He found that from the 161 suspects mentioned in the files, only four were female. The most dominant age group were male traders between 30 and 45 years. The vast majority (121) were Dutch, followed by suspects from the United Kingdom (11), Italy (5), Poland (4), Lithuania (3) and Spain (3) (Van Duyne, 2003: 290). Van Duyne also notes that most of the files “were not very informative about the social and economic backgrounds of the suspects.” He concluded, however, that “(m)ost traders are common family people with a lower middle class or working class social background. They do not have a criminal record of previous convictions or another criminal ‘training’ background and entered this market late in their lives” (Van Duyne, 2003: 309).

#### **4.4. Interpersonal links between market participants**

There are essentially three types of interpersonal links that define the organizational structure of the cigarette black market: 1.) links between individuals who are involved in the same action set, for example the web of relations used for smuggling, or for the unloading, storage and repacking for further shipment of contraband cigarettes; 2.) links between actors on

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<sup>43</sup> Tim Stinauer, “Schmuggel nach Köln nimmt zu”, Kölner Stadt-Anzeiger, 28 January 2005. Tabakzeitung, “Särge als Tarnladung”, 7 January 2005.

different market levels, for example between whole-sale and retail; and 3.) links between criminal actors and unwitting facilitators, for example hauling companies that are unaware of the true nature of the cargo they have been contracted to transport from one point to the other (see Van Duyne, 2003: 292). In some cases, interpersonal links only exist between different market levels. This is the case when market participants operate by themselves, for example a lone bootlegger whose network is confined to the consumers he supplies with contraband cigarettes (NCIS, 2003: 45).

#### **4.4.1. General statements about interpersonal links**

Official and media accounts are ripe with rhetoric that denotes the organizational structure of the cigarette black market using terms familiar from other discussions of organized crime.

In the broadest sense, the cigarette black market is said to be in the hands of or “undertaken by organised crime” (House of Commons, 2003: 13) and controlled by what is variously termed the “Cigarette Mafia” or the “Nicotine Mafia”.<sup>44</sup>

Particular collectivities of offenders are typically classified as “groups”, “gangs”, “syndicates” or “networks” without any specification of what these terms mean, whether there are any differences in meaning between these terms, and along what dimensions these collectivities may vary, if at all.<sup>45</sup> For example, law enforcement in the United Kingdom give the number of ‘gangs’ that have been disrupted in a given period of time, 259 in four years as of 2004, without any further details on their nature (HM Customs and Excise, 2004b: 19).

At times, a spectrum of organizational structuring is implied in statements about “large scale organised smuggling gangs” who are said to supply most of the illicit market, and “lower-level smuggling gangs” believed to be engaged in bootlegging (House of Commons, 2005: 17, Ev. 82-83), or in statements about smuggling groups resembling “tightly controlled ‘mafia’-style organisations, in which there are clear chains of command and communication” and “loose networks of criminals” (HM Treasury, 2004: 24).

#### **4.4.2. Case descriptions of interpersonal links**

On occasion, offender structures are described in some detail when it comes to individual cases. Be it that hierarchies and differentiations of tasks within groups are described,<sup>46</sup> be it that information is provided on how contacts are established between market participants on

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<sup>44</sup> Hans H. Nibbrig, “Höhere Tabakpreise: Zigarettensmafia greift an”, *Die Welt*, 2 March 2004; *Mannheimer Morgen*, “Zigarettenschmuggel ist starker Tobak”, 7 August 2004.

<sup>45</sup> Andreas Förster, “Zigarettensmafia goes West”, *Berliner Zeitung*, 27 April 2004; Roland Pichler, “Einmal gewinnt der Zoll, 25-mal die Schmuggler”, 5 October 2004; David Sapsted, “Crime gangs burn £2.5bn hole in the Treasury’s coffers”, *Daily Telegraph*, 31 January 2000.

<sup>46</sup> Julia Gottschick, “Heiße Ware als Furnierhölzer getarnt”, *Westfälische Nachrichten*, 16 January 2004; Wolfgang Heininger, “Mit Zigarettenschmuggel war gutes Geld zu machen”, *Frankfurter Rundschau*, 23 April 2002; Zoll aktuell, “Zigarettenschmuggel: Der Zoll macht Druck”, 1/2005, pp. 8-10.

different levels.<sup>47</sup> However, these descriptions do not follow a common framework and terminology, so that it is virtually impossible to make any general inferences from these accounts.

One of the more detailed case descriptions, contained in a publication of the German customs service,<sup>48</sup> may serve as an illustration:

“In the night from 24 to 25 September 2004 the trap snapped. In close cooperation with Ukrainian authorities it was possible to arrest Janusz M., the boss of a smuggling gang operating European wide (...) He is facing up to 10 years in prison. (...)

It took four years until (...) the smuggling ring of Janusz M. could be broken up. 10 gang members are behind bars. The smuggling of 62 shipments with a total of 180 million cigarettes could be established, about 31 million of which could be seized across Europe. (...) British customs agents got things rolling early in 2000. They had caught two transports with untaxed cigarettes hidden in lumber. The elaborate hiding and the high amounts involved suggested a professional organization. Through a company in Maintail which appeared as the sender in the accompanying documents provided a first trail to Germany. Customs (...) quickly determined that the address in Maintail was false. With much painstaking attention to detail they set their sights on the first suspects in the summer of 2000. They ran across 44 year old F.G. from Offenbach, an old acquaintance with a record going back to 1997.

In February 2001 it was possible to identify the first smuggling truck. It was loaded with doors destined for a company in Offenbach whose owner was also known to the investigators. When the vehicle was inspected agents (...) found 5.6 million cigarettes hidden as insulation material between the doors. The owner of the firm was arrested.

Soon the investigators found hints pointing to the true person pulling the strings in the smuggling operation. F.G. from Offenbach apparently was the German ‘governor’ of the smuggling ring and followed directions coming from Poland. The true head and financier of the gang was the Polish national Janusz M. At his behest, the man from Offenbach had recruited gang members in Germany who, in turn, registered businesses and created firms. It was to these contact addresses that forged trade contracts for the purchase of diverse cover goods, such as building materials, plastic foil and lumber, went in order to convey the impression that licit business was conducted.

The investigators first found out about front companies in Erlensee, Bad Vilbel, Mainz and Cologne. In April 2001 they discovered that the gang also had a front company in Dresden. The representative there had the task of importing insulation pipes from the Ukraine for further shipment to Great Britain. For the first job he had received 13,000 Euros. (...) Three million untaxed cigarettes were found in the insulation pipes. For the man from Dresden the game was over.

After further surveillance (...) the head of the gang in Germany and his right hand man, Andreas K., were arrested on 27 November 2001. Until June 2003 it was possible also to arrest the remaining eight members of the gang in Germany. A 50 year old Polish citizen residing in Cologne was intercepted at the German-Czech border. The ‘simple’ gang members (...) were sentenced to between one and a half and four and a half years, the ‘governor’ had to go behind bars for five years.

The German part of the smuggling organization was dismantled. The same happened to the gang of the Polish godfather in England. (...).”

While at first glance the description is insightful the structure of the “gang” is described only in very broad terms. It is not clear, for example, what dependencies characterized the key relation between Janusz M. and F.G., M’s “governor” in Offenbach. While the rhetoric suggests an asymmetric relation with Janusz M. occupying a position of power the provided facts would also support an interpretation that it was in fact a contractual relation among

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<sup>47</sup> Süddeutsche Zeitung, “Anklage gegen Tierarzt”, 27 April 2004; Westfälische Rundschau, “Zigarettschmuggel: Vier Millionen Euro Steuerschaden”, 18 February 2003.

<sup>48</sup> Zoll aktuell, “Zigarettschmuggel: Der Zoll macht Druck”, 1/2005, p. 9. Original in German, translation by the author.



equals. It is also impossible to discern to what extent the participants had the consciousness of belonging to an organizational entity which the article refers to as “gang” or “ring”. It appears that only Janusz M. and his “governor” had direct personal links and it is an open question given the scant available information what notion the “gang members” in Germany had of the existence and role of Janusz M., the alleged “godfather”.

#### **4.4.3. Systematic assessments of interpersonal links by law enforcement agencies**

The only attempt on the part of law enforcement agencies at a systematic assessment of the offender structures in the cigarette black market has been made, as far as can be seen, within the framework of the German situation report on organized crime. One of the features of this situation report is the evaluation of the “OC potential” of a given group of offenders. “The term ‘OC potential’ is used to express the level of organisation and professionalism (...) The OC potential is calculated using a system of weighted OC indicators and is portrayed on a scale from 1 (= very low) to 100 (= very high)” (Bundeskriminalamt, 2004: 19). The highest ranked indicators are ‘hierarchical structure’ with a value of 4.35, followed by ‘international’ (3.49), ‘an at first glance inexplicable relation of dependence or authority between several suspects’ (3.36), ‘payment of bribes’ (3.03), and ‘measures to launder money’ (2.96) (see von Lampe, 2004b: 92).

The points of reference of the ‘OC potential’ are offender groups either with regard to their ethnic make-up or with regard to the area of crime in which they operate. However, findings on the ‘OC potential’ are not consistently published. In the situation report for the year 2001 it was noted that offender groups involved in tax and customs violations (n=75), of which 66 were active in the area of cigarette and alcohol smuggling, had the highest ‘OC potential’ of all organized criminal groups (Bundeskriminalamt, 2002: 17). In the following reports, which also covered a number of cigarette smuggling cases, no similar statements on the ‘OC potential’ have been made.

#### **4.4.4. Systematic assessments of interpersonal links by researchers**

Apart from the German organized crime situation report, the only systematic analyses of offender structures in the cigarette black market have been produced by researchers. Van Duyne, in the above mentioned study, and von Lampe examined the structure of offender groups based on the analysis of case files (Van Duyne, 2003; von Lampe, 2003; 2005).

##### *4.4.4.1. The structure of offender groups in the Netherlands (Van Duyne)*

Van Duyne analyzed the files on 52 criminal investigations from the period 1994 until 1999 which were either carried out by Dutch customs or in which Dutch customs played a role or had an interest (Van Duyne, 2003: 289). He found a broad spectrum of structural patterns, ranging from individual offenders to large networks with up to 25 suspects. 28 out of 161 suspects could be considered subordinate aids, thus indicating a vertical differentiation (Van

Duyne, 2003: 293). In other cases, cooperation occurred on a partnership basis without an identifiable leadership (Van Duyne, 2003: 299). A vertical differentiation of tasks in a division of labor was also found to be characteristic of a number of structures, typically emerging as the volume of trade grew beyond what the original entrepreneur or entrepreneurs were capable or willing to manage themselves (Van Duyne, 2003, 294-295, 300).

#### *4.4.4.2. The structure of offender groups in Germany (von Lampe)*

Von Lampe presented findings on the structure of offender groups involved in the smuggling and distribution of contraband cigarettes in Germany from a pilot study (von Lampe, 2003) and from a more in-depth study (von Lampe, 2005). The 14 criminal files analyzed in the pilot study pertain to criminal activities in the period 1990 until 1997 (von Lampe, 2003: 48). Von Lampe concluded that “the cigarette black market in Germany seems to be characterised by low-density networks comprising small, simply structured enterprises and individual entrepreneurs, who perform relatively simple tasks. Group structures, to the extent they become visible, in general display little vertical or horizontal differentiation. This seems to be true even where ‘criminal labourers’ are employed, because they tend to be hired only for one specific task, or (...) only for a limited period of time. Therefore it is difficult really to consider them parts of durable enterprise structures. (...) Core groups that make up criminal enterprises tend to be based on strong ties such as kinship, marriage or friendship, but employer-employee and buyer-seller relations can be found that are rooted in weak ties or even lack any basis in pre-existing contacts” (von Lampe, 2003: 59).

In a more in-depth study of the early years of the large scale cigarette black market in Germany between 1990 and 1994, von Lampe analyzed a total of 51 criminal sub-networks appearing in 47 case files (von Lampe, 2005: 221). According to the tentative findings of this analysis, the overall structural sophistication of the networks involved in the cigarette black market was low in the initial phase of development. 24 out of the 51 identified sub-networks showed neither vertical differentiation nor existence beyond a single endeavour. However, there was a hint towards increasing sophistication over time. The networks that fell in the period from the second half of 1992 to the end of 1994 were more likely to show signs of some form of authority structure and/or a longer life span than the networks detected between 1990 and the first half of 1992 (von Lampe, 2005: 224).

### **4.4.5. Statements on the involvement of so-called traditional organised crime**

#### *4.4.5.1. Italian mafia-type organisations*

Cigarette smuggling has historically been linked to so-called traditional organized crime in Southern Italy, namely the Sicilian Mafia and the Camorra in Naples after World War II. As Gambetta explains, mafiosi first functioned as financiers and protectors of independent smugglers who later on, in the 1970s, became members of these mafia associations themselves (Gambetta, 1996: 230-231).

According to a 2003 report prepared by Italy for the Council of the European Union, “many Italian investigations have shown how tobacco smuggling has cemented links between regional mafia groups (Cosa Nostra, Camorra and Sacra Corona Unita) as well as between mafia-type organisations in Italy and criminal gangs abroad” (Council of the European Union, 2003: 3). This apparently refers to the activities of Italian criminals from bases in Balkan countries like Montenegro (Griffiths, 2004: 188-191).<sup>49</sup>

In Van Duyne’s study only one of the analyzed files contained a reference to an Italian mafia association, the Camorra, but no evidence of actual involvement in the cigarette black market was produced (Van Duyne, 2003: 298).

Von Lampe, likewise, found no evidence of such involvement and noted that “(w)here social networks provide a basis of trust for cooperating market participants there is no indication whatsoever that they are reinforced by membership in mafia-type criminal fraternities or secret societies” (von Lampe, 2003: 60).

#### 4.4.5.2. “Russian Mafia”

According to press reports that rely on the disclosures of an alleged Polish-German cigarette smuggler and on internal documents of the German customs service, the “Russian Mafia” is involved in the cigarette black market. The alleged smuggler who in the second half of the 1990s had the distribution licence of the German cigarette manufacturer Reemtsma for Lithuania and parts of Russia claimed that leading employees of Reemtsma had for years colluded with the Mafia.<sup>50</sup> He also stated that when he cut supply to one of his customers, a notorious mafia figure originally from the Ukraine had killers sent after him. This mafia figure, according to one press report, is believed by customs agents to be “the head of the cigarette smugglers, possibly world wide”.<sup>51</sup>

#### 4.4.5.2. Paramilitary groups

Somewhat more concrete and more detailed evidence exists regarding paramilitary groups deriving income from cigarette smuggling, including various republican and loyalist groups in Northern Ireland and the ETA in Basque country (Coker, 2003: 357-360; Northern Ireland Organised Crime Task Force, 2004: 10). However, it is not always clear to what extent members of these groups or entire groups are engaged in cigarette smuggling or simply impose underworld taxes on otherwise independent smugglers (see 4.5.2 below).

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<sup>49</sup> See also Peter Scherer, “Höhere Tabaksteuern locken Schmuggler nach Deutschland”, 11 July 2003.

<sup>50</sup> Hubert Gude and Birte Siedenburg, “So viel raucht kein Mensch”, Focus, 4/2003, 46-47; Jan-Eric Lindner, “Zigaretten-Schmuggel: Kronzeuge legt nach”, Hamburger Abendblatt, 28 January 2003; Birte Siedenburg and Kayhan Özgenc, “Die Beichte des ‘Paten’”, Focus, 5/2003, p. 30.

<sup>51</sup> Beat Balzli, Udo Ludwig, Andreas Ulrich, “Mörderische Konkurrenz”, Der Spiegel 5/2003, 47.

## 4.5. Overarching structures

### 4.5.1. Market concentration

The Reemtsma case mentioned above is also, as far as can be seen, the only instance where a possible concentration of the cigarette black market in Northwest Europe has been at issue. However, the hints are vague. It is not clear what being “the head of the cigarette smugglers” implies.

Still, there are indications that the cigarette black market is subject to a concentration due to economies of scale. As von Lampe noted, “(t)he legal procurement of large quantities of untaxed cigarettes is apparently linked to a concentration process on the upper levels of the black market. While it is the cheapest and potentially most profitable way to obtain untaxed cigarettes, it is open only to a few more or less sophisticated and well funded operators” (von Lampe, 2002: 157). The Reemtsma case seems to be a case in point. In the years during which the alleged smuggler held the distribution licence for Lithuania and parts of Russia and sold more than 17 billion cigarettes,<sup>52</sup> the Reemtsma brand “West” became the market leader on the German cigarette black market (RILO, 2001: 10).

A certain level of sophistication and financial power is also required for the industrial production of counterfeit cigarettes, thus limiting the number of potential participants on this level of the black market. The machinery needed for manufacturing cigarettes and packaging allegedly costs second-hand around 500,000 Euros.<sup>53</sup>

### 4.5.2. Power syndicates

Power syndicates in the purest sense of the word are criminal groups that extort illegal enterprises without being directly involved in entrepreneurial activities themselves (Block, 1983: 129). Such groups have emerged in the Vietnamese community in East Germany to prey on Vietnamese street vendors of contraband cigarettes. Street vendors have to pay regular fees, allegedly between 500 and 5000 Euro per month, for the right to sell cigarettes at a particular location.<sup>54</sup>

Extortion gangs in turn have competed over the right to control particular territories. In the mid 1990s this competition erupted into violent conflict and eventually led to the break-up of the largest gangs by the police (Habenicht, 1995: 248; Lehmann, 1998: 53; von Lampe, 2002: 153-154). Smaller gangs are believed to continue the extortion of street vendors and to have reached territorial agreements to avoid conflict.<sup>55</sup>

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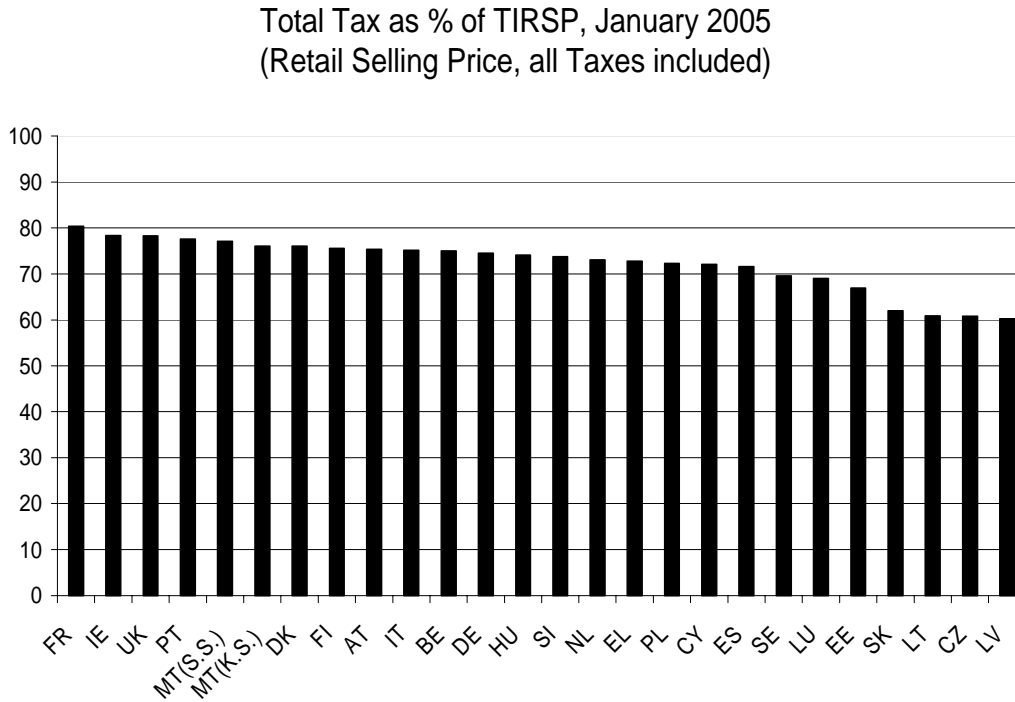
<sup>52</sup> Beat Balzli, Udo Ludwig, Andreas Ulrich, “Mörderische Konkurrenz”, *Der Spiegel* 5/2003, 47.

<sup>53</sup> Andreas Ulrich, “Drehen im Untergrund”, *Der Spiegel*, 27/2005, 56-57.

<sup>54</sup> Lutz Schnedelbach, “Illegaler Handel”, *Berliner Zeitung*, 11 July 2003; Jens Schneider, “Tausend Mark, der Kurs für ein Leben”, *Süddeutsche Zeitung*, 18 April 2000.

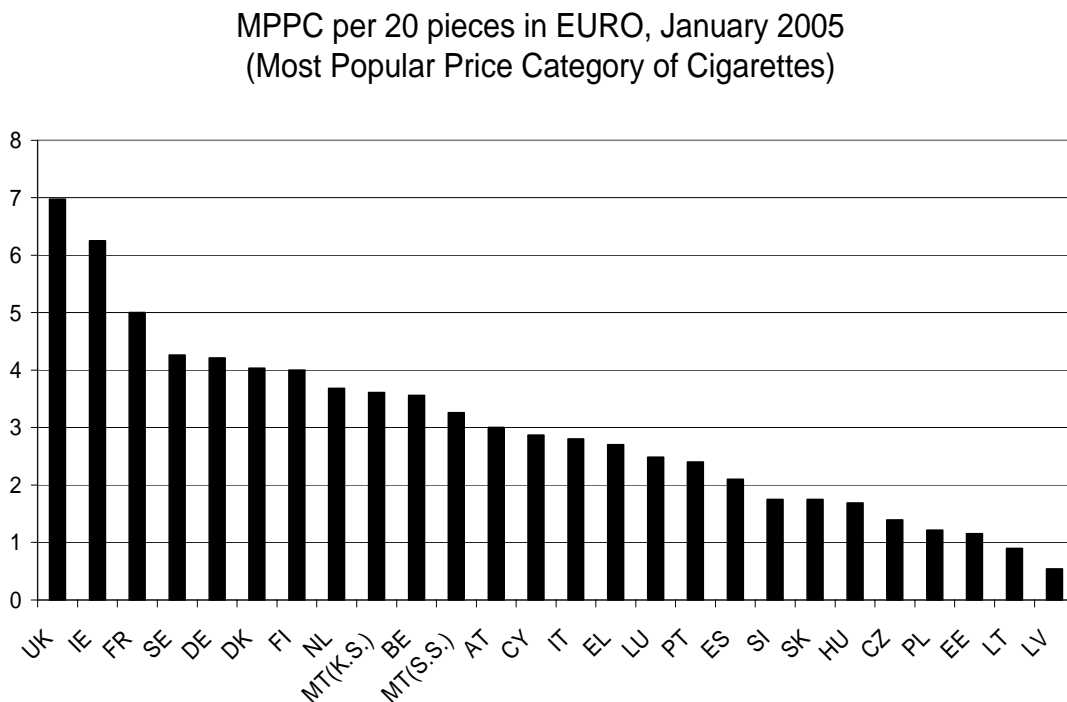
<sup>55</sup> Lutz Schnedelbach, “Illegaler Handel”, *Berliner Zeitung*, 11 July 2003; *Der Tagesspiegel*, “Schutzgelderpresser haben Revier aufgeteilt”, 25 April 2002.

**Figure 3:** Cross-National Differences in Excise Levels (European Commission)



(Source: European Commission, 2005)

**Figure 4:** Cross-National Differences in Legal Retail Prices (European Commission)



(Source: European Commission, 2005)

## 4.6. Legal/illegal nexus

### 4.6.1. Environmental conditions believed to influence the black market

Discussions of the cigarette black market do not solely focus on the core activities, actors and structures but also on contextual factors that are in some ways or other believed to be linked to the black market. One set of factors comprises conditions believed to influence and shape the black market.

#### 4.6.1.1. Tax levels and price discrepancies

The one factor most often cited as being the key to understanding the phenomenon of the cigarette black market is the level of taxation and the resulting price discrepancies between duty paid and duty non-paid cigarettes on one hand, and between high tax and low tax countries on the other. High price differentials between duty paid and duty non-paid prices are believed to provide an incentive for large-scale smuggling, involving cigarettes officially destined for markets outside the EU, and for counterfeit cigarettes. Price differentials between high-tax and low-tax countries are viewed as the root cause of bootlegging (Advisory Commission on Intergovernmental Relations, 1977: 9; High Level Group, 1998; Saba et al., 1995: 190). However, the assumed causal links are not necessarily taking effect as certain low-tax countries have experienced high levels of smuggling while certain high-tax countries have not been confronted with similar problems (Joossens and Raw, 2002: 5-6).

Data on the excise levels and legal retail prices of cigarettes in the EU Member States are regularly published by the European Commission Directorate General in the Excise Duty Tables (European Commission, 2005). They show levels of taxation in Member States ranging from 60 to 80 percent of retail selling price (Figure 3) and retail prices for a pack of cigarettes (20 pieces) in the most popular price category ranging from 0.54 €(in Latvia) to 6.98 €(in the UK) as of January 2005 (Figure 4).

#### 4.6.1.2. Social deprivation and legitimacy deficits

Apart from cigarette price discrepancies, social deprivation is believed to contribute to the emergence and growth of the cigarette black market by providing an added incentive for consumers to purchase contraband cigarettes (von Lampe, 2002: 149; Wiltshire et al., 2001: 204). This would be in line with the above mentioned finding that in the UK the cigarette black market is more prevalent in low-income areas (DTZ Pidea Consulting, 2000). On the other hand, the observed differences in the availability of contraband cigarettes between boroughs in London (Williams and Williams, 2002) do not necessarily coincide with socio-economic differences (Richardson, 2002).

Legitimacy deficits of the political system in general and the tax system in particular have also been considered conducive factors (High Level Group, 1998: 19; von Lampe, 2002: 149). Wiltshire et al., for example, found in a study of smokers in deprived areas of Edinburgh that most respondents felt that tax on cigarettes is excessive, especially compared with the price of cigarettes abroad, and that smuggling was a legitimate response (Wiltshire et al., 2001: 205).

In sum, it would appear that social deprivation and legitimacy deficits are no certain indicators for a cigarette black market but given the available evidence one could assume a greater likelihood of a cigarette black market emerging or expanding with increasing social deprivation and legitimacy deficits. Interestingly, as far as can be seen, statistics and survey data to that affect have not yet been used in assessments of the cigarette smuggling problem.

## **4.6.2. The role of the tobacco industry**

### *4.6.2.1. General allegations of complicity*

The tobacco industry is alleged to play a key role in the emergence and growth of a cigarette black market. It is argued that a cigarette black market of any significance is immanently linked to large-scale smuggling and that large-scale smuggling would not be possible without at least the tacit connivance of the cigarette manufacturers (Dantinne, 2001; Joossens and Raw, 2002).

While collusion between cigarette manufacturers and smugglers have been established - based on guilty pleas and internal tobacco industry documents - in other regions of the world, namely in North and South America (Aguinaga Bialous and Shatenstein, 2002: 77-88; Beare, 2003), there seems to be no similarly strong evidence of any such link in the countries under consideration in this report.

The EU had filed a law suit against major cigarette manufacturers before a US court, arguing that they “have controlled, directed, encouraged, supported, and facilitated the activities of smugglers”,<sup>56</sup> but this case pertained to the black markets in Spain and Italy,<sup>57</sup> and, above all, it has been dismissed on procedural grounds.<sup>58</sup> One of the defendants, Philip Morris, later - in 2004 - agreed to pay \$ 1.25bn to the EU to avoid further law suits.<sup>59</sup>

The only case, as far as can be seen, where criminal investigations have been launched anywhere in the EU against the management of a tobacco manufacturer on the grounds that they conspired with smugglers, the Reemtsma case in Germany, these investigations have not produced any indictments as of the writing of this report.<sup>60</sup> In June 2005, charges against three former Reemtsma managers were dropped after they agreed to pay 1.5 million Euro in fines.<sup>61</sup>

The absence of court approved evidence notwithstanding, a number of issues have been raised in support of allegations that cigarette manufacturers also bear some responsibility for the black market in the countries under consideration in this report. These issues include

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<sup>56</sup> European Community, Complaint before the U.S. District Court, Eastern District of New York, 3 November 2000, p. 19.

<sup>57</sup> Interestingly, the one case of supply to a smuggling group in the United Kingdom mentioned in the complaint involves cigarettes that were in turn smuggled into other Member States (European Community, Complaint before the U.S. District Court, Eastern District of New York, 3 November 2000, p. 76.

<sup>58</sup> European Commission, “Legal action against cigarette smuggling: U.S. Appellate Court rules on the Commission's appeal against previous dismissal”, press release, 15 January 2004.

<sup>59</sup> Ian Black, “Tobacco firm pays to curb smuggling: \$ 1.25bn deal with EU to end row over black market cigarettes”, The Guardian, 10 July 2004.

<sup>60</sup> See Hamburger Abendblatt, “Ermittlungen ohne Ende: Tabakkonzern Reemtsma weiter im Visier des Staatsanwalts”, 14 January 2005.

<sup>61</sup> Die Welt, “Verfahren gegen Ex-Manager eingestellt”, 24 June 2005.

- the predominance of certain brands of certain manufacturers on the national black markets;
- the supply of large quantities of cigarettes to certain smaller countries in excess of the domestic demand;
- a perceived reluctance on the part of the tobacco industry to cooperate with authorities; and
- the presumed objective interest cigarette manufacturers have that their products are sold on the black market.

#### 4.6.2.2. *The example of Imperial Tobacco*

An illustration of these allegations is provided by the example of the British tobacco manufacturer Imperial Tobacco.

According to HM Customs and Excise estimates, in 2001 the Imperial Tobacco brands “Superkings” and “Regal” accounted for 5.3 and 3.9 % of the legal UK cigarette market, but held shares of 30.1 and 20.1 %, respectively, of the illegal UK cigarette market (House of Commons, 2003: 9). Similarly, “Superkings” and “Regal” were the two brands most often seized in the UK (24 and 25 % of cigarette seizures) and among the most often confiscated in Europe (House of Commons, 2003: Appendix 3; RILO, 2001: 10). At the same time, Imperial Tobacco had exported large quantities of “Superkings” and “Regal” to small countries with no apparent domestic market of matching size and demand. Two thirds of the exports of “Regal” and “Superkings”, totalling some three billion cigarettes, were allegedly sent to just five locations, namely Latvia, Kaliningrad, Afghanistan, Moldova and Andorra (House of Commons, 2003: 10). HM Customs and Excise believed that 65 % of Imperial exports were smuggled back into the country, compared with a rate for all cigarettes of only 16 % (House of Commons, 2003: 8).

Critics of the tobacco industry have charged that these figures are best explained by complicity between Imperial Tobacco and smugglers, implying that cigarettes had consciously been supplied to the black market in the UK in a similar fashion as alleged of other tobacco companies with regard to other regional black markets (Joossens and Raw, 2002: 2-3). For example, in its complaint against US tobacco manufacturers, the EU alleges that cigarettes were supplied to smugglers, or distributors who sold to smugglers, using various means to conceal these relationships and to help facilitate the smuggling activities, including knowingly affixing improper tax stamps to their cigarettes or wilfully turning a blind eye to the issue of counterfeit stamps.<sup>62</sup>

HM Customs and Excise, in public statements, have not gone as far in their judgement with regard to Imperial Tobacco, but noted a certain lack of commitment to help reduce the return of exported cigarettes. In a memorandum submitted to a House of Commons

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<sup>62</sup> European Community, Complaint before the U.S. District Court, Eastern District of New York, 3 November 2000, p. 73.



committee, Customs stated that the “dialogue with Imperial has been less co-operative than with other manufacturers” (House of Commons, 2003: Appendix 3).<sup>63</sup>

Imperial Tobacco, in turn, has denied any form of complicity with smugglers or even an objective interest in the black market, arguing that profits from sales to the UK market are much higher than profits from sales to non-EU countries (House of Commons, 2003: Q 377). The company explained the discrepancy between the market shares in the legal and illegal markets with regional variations in the popularity of its brands, specifically “Regal”, which, it insisted, was a popular brand in regions identified as smuggling hot spots (House of Commons, 2003: Q 292). Shipments to small countries were explained with their role as hub markets for markets in other countries, in the case of Latvia, for example, as a hub for other Eastern European countries (House of Commons, 2003: Q 474).

Still, Imperial Tobacco chose to cease trade with 30 distributors between 1999 and 2002 (House of Commons, 2003: Q 310) and to significantly decrease or to completely stop export of “Regal” and “Superkings” to certain formerly important destination countries (see tab. 3).

Since then, the share of Imperial brands on the black market in the UK has significantly decreased. In 2003-04, “Superkings” accounted for 9 % of seized genuine UK brand cigarettes while the share of “Regal” was ‘negligible’ (House of Commons, 2005: Ev. 106).

In the meantime, June 2003, Imperial Tobacco had signed a Memorandum of Understanding with Customs, following similar MoUs Customs signed with the other two major British manufacturers, Gallaher (April 2002) and British American Tobacco (October 2002). These agreements formalize Customs-industry cooperation and aim to ensure that cigarettes are only supplied to markets with a legitimate demand, that supply routes are identified, and that no sales are made when the final destination is in doubt (House of Commons, 2005: 11).

**Table 3:** Number of “Regal” and “Superkings” exports to selected countries 2000-2002

<b>Destination</b>	<b>Oct. 2000 to Sept. 2001</b>	<b>Oct. 2001 to April 2002</b>
<b>Latvia</b>	1.363 million	Nil
<b>Russia (incl. Kaliningrad)</b>	835 million	99 million
<b>Afghanistan</b>	325 million	Nil
<b>Moldova</b>	540 million	36 million
<b>Andorra</b>	84 million	0,2 million

Source: HM Customs and Excise in House of Commons (2003: Appendix 3)

<sup>63</sup> See also the statement by Customs chairman Richard Broadbent in House of Commons (2003: Q 282) and a later statement by the acting director of strategy for HMCE, Mike Wells, in House of Commons (2005: Ev. 4).

4.6.2.3. *Recent trends in the role of the tobacco industry*

HM Customs and Excise believe that in recent years, due to improved industry cooperation, the availability of genuine brand cigarettes has been greatly reduced and that therefore UK manufactured cigarettes on the black market have increasingly been replaced by counterfeit product (HM Customs and Excise, 2004b: 18; House of Commons, 2005: Ev. 5).

A similar trend may have emerged in Germany where Reemtsma’s “West” has apparently lost its position as market leader in the contraband cigarette market while at the same time becoming a popular brand to be counterfeit.<sup>64</sup>

These recent developments may be regarded as evidence that cigarette manufacturers are in fact in a position to control the supply to the black market to some extent.

On the other hand, it is peculiar to note that Gallaher, the British company which was the first to sign a Memorandum of Understanding with Customs and which has been characterized by Customs in 2002 as “certainly one of the most compliant companies” (House of Commons, 2003: Q 118), in 2003-04 accounted for 21 % of all cigarettes seized in the UK while the share of Imperial products dropped to a share of 3 % (tab. 4).

In a House of Commons hearing, a Gallaher representative explained that they had problems with one particular supplier who initially had given no reason for concern and that they had suspended the contract (House of Commons, 2005: Ev. 30).

While there are no sufficient insights into the Gallaher distribution system to pass a judgement on the question of responsibility, it is noteworthy that the diversion of cigarettes to the black market does not seem to coincide with any complaints by customs about a lack of cooperation. This in turn would suggest that diversion of untaxed cigarettes is possible against the will of a manufacturer at least for a certain period of time.

**Table 4:** Share of Cigarettes (%) Seized in the UK 2000-2004

Year	2000-2001	2002-2003	2003-2004
<b>Imperial</b>	50	11	3
<b>Gallaher</b>	./.	12	21
<b>Counterfeit</b>	./.	41	54
<b>Other (UK/non-UK)</b>	./.	36	22

Source: HM Customs and Excise in House of Commons (2005: Ev. 129)

4.6.2.4. *Tentative conclusions on the current role of the tobacco industry*

The recent development of large amounts of Gallaher cigarettes being diverted to the UK black market notwithstanding, the available evidence seems to suggest that the supply of non-duty paid cigarettes to the black market in the countries under consideration in this report has

<sup>64</sup> The first production facility for counterfeit cigarettes discovered in Germany produced fake “West” (Hannoversche Allgemeine Zeitung online, “Zigaretten gefälscht in illegaler Fabrik”, 1 March 2004), and a large-scale counterfeiting operation busted in February 2005, also produced “West” besides other prominent brands: “Marlboro”, “Prince Denmark”, “Regal”, “Benson & Hedges”, and “Superkings” (Zollfahndungsamt Hamburg and Staatsanwaltschaft Rostock, “Fürst’ des internationalen Zigarettenschmuggels festgenommen”, press release, 28 February 2005).

been decreasing over the past five years. Moreover, there is no indication that presently tobacco manufacturers collude with black market operators in a way that has been described for other markets and other historical periods.

#### **4.6.3. Links between black market and legal institutions**

As is the case with many other facets of the cigarette black market, there does not seem to exist in the public domain any systematic information on the link between black market participants and legal institutions, namely business (apart from the tobacco industry) and government.

##### *4.6.3.1. Business*

Anecdotal evidence exists on links between smugglers and the transport sector, between smugglers and the industries in transshipment countries producing commodities used for camouflaging contraband shipments (Van Duyne, 2003: 287), between counterfeiters and legal producers of component parts (see above 4.2.1.3.3), and between black marketeers and small business enterprises that are used for logistical purposes such as the storing and repackaging of contraband cigarettes or providing a cover for shipments.<sup>65</sup>

The link with the transport sector is essential for large-scale smuggling. However, the nature of the link seems to vary along a spectrum from complicity to complete ignorance. In some cases the available evidence suggests that hauling companies or at least either management or staff members are part of the conspiracy (Council of the European Union, 2003: 6; see also Van Duyne, 2003: 291, and von Lampe, 2003),<sup>66</sup> whereas in other cases, perhaps most frequently, smugglers hide contraband in the cargo without any knowledge on the part of the carrier (RILO, 2001: 13).<sup>67</sup>

##### *4.6.3.2. Government*

Anecdotal evidence also exists on links between black market operators and government institutions, referring mostly to corrupt ties reaching into customs to facilitate smuggling, and, to a lesser extent, ties to law enforcement in order to obtain some degree of immunity for domestic black market activities. Overall, cases of corruption are most often reported or alleged with regard to Eastern Europe, including collusion with high ranking politicians

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<sup>65</sup> Openbaar Ministerie, “Zeven aanhoudingen in oderzoek naar smokkel van wapens en sigaretten”, press release, 7 January 2005; Oliver Schäfer, “Autowerkstatt diente Bande als Lager”, Westdeutsche Allgemeine Zeitung, 11 September 2003; Daniel Taab, “Puzzlespiel für Kölner Zollfahnder”, Kölnische Rundschau, 29 January 2005; Gelnhäuser Tageblatt, “Nach Flucht und erneuter Festnahme Haftstrafe für Zigarettenschmuggler”, 24 April 2003; Sächsische Zeitung, “11 Millionen Zigaretten geschmuggelt”, 12 January 2005.

<sup>66</sup> See also Chemnitzer Morgenpost, “Chemnitzer (33) als Schmuggler vor Gericht”, 5 September 2003; Zollfahndungsamt Essen, “Die A 2 bleibt Schmuggelroute Nummer 1 - rund 4 Millionen Zigaretten sichergestellt”, press release, 18 November 2004; BBC News, “Tobacco smuggling gang jailed”, 9 February 2001.

<sup>67</sup> The Court of Justice of the European Communities has ruled that even in these cases the driver and co-drive are liable for customs duties (OJ C 94 of 17.04.2004, p. 7).

(Bezlov et al., 2004; Hajdinjak, 2002),<sup>68</sup> whereas in the countries under consideration in this report, corruption in connection with the cigarette black market seems to be confined to a few isolated cases,<sup>69</sup> although these cases also include allegations of high level influence taking.

In one case reported from Lithuania, a judge provided a protective “roof” for cigarette smugglers supplying black markets in Northwest Europe by various means, including hindering investigations, delaying arrests, and granting parole (Gutauskas et al., 2004: 220).

In Germany, a high-ranking treasury department officer who had the responsibility of overseeing the customs service’s detective branch came under suspicion in 2001 of collaborating with smugglers and of warning the Reemtsma tobacco company of an impending raid. Allegations also surfaced that this officer purposefully initiated a fundamental restructuring of the detective branch with the aim of weakening its capacities to combat cigarette smuggling. The officer was transferred to a different post within the treasury department but no charges have been filed as of the writing of this report four years later.<sup>70</sup>

In the United Kingdom, according to press reports, the cigarette manufacturer British American Tobacco in the year 2000 “was able to put private pressure on Tony Blair and a cabinet minister who wanted to hold an inquiry into allegations that the firm was colluding with criminals. (...) After the behind-the-scenes lobbying”, the newspaper ‘The Guardian’ charged, the plan for such an inquiry was dropped.<sup>71</sup>

#### **4.6.4. Environmental conditions believed to be influenced by the black market**

Several negative consequences are variously ascribed to the cigarette black market, some of which seem more obvious than others, while in general there appears to be no sufficient evidence to establish the degree to which the assumed causal links have in fact materialized.

Some of the ascribed consequences pertain to the actors directly involved in black market activities, some to the broader socio-economic environment of the cigarette black market.

##### *4.6.4.1. Consequences for black market participants*

Perhaps the most obvious and straightforward consequence of the cigarette black market is that it provides an income for individuals who are willing to break the law. Connected concerns relate to the possibility that these black market participants are placed in a position to finance other forms of crime, including terrorist activities, and to gain influence over the

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<sup>68</sup> See also Nikolaus Förster and Sead Husic, “Investigators probe Montenegro’s role at centre of illegal cigarette trade”, *Financial Times*, 10 August 2001; Norbert Mappes-Niediek, “Der Geschmack von Freiheit und Anarchie”, *Die Zeit*, 7 November 2002, pp. 13-16.

<sup>69</sup> The only cases of corruption involving German customs officers in connection with cigarette smuggling date back to the early 1990s (Zoll aktuell, “Korruptionsvorsorge: Vertrauen sichern, Integrität fördern”, 5/2002, p. 6).

<sup>70</sup> Darmstädter Echo, “Ist der Kampf gegen den Zigarettenschmuggel verloren?”, 30 October 2004; *Der Spiegel*, “Korruption: Oberster Zollfahnder unter Verdacht”, 20/2001, p. 17.

<sup>71</sup> Rob Evans, David Leigh, Kevin Maguire, “Tobacco firm gained secret access to Blair”, *The Guardian*, 27 October 2004.

legal economy through money laundering (Council of the European Union, 2003: 3-4; HM Customs and Excise, 2000: 6-7).<sup>72</sup>

#### *4.6.4.2. Consequences for the environment*

##### *4.6.4.2.1. Public revenues*

The most obvious consequence of the cigarette black market for the broader socio-economic environment is probably the loss of public revenue from evaded excise and VAT (Dantinne, 2001; HM Customs and Excise, 2000: 7). However, it can not be assumed with any certainty that the same amounts of cigarettes distributed through the black market would otherwise have been sold duty-paid on the legal market because of the price elasticity of demand (Chaloupka and Warner, 1999; Gruber, Sen and Stabile, 2003). Still, revenue loss estimates are regularly published (see Joossens and Raw, 2000: 948). In the United Kingdom, for example, revenue losses from smuggling in 2003-04 were estimated at £ 1.9 billion, down from £ 2.7 billion in 2000-01 (HM Customs and Excise, 2004b: 16).

##### *4.6.4.2.2. Smoking prevalence and health*

Another widely held view is that the lower prices for contraband cigarettes stimulate consumption and consequently will lead to an increase in the health risks connected with smoking. Also, there are concerns that the cigarette black market can undermine efforts to limit youth access to tobacco products (Dantinne, 2001; HM Customs and Excise, 2000: 5; Joossens and Raw, 2000: 947; Joossens et al., 2000: 394). The underlying assumption is that vendors on the black market are more willing to sell cigarettes to minors than legal retailers (House of Commons, 2005: Ev. 60, 71).

In the case of counterfeit cigarettes, additional health risks are connected with the poor tobacco quality and the contamination with dangerous materials (HM Treasury, 2004: 12-13; House of Commons, 2005: Ev. 49; see above, 4.2.1.3.3).

There are no studies available that would provide evidence of such links. However, it is interesting to note that smoking prevalence among adults and juveniles has not increased parallel to the growth of the cigarette black market in the United Kingdom, but compared to the 1970s and 1980s the trend of declining smoking prevalence has slowed down and levelled off over the past 15 years (HM Customs and Excise, 2000: 6; Petersen and Peto, 2004: 14-15). In Germany, an increase in the number of young smokers has been observed (Drogenbeauftragte der Bundesregierung, 2003: 47).

##### *4.6.4.2.3. Legal tobacco retailers*

One group that is quite clearly affected in a negative way are legal tobacco retailers who are in competition with the black market (HM Customs and Excise, 2000: 7). In a 2004 survey conducted among tobacco retailers in the United Kingdom, 88 % of respondents reported that smuggling has decreased their tobacco sales, with 36 % claiming that there has been a dramatic decrease (House of Commons, 2005: Ev. 60). As far as can be seen, there are no

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<sup>72</sup> See also Conny Neumann and Andreas Ulrich, "Rauchen für den Krieg", *Der Spiegel*, 8/2003, p. 82.

similar data for the other countries included in this report, but negative effects on legal retailers have been noted in more general terms (European Parliament, 1997: 49).

#### 4.6.5. Countermeasures

Countermeasures to curb the cigarette black market in Northwest Europe have been adopted on various levels since the early 1990s. Some of these measures seem to have had an identifiable impact, thereby changing the basic conditions for black market operators.

##### 4.6.5.1. Community transit system

On the supra-national-level, the first steps to combat cigarette smuggling were taken within the framework of the Community Transit System and aimed at making it more difficult to divert untaxed cigarettes to the black market within the EU prior to proper export. The exclusion of cigarettes from the TIR<sup>73</sup>-system in 1994<sup>74</sup> was followed by increases in the guarantee to be furnished for the tax and duty exempt shipment of cigarettes under the Community Transit System.

The Community Transit System is a concession system aimed at facilitating trade by allowing the temporary suspension of customs duties, excise and VAT payable on goods originating from and/or destined for a third country while under transport within the EU (European Parliament, 1997: 26). The System requires, in cases of road transport, that the principal, usually the freight forwarder, provide customs with a legally enforceable guarantee.

In February 1996, the so-called 100 % guarantee was introduced for sensitive goods, including cigarettes, as a temporary measure which, however, is still in effect as of the writing of this report. The principal has to provide a specific guarantee covering 100 % of potential liability for each transit operation. Previously, the required guarantee only covered an amount corresponding to 30 % of the potential liability on an estimated one week's turnover of the respective principal (European Parliament, 1997: 27).

The introduction of the 100% guarantee has, according to Member States customs authorities, been followed by a marked decline in transit fraud and a shift towards traditional smuggling and the false declaration of goods. According to one explanation, freight forwarders have grown more cautious about whom they do business with, and the most serious operators in the business now thoroughly check the credentials of those on whose account they will provide a transit guarantee (European Parliament, 1997: 56).

##### 4.6.5.2. Intensified customs controls

Another approach to curbing cigarette smuggling has been taken on the national level by different member states with the intensification of customs control of cross-border traffic. Measures include the increase of staff, introduction of stationary or mobile scanners and the use of tobacco sniffing dogs.

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<sup>73</sup> “Transports Internationaux Routiers” - International Road Transport.

<sup>74</sup> AW-Prax, January 1995, Supplement, p. 2.

#### 4.6.5.2.1. *Increased staff*

Increase of staff has been a strategy early on in Germany. Recruitment for the customs service to combat cigarette smuggling was declared a priority by the Treasury Department in 1991.<sup>75</sup> In the same year, a special unit (“Blauer Dunst”) to disrupt the cigarette black market in East Germany was formed from the ranks of West German customs agents. The unit was disbanded in 1998 after seizing some 275 million cigarettes and after retail distribution patterns were perceived to have shifted from open street selling to more clandestine methods (Bundesministerium der Finanzen, 2003: 58).

In the United Kingdom, the Tackling Tobacco Smuggling Strategy (TTS) was launched in 2000. One component of the strategy was for Customs to increase front-line and investigative staff by almost 1000 and to further develop a network of liaison officers based overseas (HM Customs and Excise, 2000: 11; House of Commons, 2005: 8).

#### 4.6.5.2.2. *X-Ray scanners*

X-ray scanners are used to examine trucks and containers without having to unload the cargo. With a scanner, more freight can be checked in a shorter period of time than by conventional means. While the physical verification of a container’s load can take about eight hours, a scan can be performed in about 20 minutes. Apart from time efficiency, scanners are also regarded as cost efficient because they may generate taxes in amounts that exceed the high procurement costs (Bundesministerium der Finanzen, 1998: 62; van de Voort and O’Brien, 2003: 10-11).

In Germany, the first scanner was introduced in 1996 at the port of Hamburg, originally with the intention of improving the control of drug smuggling. But from the beginning it proved effective against cigarette smuggling as well. During its first five years of operation alone it led to the discovery of 540 million cigarettes (out of a total of 4.5 billion cigarettes seized in Germany in the time period 1996-2001).<sup>76</sup> Other scanners have been added in recent years, including six semi-mobile scanners as of early 2005.<sup>77</sup>

In the United Kingdom, a network of scanners has been installed as part of the Tackling Tobacco Smuggling Strategy since 2001, which detected 700 million cigarettes in the first two years of operation (House of Commons, 2005: 8, Ev. 9, 46).

Scanners have also been deployed in Belgium and the Netherlands, in 2002 and 1999, respectively.<sup>78</sup>

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<sup>75</sup> Zeitschrift für Zölle und Verbrauchssteuern, 1991, p. 336.

<sup>76</sup> BMF-Finanznachrichten, “Erste Röntgenanlage für Transportcontainer in Betrieb genommen”, 21/1996, 2; Zoll, “Fünf Jahre Containerprüfanlage des Zolls in Hamburg”, press release, 21 December 2001.

<sup>77</sup> Zoll aktuell, “Zigarettschmuggel: Der Zoll macht Druck”, 1/2005, p. 10; Zoll- und Verbrauchssteuerabteilung Dresden, “Zoll intensiviert Schmuggelbekämpfung vor und nach EU-Osterweiterung”, press release, 22 August 2003.

<sup>78</sup> RALFH Newsletter, “Rotterdam Maasvlakte”, July 2001, p. 4; RALFH Newsletter, “Mobile container scan for Antwerp customs department”, July 2002, p. 5.

#### 4.6.5.2.3. *Tobacco sniffing dogs*

Sniffing dogs trained to detect tobacco have been a more recent addition to the instruments used by customs to curb cigarette smuggling. After successful tests in the UK and the Netherlands, a pilot project in Germany was launched in 2001 with the training of six dogs.<sup>79</sup> In the Netherlands, nine dogs were in service as of 2004.<sup>80</sup> While their effectiveness appears to be high, - the check of a truck can be done in a few minutes -,<sup>81</sup> there are no systematic data available on the impact of tobacco sniffing dogs.

#### 4.6.5.2.4. *Perceived outcome of intensified customs control*

Intensified controls of freight traffic have been linked to decreases in the number of cigarettes confiscated by customs as they have been observed since 2000 in Germany, the Netherlands and most other Members States (Bundesministerium der Finanzen, 2003: 57; Council of the European Union, 2003: 2; Van Dyne, 2003: 287). Scanners and detector dogs, it has been argued by some, have reduced smuggling altogether, or at least have forced smugglers to divide shipments into smaller consignments or to seek out new routes for their contraband shipments (Van Dyne, 2003: 287; Eichel, 2004; House of Commons, 2005: Ev. 77).

As mentioned above (4.2.1.3.1.3), an aggressive policy launched against the so-called “white-van trade” in the UK in 2000 is also believed to have had an impact, while also invoking criticism in the public and by the EU Commission for being overly harsh.<sup>82</sup>

#### 4.6.5.3. *Public awareness campaigns*

Countermeasures have also been directed against the demand side, namely public awareness campaigns. Campaigns to raise public awareness about the negative implications attributed to the cigarette black market have been launched, at least, in Germany and the United Kingdom. One slogan of a campaign launched in Germany in 1993 read “He who buys contraband supports organized crime”.<sup>83</sup> However, there are no data available to assess the impact of these campaigns.

### 4.6.6. Overall trends

The cigarette black markets in the countries under consideration in this report have undergone significant changes in the past 10 to 15 years. These changes pertain, first of all, to the presumed market volume, but other key variables have also changed. For example, as has been detailed above, the restraints for black market activity that are set up by law and law enforcement have not remained constant over the years.

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<sup>79</sup> Berliner Morgenpost, “‘Dingo’ ist einer von sechs Zigaretten-Spürhunden beim Zoll”, 16 February 2002; Zoll, “Neue Wege bei der Bekämpfung des internationalen Zigaretten schmuggels”, press release, 19 December 2001.

<sup>80</sup> Neue Züricher Zeitung, “Hunde im Einsatz gegen Tabakschmuggel”, 4 June 2004.

<sup>81</sup> Neue Züricher Zeitung, “Hunde im Einsatz gegen Tabakschmuggel”, 4 June 2004.

<sup>82</sup> Andrew Osborn and Larry Elliott, “Anti-smuggling regime under EU fire”, Guardian, 19 September 2002; The Economist, “Anything to declare?”, 21 September 2002, pp. 36-37.

<sup>83</sup> BMF-Finanznachrichten, “Bundesfinanzministerium startet Antischmuggelkampagne”, 53/1994, 3-4.

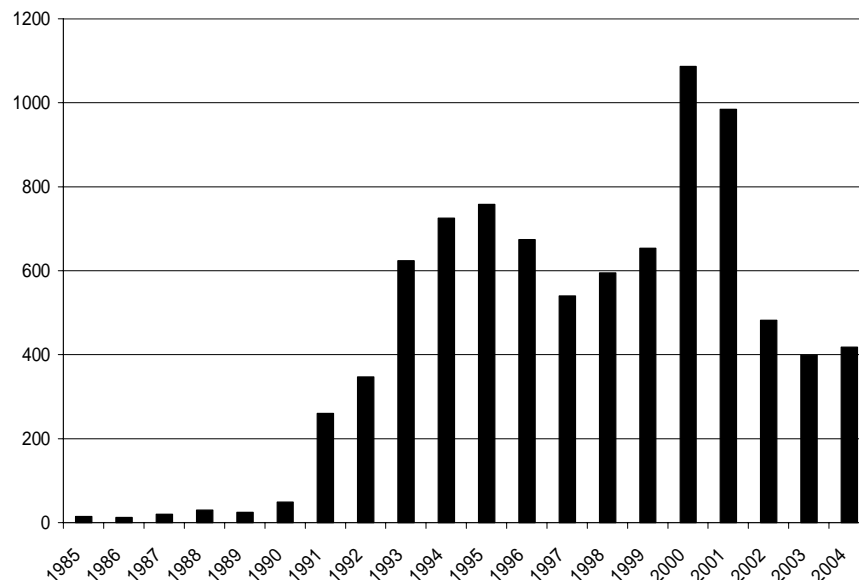


#### 4.6.6.1. The development in Germany

In Germany, statistics on the seizure of contraband cigarettes have been used to distinguish various phases of development.

Whereas low level smuggling from Luxembourg and valuta stores in Eastern Europe were reported in the 1980s, the cigarette black market as a major problem is believed to have emerged only after the fall of the Iron Curtain. A preliminary peak was reached in the mid 1990s, followed by a fall in the number of seized cigarettes until 1997 parallel to joint customs and police efforts to disrupt the street sale of contraband cigarettes in East Germany (von Lampe, 2002). In 1998, the trend was reversed again and an all time high reached in the year 2000 as increasingly cigarettes bound for the UK black market were intercepted in Germany (Bundesministerium der Finanzen, 2003). From 2002 until 2004 seizures have remained below the levels reached during the previous nine years (Fig. 4).

**Figure 4:** Cigarettes Seized by German Customs 1985-2004



Million per year

Source: Zoll (various publications)

A reversal of the trend had been foreseen as a consequence of the EU-enlargement in May 2004 and the removal of controls at the German-Polish and German-Czech borders, combined with tax increases.<sup>84</sup> This reversal may have taken place in 2005. The customs officers' union has claimed that the actual volume of smuggling had already doubled in 2004,<sup>85</sup> although the number of seized cigarettes has only slightly increased in 2004 compared with 2003.

Similarly, law enforcement agencies in Berlin report that they have detected no increase in black market activities in 2004, at least as far as organized criminals are concerned

<sup>84</sup> Andreas Förster, "Zigarettenmafia goes West", Berliner Zeitung, 27 April 2004; Hamburger Abendblatt, "Zoll befürchtet eine Welle von Schmuggelzigaretten", 29 April 2004.

<sup>85</sup> Frankfurter Allgemeine Zeitung, "Zigarettschmuggel reißt Etatlücke", 28 October 2004; see also Dirk Banse and Hans H. Nibbrig, "Schmuggel nimmt deutlich zu", Die Welt, 13 September 2004.

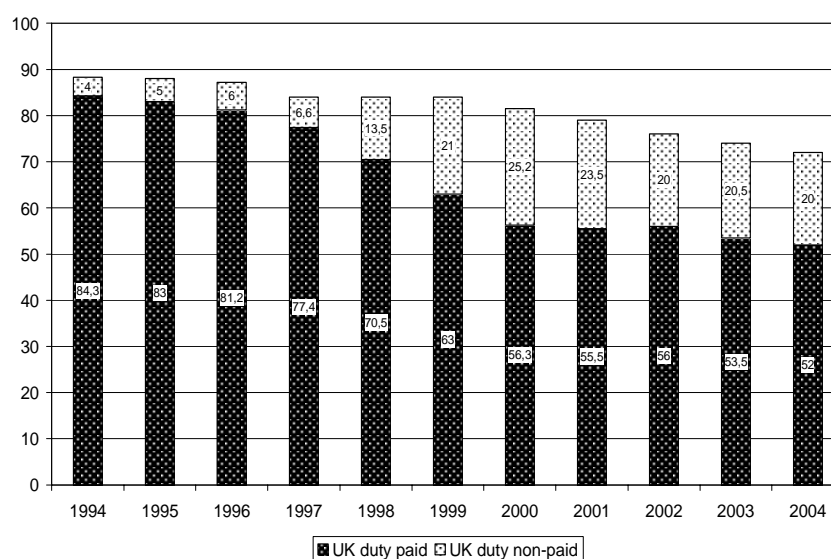
(Polizeipräsident in Berlin and Staatsanwaltschaft Berlin, 2005: 26). But in the first half of 2005 customs reportedly have seized more cigarettes than during the entire previous year.<sup>86</sup>

#### 4.6.6.2. The development in the United Kingdom

In contrast to Germany, it is less clear when the cigarette black market emerged as a major problem in the United Kingdom. While some sources cite the introduction of the Single Market in 1993 as the starting point of the development, others note that the Single Market initially only promoted high volume smuggling of hand rolling tobacco and that the emergence of a significant cigarette black market is a development dating back no earlier than 1996 or 1997 (HM Customs and Excise, 2000: 5; House of Commons, 2003: Q 138, 352, 391; 2005: Ev. 108, 117).<sup>87</sup>

Estimates by the Tobacco Manufacturers Association on the size of the non-UK duty paid sector suggest a slow increase in cigarette smuggling until 1997 and a more dramatic increase in the years 1998 through 2000 (Fig. 5).

**Figure 5:** Cigarette Consumption in the UK 1994-2004 (TMA Estimates)



Billion per year

Non-UK Duty Paid = smuggling, legal cross border and duty free shopping

Source: Tobacco Manufacturer’s Association at [www.the-tma.org.uk](http://www.the-tma.org.uk)

The year 2000 is also the year when according to Customs estimates the cigarette black market in the UK peaked (House of Commons, 2005: 9). Since then, the amounts of seized cigarettes have decreased from 2.8bn in 2000-01 to 1.8bn in 2003-2004 (HM Customs and Excise, 2003a: 139; 2004a: 143), and according to all available data and estimates, the volume of the black market has decreased along with a change in modus operandi (House of Commons, 2005: 9-10, Ev. 83). Two changes seem to be most significant, the reduction of the

<sup>86</sup> Andreas Ulrich, “Drehen im Untergrund”, Der Spiegel, 27/2005, 56-57.

<sup>87</sup> See also Süddeutsche Zeitung, “Für Briten Schmuggelware statt Duty-Free”, 18 June 1999.

“white van trade”, possibly followed by a shift to air passenger smuggling, and the emergence of counterfeit cigarettes as a main type of product on the black market.

#### *4.6.6.3 Genuine and counterfeit product*

While the volume of the cigarette black markets may be on the decrease in the countries under consideration in this report, the relative and absolute importance of counterfeit cigarettes seems to have continuously increased over the past few years. In the United Kingdom, customs report a three-fold increase in 2003-04 over 2001-02 in the volume of counterfeit cigarettes seized. In 2003-04, 54 % of cigarettes seized were counterfeit (House of Commons, 2005: 17).

In Germany, three times more counterfeit cigarettes were seized in 2004 compared to 2003, amounting to 165 million out of a total of 418 million contraband cigarettes seized.<sup>88</sup> In the first half of 2005, more than 100 million cigarettes were seized in raids on two illegal cigarette factories alone.<sup>89</sup>

## **5. Discussion of the relevance of the description**

The above account sheds some light on the functioning and volume of the cigarette black market, the participating individuals, their intra- and inter-group relations, the links with the legal spheres of society, and trends over time. As such, it may have some descriptive value. But this does not necessarily mean that any more far reaching inferences can be drawn.

The purpose of this section is to evaluate, to the degree possible, the social relevance of the described phenomena, more specifically the relevance of criminal networks and criminal organizations in the cigarette black market, by comparing the empirical findings with plausible and empirically grounded theoretical assumptions about the social consequences of specific manifestations of criminal structures and criminal activities.

### **5.1. Propositions on the social relevance of the observed phenomena**

#### **5.1.1. Specific propositions pertaining to the cigarette black market**

On a global level it is possible to make some assumptions about the relevance of the cigarette black market as such compared with a situation where no black market exists at all or where the size of the market is significantly larger or smaller. After all, it seems to be fairly straightforward to assume that the effects ascribed to the black market, such as loss of public revenue and greater availability of cheap cigarettes, correlate at least to some extent with the overall dimension of the problem.

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<sup>88</sup> Bundesministerium der Finanzen, “Zoll legt überzeugende Jahresbilanz 2004 vor”, press release, 1 April 2005.

<sup>89</sup> Andreas Ulrich, “Drehen im Untergrund”, *Der Spiegel*, 27/2005, 56-57.

On this level it can be said that the cigarette black market has become a considerable fiscal problem and a potential public health problem, which has been most severe in the UK around the year 2000 and in Germany in the mid 1990s and possible in 2005. In comparative terms the United Kingdom seems to have been more affected by the phenomenon than Germany or any other country under consideration in this report over the past 5-8 years. However, given the uncertainty regarding the exact volume of the cigarette black market before the background of methodological difficulties and the lack of cross-nationally comparable data, it does not seem possible to come to a much more detailed and concise judgment.

But even provided the methodological difficulties in actually establishing the volume of the black market can be overcome, the assessment would be very narrowly focused on one aspect of the cigarette black market while blending out all aspects that are not directly related to the number of contraband cigarettes sold and consumed.

### 5.1.2. General propositions

With the goal of a meaningful assessment of organized crime in mind, the challenge is to evaluate not just a certain type of crime in terms of volume but a particular constellation of activities, actors, and structures that may have social relevance in many different respects. This essentially requires an understanding of how the various aspects under examination manifest themselves, how they are interrelated, and how individually or in combination they affect their environment.

#### 5.1.2.1. Offender structures and threat levels

The analyzed open source material does not contain any explicit theoretical propositions of this kind. What can be found are scattered, more or less implicit notions about a link between the involvement of criminal groups and the gravity of the situation.

The British government, for example, states as one purpose of its fight against cigarette smuggling, apart from protecting public revenue and private business, the aim “to protect society from organised crime” (House of Commons, 2005: 4). The underlying rationale presumably is the concern that, as a customs report has put it, “large scale tobacco smuggling has the potential to create the building blocks for organised crime networks run along business lines in a way rarely seen before in the UK, and to finance other serious criminal activity” (HM Customs and Excise, 2000: 6-7). Conversely, there is also the concern that existing criminal groups move into the cigarette black market as a more profitable and in any case less risky business than, for example, drug trafficking (NCIS, 2003: 46).

There is some information to that effect. According to one estimate, “one in five organised crime gangs involved in smuggling Class A drugs into the UK are also engaged in tobacco smuggling” (Seely, 2002: 11). In Germany, individuals involved in cigarette smuggling have also been connected with alien smuggling and the trafficking in stolen motor vehicles.<sup>90</sup> In

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<sup>90</sup> Die Tabakzeitung, “Tabaksteuererhöhung bei offenen Grenzen ruft Zigarettensmafia auf den Plan”, 16 April 2004. See also Thomas Bär, “Sachsen als Drehscheibe”, Prager Zeitung online, 25 February 2004.

investigations conducted by Bulgarian, Dutch and British authorities, large-scale cigarette smugglers were also linked to arms trafficking.<sup>91</sup>

In short, it is believed that the cigarette black market not only causes revenue losses and promotes cigarette smoking, but also breeds and strengthens criminal groups that constitute a threat in their own right.

#### *5.1.2.2. Determining the quality of offender structures*

To follow up on this idea and to come to a meaningful assessment, however, one would have to have a fairly thorough understanding of the level and nature of co-offending in the cigarette black market, and one would have to know what kind of social impact the respective structures entail. Since there is no clarity on the first question, given the lack of systematic data on offender structures, no assessment can be made at this point.

At the same time, it must be stressed that even if concise and comprehensive data on group structures in the cigarette black market existed, they would not be self-explanatory and not necessarily meaningful for an assessment of the overall situation.

In the organised crime literature it has been argued that criminal groups in the sense of illegal enterprises are shaped by their environment and the specific tasks at hand (Southerland and Potter, 1993; Smith, 1994). This implies that it is unlikely to see group structures persist in a dynamic environment. In fact, empirical research in Europe suggests that the predominant structural patterns of cooperation are webs of personal relations that are flexibly used by criminals for the commission of crimes as opportunities arise and circumstances require (Bruinsma and Bernasco, 2004; Kleemans and van de Bunt, 2003, Paoli, 2003; Zaitch, 2002). Therefore the continuity does not so much lie in a particular group structure but in the underlying networks of criminally exploitable ties, although these networks are also subject to change over time. Accordingly, the description of a group structure in a given case is first of all a snapshot that cannot be expected to be representative of the ways the participants cooperate at different times and under different conditions.

This appears to be even more the case with regard to different areas of crime. A certain organisational design may be essential for one task but completely dysfunctional for another. For example, a hierarchical structure can be regarded as a necessary prerequisite for a power syndicate that wishes to impose its control over a territory or illegal market (Gambetta, 1996: 68), but it may be counterproductive for an illegal enterprise that has to operate in a hostile and uncertain environment, as is the case with drug trafficking (Paoli, 2003).

Thus, the quality of a particular group structure in terms of efficiency cannot be ascertained on an abstract basis. Instead, in each case it would have to be determined how well, measured by a broad set of factors, the group structure is suited to accomplish the tasks at hand under the given circumstances, and how adequate they are with regard to other potential areas of operation.

Moreover, in light of the empirical evidence on the predominant patterns of cooperation it seems that a profound assessment will have to include the underlying network of criminally exploitable ties that connects the participants of a particular illegal enterprise and possibly

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<sup>91</sup> Openbaar Ministerie, “Zeven aanhoudingen in onderzoek naar smokkel van wapens en sigaretten”, press release, 7 January 2005.

other criminal actors. There are various levels on which to analyse networks, the ties of a particular network member (egocentric network), the ties between two or three network-members (dyads and triads), and the entire (complete) network (Knoke and Kuklinski, 1982: 16-17). The questions that could be addressed as relevant include the size and structure of the complete network, and the durability and flexibility of network ties.

While relations are the building blocks of network analysis (Knoke and Kuklinski, 1982: 12) it may also be plausible to pay attention to the characteristics of individual network members to determine what resources can be activated through the network. In this context, not so much the ethnic background appears to be important but the social status, and as a separate dimension, personal talents and skills (von Lampe, 1999: 318; 2004a: 245). As a result, an assessment could highlight what type of offenders are linked up in how large, how resilient and how flexible networks of criminally exploitable ties.

However, it must be stressed that there does not seem to be a theoretical framework at hand that could refine the analysis beyond the level of prima facie plausibility, neither with regard to the adequateness of certain group structures in the various contexts of the cigarette black market, nor with regard to the social relevance of different properties of networks of criminally exploitable ties. In the end, this implies a fundamental need for linking organized crime assessment and empirically grounded theory building (von Lampe, 2004a; 2004b). Put in another way, before an assessment of the situation can give answers, the right questions have to be formulated.

### **5.1.3. Seriousness of the situation in absolute and relative terms: Is a judgement possible?**

Following from the previous discussion, there is no empirical or theoretical basis to pass a judgement on the seriousness of the situation with regard to the offender structures involved in the cigarette black market. This also means that there is no basis for comparing the seriousness of the situation in the cigarette black market with that in the other areas of crime under investigation by the “Assessing Organised Crime”-project, i.e. drug trafficking, alien smuggling, and human trafficking.

## **6. Summary and outlook**

### **6.1. Summary of flaws in database and theoretical framework**

The review of open source data has led to a fragmentary assessment of the situation of the cigarette black market in Northwest Europe. Although for all key aspects that are commonly addressed in discussions of organized crime (activities, individuals, group structures, underworld structures, legal-illegal links) some information could be found, the knowledgebase by and large is small and in any case too small to come to a comprehensive

assessment, perhaps with the exception of a rough outline of the major schemes applied to bring cigarettes to the black market.

The two most severe deficiencies in the available data appear to be

- a lack of concise data on offender characteristics and offender structures; and
- a lack of time series data and cross-nationally compatible data.

Additional data do exist in the non-public domain, namely in the hands of customs and police. This information, systematically analyzed, would in all likelihood provide for a more detailed and more in-depth account. However, the need for a theoretical framework that can put the available information in perspective would become even more pressing. Such a theoretical framework would have to be derived from the general organized crime literature and adapted to the peculiarities of the cigarette black market. This may call for empirically grounded theory building preceding the assessment proper, or for an integration of assessment and research into a continuous learning process.

## **6.2. Outline of a methodologically sound approach**

Given the interlinking deficiencies in the available data base and theoretical framework it is not possible to devise a methodologically sound approach simply by calling for more information where so far it has been lacking. The key question is what information really matters for an assessment that, in line with the common meaning of the term, goes beyond a mere description.

It seems that there are two paths that need to be followed. The one path is about the volume of the cigarette black market, the other is about the people involved in the black market.

### **6.2.1. Improving black market volume estimates**

It appears plausible to assume that the seriousness of the situation in many respects is linked to the volume of the cigarette black market, regardless of who is involved in the various market transactions. This pertains namely to losses in public revenue and health issues related to smoking. The volume of the market is defined by the number of cigarettes sold to consumers. Various methods have been employed in the past to establish this number, including consumer surveys and pack surveys. These methods should be integrated into an overall framework to arrive at longitudinal and cross-sectional data on the consumption of contraband cigarettes. It seems especially important from a law enforcement point of view, but also from a research perspective, to detect patterns of regional differences in black market activity on a continuous basis. Such information could provide valuable orientation for the efficient allocation of resources and could expose contingencies of the black market.

### **6.2.2. Improving knowledge on offenders and offender structures**

There is also some plausibility attached to the notion that the cigarette black market promotes the emergence and continued existence of criminal structures. However, the focus should not be on criminal groups in terms of clear cut organizational entities. The concern that criminal groups could pose a threat in and by themselves beyond the black market activities they are involved in is at odds with research findings from the study of organized crime. Apart from the difficulty of establishing the existence of organizational units and apart from the ever present danger to over interpret offender relations, other aspects may be more important when it comes to determining the threat potential of the offenders engaged in and profiting from black market activity.

Assuming that the predominant structural pattern of criminal cooperation in Europe are webs of personal relations that are flexibly used by criminals for the commission of crimes, it would seem more relevant to determine the quality and reach of such networks of criminally exploitable ties and the quality of the individuals belonging to these networks, rather than to classify the group structure in the context of a particular criminal endeavour. The focus, therefore, should shift from the analysis of offender structures in a particular case to the web of ties between offenders within the cigarette black market and beyond, and it should be broadened to also include information on the personal capacities of the offenders. In this context not so much the ethnic background appears to be important but the social status, and as a separate dimension, personal talents and skills. As a result, an assessment could highlight what type of offenders are linked up in how large, how resilient and how flexible networks of criminally exploitable ties.

### **6.2.3. Potential outcome**

A situation report based on more consistent market volume estimates and more systematic data on offender networks and individual potentials could go in the direction of an assessment of the seriousness of the cigarette black market. While an empirically grounded theoretical framework would still be lacking, some tentative assumptions could be made about the overall dimension of the problem and about the human and social capital of the black market participants.



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