Occasional Paper

E-Commerce, Delivery Services and the Illicit Tobacco Trade

Alexander Babuta, Cathy Haenlein and Alexandria Reid
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Executive Summary

THIS OCCASIONAL PAPER examines the exploitation of the internet and delivery services in relation to illicit trade in tobacco products in Europe. The findings are based on primary research in the form of semi-structured interviews with subject matter experts from law enforcement agencies, government, the private sector, NGOs and international organisations conducted in the UK, France and Germany between May and July 2018.

The research demonstrates that the growth of e-commerce and proliferation of postal and small parcel delivery services have had a significant impact on the trade in illicit tobacco products in many of the locations under consideration. Illicit tobacco products are now readily available to purchase with little effort and minimal risk – through online marketplaces, purpose-built hosted websites and social media platforms. In the past few years, as the number of social media users has increased dramatically, platforms such as Facebook appear to have become the primary medium through which illicit tobacco products are sold online, although online marketplace websites continue to be exploited. As illicit tobacco products are so readily available to purchase on these platforms, there does not appear to be a market for such products on the darknet.

Evidence suggests that there are two distinct types of offender selling illicit tobacco products online: opportunist individual sellers with no links to organised crime; and organised criminals with international contacts, access to a steady supply of illicit products, and sophisticated distribution networks. It appears that a small number of highly prolific sellers are responsible for a large proportion of all illicit sales. This has significant implications for investigation and enforcement, as it is likely that measures aimed at disrupting and apprehending the most prolific offenders will be more effective than measures targeting social media pages, groups and websites, which can reopen almost immediately following enforcement action.

A related but often distinct problem is the exploitation of postal and delivery services to transport illicit tobacco products into and within Europe. In recent years, the rapid growth of postal and parcel services has benefited criminal actors just as it has legitimate ones, although different postal and delivery operators face different levels of vulnerability. Given the sheer volume of small parcels now unloaded at customs facilities on a daily basis, customs officials are unable to inspect each consignment, instead relying on risk-led profiling strategies. Capitalising on this vulnerability, organised criminals have increasingly adopted a low-volume, high-frequency approach to smuggling all manner of illicit commodities (albeit alongside the ongoing use of high-volume transportation methods). In addition to reducing the risk of interception, low-volume, high-frequency methods also minimise the financial loss incurred in the event of a seizure, as a single consignment represents only a small proportion of illicit goods being transported by a given group.
Some criminal groups involved in illicit tobacco trade through postal and parcel systems are highly sophisticated and capable of coordinating long-running operations using multiple addresses, breaking up consignments across service providers. This agility makes it particularly difficult for customs and border agencies to enforce against this form of organised criminality.

The exploitation of the internet and delivery services to sell and transport illicit tobacco products in Europe are trends that are set to persist in the coming years. However, existing responses to the illicit tobacco trade are arguably not well suited to combat these new smuggling methods and could be strengthened in a number of ways.

First, internet companies, and particularly social media platform providers, could take measures to disrupt the sale of illicit tobacco products on their platforms. For instance, algorithmic content filters – in combination with human reviewers – are widely used to prevent the sharing of content that violates the platforms’ policies, such as pornography, hate speech and terrorist-related content. Such methods should also be used to prevent the sharing of material that violates the platforms’ commerce policies, including those related to tobacco products. Collaboration between platform providers and law enforcement agencies should be strengthened, to ensure the lawful provision of data to enable successful prosecution cases to be brought against the most prolific online offenders.

Second, in relation to abuse of postal and delivery services, it is crucial to strengthen two-way information-sharing mechanisms between postal and parcel operators and customs agencies. While cooperation has improved in recent years, there remains significant variation between countries and between delivery service providers, and further action is needed to ensure collaborative working practices between law enforcement agencies and delivery service providers as a group. Furthermore, existing risk assessment and profiling methods used by customs agencies are often not well suited to identifying the low-volume, high-frequency smuggling methods now favoured by some organised criminals. As such, there is a need to develop more sophisticated and intelligence-led approaches to risk assessment, for instance by using big data analytics to identify suspicious consignments and routing patterns.

More broadly, there is a need to strengthen information-sharing mechanisms between law enforcement agencies and other parts of the private sector. While cooperation has improved considerably in recent years, the private sector collects a large amount of useable information related to illicit trade, yet in many cases law enforcement agencies do not use this information. Improving information sharing with the private sector – including the tobacco industry – would provide law enforcement agencies across Europe with a richer intelligence picture of the individuals and groups involved in illicit trade activity.

At the same time, the decentralised business structure and low-volume, high-frequency methods favoured by many groups involved in the illicit tobacco trade render seizure-focused enforcement action increasingly ineffective. Law enforcement agencies can only intercept a small fraction of all goods being transported. Moreover, the consignments that are intercepted are often too low in value to have a meaningful deterrent impact on the smuggling group. For
this reason, a greater focus on prevention is needed. It is important to devote more resources to consumer-focused demand-reduction campaigns, particularly through social media.

The trends examined in this paper suggest that a new generation of organised criminality is developing across Europe, one that will require new and innovative responses. Collaboration is crucial, between European governments, between law enforcement agencies, and between the public and private sectors.
Introduction

ONE-CLICK ORDERING, ONLINE reviews, next-day delivery and 24/7 accessibility are all services that global consumers have come to expect. From cars and holidays to insurance and banking, for many, the internet has become the preferred medium for purchasing goods and services, with ever-wider choices and increasingly competitive prices on offer. As the internet has revolutionised the way we shop, physical delivery methods have evolved to keep pace. Worldwide, a thriving postal and small package delivery market now moves an endless flow of parcels along global air and shipping links each day.

Together, these shifts have hastened a fundamental transformation of the global retail landscape. This has been widely celebrated in terms of its implications for economic development, access to global supply chains, market expansion and efficiency. Yet, as e-commerce and small packages have proliferated, they have brought with them critical vulnerabilities. Today, more than ever, it is clear that there is a dark side to the digital retail system on which we rely.

This lies in the fact that border and customs authorities worldwide are structured to deal with large shipments and bulk commercial consignments, rather than an endless flow of small packages. Necessity dictates that these authorities operate using risk-profiling techniques, selecting only those consignments deemed most suspicious for inspection. Given the sheer volume of small parcels unloaded at customs facilities on a daily basis, packages of a certain weight and size will rarely reach the threshold for inspection. On this basis, authorities can monitor only a small minority of the consignments transiting inspection and clearing sites.

This is a critical vulnerability on which organised crime groups (OCGs) have capitalised. Seizures of products ordered online and delivered by post have become commonplace, from illegal drugs and fake pharmaceuticals to counterfeit shoes and clothing. Those packages seized only hint at the scale of the traffic transiting these systems, which offer anonymity and convenience to suppliers and recipients alike. Beyond those products seized, many inevitably reach their destinations, with a range of potentially damaging effects.

As highlighted by the OECD, a ‘small-package delivery system which escapes controls has combined with the democratisation of trade through e-commerce to ignite a boom in illicit trade’.\(^4\) Customs agencies across Europe increasingly report the very real threat to health, safety and security posed by online access to illegal products of all kinds, and the dispatch of small, low-value shipments.\(^5\) From heroin to fake handbags, worldwide, neither legislation nor enforcement has kept pace with these expanding criminal methods.

This Occasional Paper explores the exploitation of the internet and delivery services in relation to one particular set of commodities: illicit tobacco and tobacco products. This covers multiple forms of illicit activity, from trade in counterfeit and contraband cigarettes to illicit trade in component parts, packaging and loose tobacco. The paper discusses all of these commodities but focuses most closely on trade in counterfeit and contraband cigarettes. Importantly, this paper is not concerned with assessing the suitability of existing legislative and regulatory frameworks governing the legal online tobacco trade, but looks only at the illicit trade in tobacco products that is conducted outside these frameworks.

The exploitation of the internet and delivery services in the illicit tobacco trade is increasingly recognised as a concern for law enforcement. In 2016–17, RUSI’s On Tap Europe series highlighted both components as enablers of the illicit trade in tobacco, as well as that in alcohol and pharmaceuticals.\(^6\) A range of other studies have similarly noted the importance of these factors in facilitating the illicit tobacco trade.\(^7\) Yet, to date, there has been little research exploring the precise tactics and methods used to exploit the internet and delivery services for transporting and selling illicit tobacco products.

This study aims to address this gap, examining in detail these two enablers of the illicit tobacco trade. In this paper, the internet and delivery services are considered separately, with delivery services understood to encompass both publicly and privately run postal and parcel services – a market whose diversity is explored in Chapter III. In some cases, there is a clear link between illicit tobacco products ordered online and seizures made at postal hubs. However, this is not always the case: this paper shows that online illicit trade is sometimes entirely detached from the use of postal and parcel services, and vice versa. Increasingly, illicit transactions are arranged

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through social media platforms, with goods subsequently exchanged in person – a phenomenon described here as ‘the digitalisation of street selling’.  

The paper examines these topics with reference to three EU countries: the UK, France and Germany. In 2017, all three were among the top five countries in Europe identified by Project SUN as sites of illicit cigarette consumption by volume: France first, the UK second and Germany fourth. All three have advanced digital and postal infrastructures, yet face diverse challenges in terms of their relative positions in the illicit supply chain.

The purpose of this paper is not to explicitly compare the threats faced or the responses adopted in these countries. Instead, research conducted in all three countries is used to explore the nature of the broader threat and the options available to address it. Specifically, in presenting evidence gathered across these countries, the paper has a number of objectives. These are to:

- Illustrate the tactics and methods used by criminals and OCGs in their abuse of the internet and delivery services.
- Assess the vulnerabilities that facilitate the exploitation of these services by organised criminals.
- Examine existing law enforcement responses and their effectiveness, as well as information-sharing mechanisms between public and private sectors.
- Identify best practices and propose recommendations to inform the broader response to the illicit tobacco trade.

**Methodology**

Research for this paper was carried out in three phases. The first phase comprised a review of existing academic literature, government policy documents, law enforcement strategy documents and private sector reports on organised crime and the illicit tobacco trade in Europe, with a particular focus on the internet and delivery services.

In the second phase, semi-structured key informant interviews were conducted with 50 respondents, including 26 serving law enforcement officers and government representatives, 18 private sector representatives, and six representatives of NGOs and international organisations. Participants were selected based on their knowledge of the topics under investigation.


A snowball sampling method was used, whereby participants suggested additional respondents for inclusion in the research. Interviews were conducted on an anonymous basis in eight locations across the UK, France and Germany between May and July 2018. Most interviews were conducted in person, with 12 taking place by telephone. Throughout this paper, a coding system is used to reference each anonymous interviewee. Law enforcement officers and government representatives are identified by the letter ‘L’ followed by a unique identifying number corresponding to the order in which interviews were conducted (for example, ‘L1’ is used for the first law enforcement officer or government representative interviewed). Private sector representatives are identified by the letter ‘P’, while the letter ‘N’ refers to representatives of NGOs and international organisations.

The final phase of research involved fieldwork in the form of participant observation at an international parcel-sorting hub in the UK, followed by the observation of covert intelligence gathering at two locations in the south of England. This involved observing undercover operatives as they made test purchases of illicit tobacco products from a number of sellers, including those advertising online. Insights from this research are included throughout the paper. Due to operational sensitivities, it is not possible to elaborate on the details of these exercises.

This study has a number of limitations. First, the external validity of the findings is somewhat limited by the small sample size and geographical scope. While many of the findings may be generalisable beyond the three countries studied, this should not be assumed. Second, although all respondents had extensive professional experience dealing with the subject matter, a degree of subjectivity is inevitable. For this reason, evidence referenced as a result of interviews should be interpreted as the respondent’s particular perspective on the issue, as opposed to objective reality. Finally, it is important to note that law enforcement officers’ understanding of a particular issue may be shaped by the individual cases that they have been involved in. Owing to the covert nature of illicit trade, much of the activity discussed in this paper may never come to the attention of an individual officer. Therefore, while some respondents may perceive certain phenomena to be more significant than others in certain contexts, this may in fact reflect a limitation in the authorities’ coverage of a certain issue. The paper makes these limitations clear throughout.

Structure of the Paper

This paper is divided into three chapters. Chapter I provides an overview of the organised crime landscape and illicit tobacco trade in Europe, outlining the situation in the three countries under consideration. Chapter II explores the illicit tobacco trade in the digital age, highlighting the means by which illicit tobacco products are bought and sold online. Chapter III focuses on vulnerabilities specific to those delivery services that dispatch both legitimate and, unwittingly, illegitimate consignments across Europe, with a focus on their exploitation to transport illicit tobacco. Chapters II and III also consider how law enforcement and other agencies have approached these dimensions of the illicit tobacco trade and the challenges they have faced in the process. The paper concludes with a set of recommendations to inform current and future responses.
I. Organised Crime and the Illicit Tobacco Trade in Europe

Across Europe, organised crime is a multibillion-dollar industry, and business is booming. The use of online platforms and delivery services to smuggle illicit tobacco products across Europe are but two elements of this thriving illicit economy. This chapter provides an overview of the broader organised crime landscape in Europe, exploring the main trends that have emerged in recent years across a range of different crime types. Following this, the chapter goes on to examine the illicit tobacco trade specifically, providing an overview of the situation in the three countries under consideration.

In its 2017 European Union Serious and Organised Crime Threat Assessment (SOCTA), Europol identified approximately 5,000 international OCGs under investigation in the EU, a significant increase on its 2013 estimate of 3,600. This increase is attributed both to an improved intelligence picture and to the shifting structure of OCGs and criminal markets. This shift has seen groups become increasingly fluid and fragmented, adopting a ‘networked’ approach, whereby a large number of smaller groups and individual criminals cooperate for mutual benefit. They often do so by establishing strategic partnerships with foreign counterparts: the 2017 SOCTA observes the involvement of over 180 nationalities in the 5,000 international OCGs under investigation.

Europol further observes that OCGs have undergone an evolution from more traditional, hierarchical business models towards ‘loose, undefined and flexible networks’. This networked model engenders cooperation, which is crucial for the success of many cross-border trafficking operations. Research conducted for this report has found that illicit trade in tobacco products, for example, is perpetrated by a variety of different actors – from opportunistic individual sellers with no links to organised crime, to small networks of individual sellers cooperating on an ad hoc basis, to sophisticated OCGs with international contacts and global distribution networks.

However, it is often difficult to distinguish between different types of perpetrator, particularly when their activities are conducted primarily online.

Across a range of crime types, OCGs throughout Europe are also becoming increasingly flexible in the methods and tactics they employ. They are able to respond rapidly to shifts in enforcement action, changes in legislation and emerging business opportunities. As noted by Europol, many OCGs ‘display great adaptability in the speed with which they adjust their modi operandi or whole business models to changes in the environment’.15 Two trends in particular have emerged that demonstrate this adaptability. The first is the exploitation of technology and e-commerce; the second is the use of low-volume, high-frequency trafficking methods, often involving the exploitation of delivery services. Each trend will be examined briefly in turn.

Exploitation of Technology and E-Commerce

Across all crime types, the rapid growth of the internet and e-commerce has fundamentally changed how modern-day OCGs operate. Europol now describes the online trade in illicit goods and services as one of the very ‘engines’ of organised crime.16 The rise of online illicit marketplaces and ‘crime-as-a-service’ has enabled individuals with no pre-existing links to organised crime to establish lucrative criminal enterprises quickly and relatively easily.17 In the case of some crime types, the anonymity provided by darknet platforms and the use of end-to-end encryption has fundamentally altered the risk–reward calculus for those considering engaging in organised crime.18 It has also enabled individuals to slip under the radar of traditional law enforcement detection measures, requiring agencies across Europe to develop new responses to these emerging threats.

Europol’s 2017 Internet Organised Crime Threat Assessment describes how ‘illicit online markets, both on the surface web19 and Darknet, provide criminal vendors the opportunity to purvey all manner of illicit commodities, with those of a more serious nature typically found deeper in the Darknet’.20

Indeed, recent research shows that the illegal drugs market is the largest criminal market on the darknet. A 2016 study by the RAND Corporation examining the eight largest darknet

16. Ibid., p. 10.
17. ‘Crime-as-a-service’ refers to the process by which criminal services are provided by sellers on online marketplaces and other platforms.
18. The darknet is a hidden area of the internet that can only be accessed with specific software, often using non-standard communications protocols. A primary use of the darknet is for hosting ‘hidden services’, such as online marketplaces that facilitate the purchase or sale of illicit or illegal goods and services.
19. The surface web is the portion of the internet that is readily available to the general public and searchable with standard web search engines.
cryptomarkets found that sales of illegal drugs generated €12.6–22.1 million each month on those platforms alone.\(^{21}\) A 2017 study by Europol and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) collected regular snapshots from 16 major darknet marketplaces between November 2011 and February 2015 and assessed buyer feedback reports to estimate the volume and value of goods traded over time. The study found that illicit drugs, drug-related chemicals and illicit pharmaceuticals accounted for 62% of all darknet marketplace listings, followed by counterfeit and fraudulent goods (16.7%).\(^{22}\)

However, while previous research has focused on the use of darknet marketplaces for the sale of commodities such as illegal drugs, the surface web remains the medium of choice for the illegal sale of many commodities, including tobacco products. Authorities interviewed for this research described the growth of the internet – and particularly social media – as a core facilitator of many modern-day smuggling operations.\(^{23}\) The challenges this poses are complex, dynamic and look set to persist over the coming years.

**Low-Volume, High-Frequency Methods and Exploitation of Delivery Services**

A second discernible trend in the organised crime landscape is a shift towards low-volume, high-frequency smuggling of a range of illegal commodities. While bulk smuggling using shipping containers remains a higher-risk, higher-reward strategy that continues to be exploited, smuggling in low volume through postal and parcel services reduces both the risk of inspection and the potential loss in terms of product and funds if a consignment is intercepted. For this reason, although bulk shipments of a range of commodities continue, postal and parcel services have increasingly been exploited by OCGs looking to transport counterfeit goods, drugs and weapons, among other products.\(^{24}\)

These challenges affect numerous jurisdictions across Europe and beyond. For example, in its most recent National Strategic Assessment of Serious and Organised Crime, the UK National Crime Agency notes that:

> the volume of shipments transiting the UK border via fast parcels and post continues to increase, with OCGs concealing illicit goods amongst legitimate traffic. In 2017, all known seizures of the opioid Fentanyl were made via the fast parcel and post system. Fast parcels and post also remain a significant

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mode of transport for the importation of single firearms. Firearms importations into the UK via fast parcels and post are facilitated almost exclusively by online purchases.\textsuperscript{25}

Europol’s 2017 SOCTA, meanwhile, points to the use of post and parcels to deliver everything from firearms and firearm components to cash, counterfeit currency, fraudulent documents, heroin and counterfeit products.\textsuperscript{26} It does so noting that the use of postal and parcel services is now the most common method of trafficking firearms in the EU.

These assessments show that the growth of e-commerce platforms and associated proliferation of delivery services have benefited criminal actors just as they have legitimate ones. It is clear that these services can be abused by criminal entrepreneurs involved in transporting an array of illegal commodities. However, of greatest interest here is their abuse by those involved in illicit trade – understood as the unlawful production, transportation or sale of otherwise legal commodities.\textsuperscript{27} The remainder of this chapter provides an overview of trends in the illicit trade landscape, including those in the three countries under consideration: the UK, France and Germany.

\textbf{Trends in Illicit Trade in Europe}

In recent years, across Europe, as sustained and coordinated law enforcement action has contributed to increasing the levels of risk associated with some traditional criminal activities (most notably drug trafficking), many OCGs have sought to diversify into lower-risk areas. In many cases, illicit trade offers just such a set of low-risk options.\textsuperscript{28} At the same time, the transport and sale of illicit commodities such as tobacco and tobacco products is highly lucrative, offering financial rewards commensurate with higher-risk forms of cross-border trafficking. This has encouraged new criminal entrepreneurs, who often have no previous links to organised criminality, to enter the illicit marketplace – as well as encouraging existing OCGs to diversify.

It is challenging to assess the share of overall organised crime activity for which illicit trade accounts. This relates to the broader difficulties associated with measuring organised crime in general, given that methods are deliberately clandestine and designed to remain undetected. Despite the challenges involved in quantifying the true scale of organised crime activity, a number of global estimates have been ventured. For example, a 2017 estimate by Global Financial Integrity places the market value of global transnational organised crime in the range of $1.6–2.2 trillion per year.\textsuperscript{29} Based on the most recent estimate of world merchandise exports from the World Trade Organization of $15.46 trillion in 2016,\textsuperscript{30} this suggests that organised crime accounts for over 10% of all global exports.

\textsuperscript{26} Europol, 2017 European Union Serious and Organised Crime Threat Assessment.
\textsuperscript{27} Ellis, ‘On Tap Europe’.
\textsuperscript{28} Ibid.
Some (although not all) analysis suggests that illicit trade in counterfeit and pirated goods is the single most lucrative form of criminal activity worldwide. The aforementioned 2017 Global Financial Integrity study valued trade in counterfeit and pirated goods at $0.92–1.13 trillion annually.\(^{31}\) This calculation suggests that illicit trade in counterfeit and pirated goods could account for over 50% of all annual proceeds from transnational organised crime activity.\(^{32}\) A separate 2016 study from the OECD and the European Union Intellectual Property Office (EUIPO) placed the value of imported fake goods worldwide (excluding digital piracy) at $461 billion in 2013, representing around 2.5% of all global imports.\(^{33}\) By comparison, a 2016 report commissioned by the International Chamber of Commerce projects that the value of domestic and international trade in counterfeit and pirated goods could grow to between $1.6 and $1.9 trillion in 2022.\(^{34}\)

Despite the apparent scale of illicit trade activity, it is rarely prioritised alongside other forms of organised crime, which are perceived to pose a more immediate national security threat.\(^{35}\) As a result, illicit trade has been able to flourish, with OCGs worldwide continuing to profit from this low-risk form of organised criminality. This goes not least for the trade in illicit tobacco – a lucrative part of this broader illicit trade picture. Across Europe, large-scale, cross-border trade in counterfeit and contraband tobacco products continues to slip under the radar.

Again, this trade’s hidden, cross-border nature makes accurate estimations of scale notoriously difficult to achieve. A range of methods for measuring the trade exist, each with their own limitations.\(^{36}\) A further challenge lies in the fact that these methods are mostly applied to trade in illicit cigarettes, leaving statistics on illicit trade in hand-rolled tobacco (HRT) and other tobacco products extremely limited.

Within Europe, one of the most consistent annual studies of the illicit cigarette market is KPMG’s Project SUN (formerly Project Star). This study seeks to quantify illicit cigarette consumption based on empty pack surveys across the 28 EU member states, plus Norway and Switzerland. In 2017, Project SUN estimated illicit consumption (including counterfeit, contraband and illicit


\(^{32}\) Ibid.


\(^{35}\) Ellis, ‘On Tap Europe’.

\(^{36}\) Antonopoulos and von Lampe, ‘“Where There’s Smoke, There’s Money”’. For three examples of different approaches to measuring the scale of the trade, see Transcrime, ‘An European Outlook on the Illicit Trade in Tobacco Products’, Trends in Organized Crime (Vol. 19, No. 3–4, 2016), pp. 300–28; KPMG, ‘Project SUN’; Corné van Walbeek, ‘Measuring Changes in the Illicit Cigarette Market Using Government Revenue Data: The Example of South Africa’, Tobacco Control (Vol. 23, 2014), pp. e69–e74. It should be noted that a range of other methodologies for calculating the scale and scope of the illicit cigarette trade exist, all of which face challenges and limitations.
whites) across Europe to have accounted for as many as 44.7 billion cigarettes.\textsuperscript{37} While this figure represents a fall on previous years, this nonetheless accounts for as much as 8.7\% of total cigarette consumption, depriving European governments of €10 billion in tax over the calendar year.

In many cases, the intelligence picture on the actors, methods and routes employed by those involved in this trade remains less developed by comparison to other crime types. Yet, a number of important trends have been identified, many of which are covered in RUSI’s 2016–17 On Tap Europe reports.\textsuperscript{38} Other important studies by the OECD and EUIPO, the Financial Action Task Force and Transcrime point to key features of the organised crime dynamics underpinning the trade.\textsuperscript{39}

Notably, RUSI’s On Tap series identified three ways in which OCGs facilitate the illicit tobacco trade in Europe. They do so, first, by smuggling genuine products from lower-priced markets (both within and outside the EU) to higher-priced EU markets, exploiting substantial price differentials (‘contraband’). Second, OCGs are involved in smuggling counterfeit cigarettes and illicit whites into the EU, often from Eastern European countries such as Ukraine and Belarus. Finally, OCGs are involved in manufacturing and assembling counterfeit and unlicensed products within the EU, as testified by ongoing discoveries of illicit production facilities.\textsuperscript{40} These latter two points appear to be of growing relevance: in 2017, Project SUN identified illicit whites with no country-specific labelling as the largest single source of illicit cigarettes consumed across Europe, with counterfeit cigarettes accounting for over 4 billion cigarettes consumed in the EU in 2017, a larger share than in any of the previous four years.\textsuperscript{41}

\begin{itemize}
  \item 37. KPMG, ‘Project SUN’, p. 6. Counterfeit cigarettes are cigarettes that are illegally manufactured and sold by a party other than the original trademark owner. Contraband cigarettes are genuine products that have been either bought in a low-tax country and which exceed legal border limits or acquired without taxes for export purposes to be illegally re-sold (for financial profit) in a higher-priced market. Illicit whites are defined by Project SUN as cigarettes that are usually manufactured legally in one country/market but which evidence suggests have been smuggled across borders during their transit to the destination market under review, where they have limited or no legal distribution and are sold without payment of tax. For more on the Project SUN methodology, see ‘Methodology and Appendices’ at <https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2018/07/project_sun_methodology_2018.pdf>, accessed 3 August 2018.
  \item 38. For an overview, see Ellis, ‘On Tap Europe’.
  \item 41. KPMG, ‘Project SUN’. It should be noted that while flows of illicit whites with no country-specific labelling accounted for the largest single source of illicit cigarettes, flows from Belarus and Ukraine (the largest source countries in 2016) also declined.
\end{itemize}
Illicit Tobacco Trade in the UK, France and Germany

The UK, France and Germany each face different challenges in relation to the illicit tobacco trade. With one of the highest prices in Europe, at €8.83 per weighted pack, the UK acts as one of the most important destination markets for tobacco products smuggled across the EU. According to Project SUN, illicit consumption in the UK stood at 6.9 billion cigarettes in 2017 – the second highest after France by volume. However, the country also faces problems of illicit production: a number of production facilities have been uncovered in recent years, both domestically and across the border in the Republic of Ireland. Most recently, in March 2018, the Irish Gardaí and Revenue agency shut down the first illicit cigarette factory ever discovered in the Republic, seizing 25 million illicit cigarettes and more than 40 tonnes of tobacco.

France tops Europe in terms of illicit cigarette consumption by volume. According to Project SUN, illicit consumption stood at 7.61 billion cigarettes in 2017, accounting for 13.1% of all cigarettes consumed. The findings suggest that Algeria was the source country for approximately 27% of all illicit cigarettes consumed in France in 2017, with a weighted pack price in Algeria of €1.08 creating a large price differential between the two countries. Furthermore, average weighted pack prices in neighbouring Belgium, Luxembourg, Italy and Spain are all significantly lower, with substantial cross-border smuggling taking place. This has triggered protests from tobacconists in border areas, a situation that could be exacerbated as the country works toward increasing cigarette prices to €10/pack by 2020 in a bid to reduce consumption.

According to Project SUN, 4.2 billion illicit cigarettes were consumed in Germany in 2017, making it the fourth largest illicit market in Europe by volume. Yet this figure is substantially lower than those in the UK and France, with Germany also functioning as an important transit country for illicit cigarettes. This owes primarily to the country’s geographic location, sandwiched between lower-priced markets to the east and higher-priced markets to the west. Perhaps most relevant in this regard is the country’s eastern border with Poland. With an average weighted pack price of just €3.19, Poland has long been a key source of contraband (as well as counterfeit) tobacco.

42. KPMG, ‘Project SUN’.
products in Europe, many of which are moved west into Germany for onward transportation and sale in higher-priced EU markets.48

In all three countries studied, tobacco sales are subject to strict regulations.49 Although these regulations are not themselves the focus of this paper, a brief overview is essential to frame the analysis that follows. Of note, there are important differences in the legal frameworks governing online and distance selling in each country. In the UK and Germany, for example, online sale of tobacco products is permitted, in line with specified conditions. In France, by contrast, all online sales of tobacco products are banned.

The situation again differs in terms of cross-border distance sales. The 2014 revised Tobacco Products Directive also gave EU member states the option to ban cross-border distance sales of tobacco products.50 A number of countries – including France – chose to ban these sales, preventing consumers from ordering tobacco products from abroad (with this owing also to the fact that French tobacconists belong to the only legal monopoly permitted to sell tobacco products).51 The UK and Germany, by contrast, did not impose a ban. For member states such as these, retailers of all tobacco products – and those selling e-cigarettes – must register with both the country from which they are selling and their destination market before selling online.

With this context in mind, the remainder of this paper examines the exploitation of the internet and delivery services across the UK, France and Germany for the sale of illicit tobacco products. The following two chapters explore the methods and tactics used by OCGs in the process. Efforts to enhance investigation and enforcement are also examined, before the paper concludes with a set of recommendations.

II. Illicit Tobacco Trade in the Digital Age

IN THE CASE of many crime types, the internet represents a low-risk method for organised criminals to reach a larger potential consumer base than ever before. The ease with which illicit goods can be traded with no physical contact between buyer and seller, the anonymity offered by strong encryption and the knowledge that law enforcement agencies lack the resources to monitor each and every online transaction all contribute to creating a low-risk, high-reward environment for organised criminals seeking to trade all manner of illicit commodities. This chapter provides an overview of existing research examining the relationship between the internet and organised criminality, before going on to explore the online manifestations of the illicit tobacco trade specifically, based on primary research conducted for this study.

In recent years, governments worldwide have increasingly focused investigative and enforcement efforts on addressing online harms associated with terrorist content, radicalisation, child sexual exploitation and other forms of serious crime judged to pose an immediate threat to society. While these efforts have been somewhat successful in making the internet a riskier environment for some criminal and terrorist actors, online illicit trade has continued to thrive: organised criminals operate in plain sight with almost complete impunity. As a 2016 NetNames study observes, ‘[f]or counterfeiters, e-commerce offers low overheads, high profits and few risks of being caught’.

A growing body of empirical studies on the digital manifestations of organised crime have focused on darknet cryptomarkets, and particularly online trade in illegal drugs. Meanwhile, research examining surface web criminality typically focuses on examples of serious online crime such as complex online frauds. Very few empirical studies to date have examined online counterfeit crime or illicit trade on the surface web, while those that have focus primarily on the online

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trade in counterfeit pharmaceuticals. Research shows that since the 1990s, there has been a major increase in the number of illegal ‘online pharmacies’ operating on the surface web, many selling counterfeit medicines to Western markets.\textsuperscript{55} A 2014 Interpol analysis identified increased use of the internet as the primary development in the illegal pharmaceutical trade since 2008, referencing a US-based criminal network that earned $55 million during just two years of online operations.\textsuperscript{56} However, the report also found that online trade in illicit pharmaceuticals is not typically conducted by large-scale, transnational OCGs, but rather by individual sellers and small groups of sellers.\textsuperscript{57}

There is at present a lack of research examining the role of the internet in the illicit tobacco trade. As such, there remains a limited understanding of the tactics and methods used by criminal actors who sell illicit tobacco products online. This chapter seeks to address these knowledge gaps, informed by consultation with experts across the UK, France and Germany. It then moves on to consider the options available in terms of enforcement and investigation.

**Tactics and Methods**

Research conducted for this study has found that the internet is a significant enabler of the illicit tobacco trade in Europe, with a large proportion of online sales now taking place over social media. In the UK and France – the two countries with the highest illicit cigarette consumption by volume in 2017\textsuperscript{58} – respondents stressed that tackling the online trade now forms an increasingly large component of strategies to combat the illicit tobacco trade. This reflects the growth of the internet as an enabler of organised criminality more broadly: as one UK law enforcement agent explained, ‘social media and the internet are our main threats, for all commodities’.\textsuperscript{59}

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\textsuperscript{58} KPMG, ‘Project SUN’.

\textsuperscript{59} Interview with L18, representative of law enforcement/government agency, UK, 21 June 2018 (telephone).
There are three main channels through which illicit cigarettes are distributed online: social media platforms; purpose-built hosted websites; and online marketplaces. Social media platforms such as Facebook, Instagram and Snapchat are known to be exploited to market illicit products directly to customers and organise face-to-face transactions, with goods paid for in cash. These platforms differ from illegally operating purpose-built websites, which are created specifically for the purpose of selling illicit tobacco products online. Such websites appear to be professional and operate just like legitimate web marketplaces, with consumers able to buy goods by credit card and organise delivery via post. Online marketplaces such as eBay, Amazon and Gumtree have also been exploited by those seeking to sell illicit tobacco products. However, with growing attention to this risk and the dramatic increase in social media usage in recent years, such ‘traditional’ e-commerce platforms now appear to account for a significantly smaller proportion of online sales of illicit tobacco products than they did in previous years.

Across Europe, the darknet trade in illicit tobacco products appears insignificant, probably because these goods are so readily available on the surface web.\(^6\) This finding is consistent with previous research: a 2016 RAND Corporation study estimated that alcohol and tobacco listings together accounted for fewer than 1% (70 out of more than 60,000) of drug listings on darknet cryptomarket websites.\(^6\) Similarly, a 2017 study from the Université de Montréal found that illicit tobacco products accounted for fewer than 1% of all listings on the 14 cryptomarkets studied, concluding that ‘tobacco trafficking is still marginal on cryptomarkets’.\(^6\)

In the UK, law enforcement and intelligence operations have consistently identified Facebook as the main online platform used for the illicit tobacco trade, although online marketplaces such as eBay and Amazon continue to be at risk.\(^6\) Interviewees reported a noticeable increase in recent years in the quantity of illicit tobacco products sold on Facebook and other social media networks.\(^6\) Intelligence gathering conducted as part of Operation Jasper, a large-scale online enforcement operation coordinated by the National Markets Group for IP Protection, has

60. Interview with L6, L7, representatives of law enforcement/government agency, UK, 18 June 2018; Interview with P6, private sector representative, France, 3 July 2018.
61. Kruithof et al., ‘Internet-Facilitated Drugs Trade’.
63. Interview with P1, private sector representative, UK, 23 May 2018 (telephone); Interview with L3, representative of law enforcement/government agency, UK, 15 June 2018; Interview with L19, representative of law enforcement/government agency, UK, 22 June 2018 (telephone); Additional primary research conducted in two locations in the south of England, July 2018; Interview with L4, representative of law enforcement/government agency, UK, 15 June 2018; Interview with L16, representative of law enforcement/government agency, UK, 21 June 2018 (telephone).
64. Interview with L16, representative of law enforcement/government agency, UK, 21 June 2018 (telephone); Interview with L4, representative of law enforcement/government agency, UK, 15 June 2018.
identified Facebook and Instagram as the two main platforms through which illicit goods are marketed online (see Box 1).  

Similarly, in France, interviewees claimed that the scale of the illicit tobacco trade on social media dwarfs that of illicit tobacco trade through online marketplaces. As one respondent explained, in contrast to the situation on social media platforms, the large US-based marketplace websites tend to be more vigilant in detecting infringing listings and removing them quickly. In Germany, however, respondents reported that the illicit trade in tobacco products appears to be less prevalent on social media. In contrast to the situation in the UK and France, in Germany, some marketplace websites were described as a ‘one-stop shop’ for illicit tobacco products.

**Box 1: Operation Jasper – Fighting Counterfeit Products Online**

Operation *Jasper* is a joint initiative in the UK led by the National Markets Group for IP Protection and Trading Standards to crack down on illegal online sales of counterfeit goods, including tobacco products. Launched in 2015, *Jasper* has seen 7,800 Facebook profiles taken down or delisted, 42 warrants executed, 210 warnings issued, 55 cease-and-desist letters sent, and 46 separate investigations launched. In the three years since the project was launched, trends in the online space have changed rapidly. ‘Interestingly, we’ve also seen more Facebook sellers switch to taking orders from consumers and fulfilling those orders with goods from third party sources’, suggested Mike Andrews, Head of the National Trading Standards eCrime team. This trend has been observed in southwest Wales, for example, where law enforcement officers have observed ‘brokers’ taking orders for illicit tobacco on local social media groups that were then fulfilled by OCGs based in England. Illicit tobacco products from England were then sent via the postal system to a local broker, who delivered the smuggled-to-order product directly to the individual who originally ordered the product online.


68. Interview with L22, L23, representatives of law enforcement/government agency, Germany, 24 July 2018; Interview with P13, P14, P15, P16, private sector representatives, Germany, 24 July 2018; Interview with L24, L25, representatives of law enforcement/government agency, Germany, 26 July 2018.

69. Interview with P4, private sector representative, UK, 8 June 2018 (telephone).
Research conducted for this paper suggests that there are two distinct types of offender operating on social media: low-level opportunist sellers; and more organised criminals with international contacts and access to a steady supply of illicit products and sophisticated distribution networks. As one UK law enforcement agent explained, ‘you get the holiday-makers who are selling it and will say it’s duty-free, then you get the more organised individuals who have access to a large supply’, an assessment shared by French law enforcement.\(^{71}\)

In contrast to purpose-built websites and online marketplaces exploited for the illicit tobacco trade, most sales organised over social media result in face-to-face transactions, with payment made in cash. Facebook sellers do not typically use postal or parcel services, instead arranging to meet the buyer in a public place such as a car park or offering collection from the seller’s home address. One interviewee referred to this as ‘the digitalisation of street selling’, describing how Facebook is commonly used to arrange direct meetings between buyer and seller.\(^{72}\) Many sellers offer promotions such as discounts for bulk purchases as a means of attracting buyers.

Analysis suggests that low-level sellers operating on social media tend to post public listings directly to their own social media profiles, while larger-scale, more organised sellers opt to advertise their goods on local social media ‘buy-and-sell’ groups.\(^{73}\) The more organised sellers may also establish many different social media profiles and set up their own private groups to reach a larger customer base. In France, digital analysis shows that buy-and-sell groups targeted for illicit tobacco sales can number up to 20,000 members.\(^{74}\) Such groups are often created for legitimate purposes, but are later exploited by criminals seeking to sell illicit tobacco products in a particular region.

These sellers often remain regionally focused, interacting with nearby users via social media. In the UK, digital analysis has revealed the most prolific online sellers to be concentrated in large cities and around large coastal towns, with sellers along the southern coastline appearing particularly active.\(^{75}\) It is believed that a number of international OCGs regularly import illicit products through southern and eastern ports, with many products re-sold through local Facebook buy-and-sell groups.\(^{76}\) Here, Eastern European-labelled products appear most frequently on social media listings, for instance Polish sellers offering Polish-labelled products to Polish buyers.

\(^{70}\) Interview with L16, representative of law enforcement/government agency, UK, 21 June 2018 (telephone).

\(^{71}\) Interview with L21, representative of law enforcement/government agency, France, 6 July 2018.

\(^{72}\) Carcaly, ‘L’entreprise face au commerce illicite en ligne’.

\(^{73}\) Interview with P2, private sector representative, UK, 23 May 2018 (telephone); Interview with P3, private sector representative, France, 5 July 2018.

\(^{74}\) Interview with P10, private sector representative, France, 5 July 2018.

\(^{75}\) Interview with P2, private sector representative, UK, 23 May 2018 (telephone).

\(^{76}\) Ibid. See also Doncaster Free Press, ‘Special Report: Hundreds of Illegal Cigarettes Recovered’, 24 November 2016.
in London.\textsuperscript{77} Similarly, in France, illicit tobacco sales through social media are concentrated in large cities such as Paris, Marseille and Lyon.\textsuperscript{78}

Research conducted for this study suggests that online sellers are not necessarily the same individuals who bring illicit products into the country. As one law enforcement agent in the south of England explained, ‘it’s hard to tie online sellers to individuals bringing it in on the border ... Typically, the people selling it on Facebook are not those bringing it in’.\textsuperscript{79} Scottish law enforcement agents also reported that the most serious criminals do not operate on Facebook.\textsuperscript{80} Rather, it was suggested that larger OCGs import and subsequently supply wholesale quantities of illicit products to smaller-scale vendors, who then resell illegally online (See Figure 1 for one potential distribution model).

Online test purchases have revealed that many online sellers of illicit tobacco products offer consumers small volumes, yet have access to a range of products in large quantities, some of which are sold to other criminals who source stock online to redistribute offline directly to consumers.\textsuperscript{81} In Northern Ireland, for example, a test purchase team was able to purchase a €900 ‘master case’ (10,000 cigarettes in 50 cartons)\textsuperscript{82} from a buyer they met online, demonstrating the large quantity of product some online sellers can access.\textsuperscript{83} In February–March 2018, French law enforcement dismantled a group of offenders running a closed Facebook group to distribute illicit cigarettes in wholesale quantities. It is estimated that the group was earning approximately €200,000 per month selling cigarettes through Facebook.\textsuperscript{84} Meanwhile, some online sellers appear to belong to sophisticated distribution networks that operate in much the same way as drug-dealing networks. For example, one law enforcement officer recalled an occasion when undercover operatives communicating with a seller online were directed to meet with another individual within the network who delivered the product and took payment in person.\textsuperscript{85}

While Facebook is the main social media platform exploited to sell illicit tobacco products, other social media platforms such as Snapchat and Instagram are also vulnerable.\textsuperscript{86} These platforms can

\begin{itemize}
  \item \textsuperscript{77} Interview with P2, private sector representative, UK, 23 May 2018 (telephone). See also Doncaster Free Press, ‘Special Report’.
  \item \textsuperscript{78} Interview with P3, private sector representative, France, 24 May 2018 (telephone).
  \item \textsuperscript{79} Interview with L16, representative of law enforcement/government agency, UK, 21 June 2018 (telephone).
  \item \textsuperscript{80} Interview with L9, representative of law enforcement/government agency, UK, 18 June 2018.
  \item \textsuperscript{81} Interview with L3, representative of law enforcement/government agency, UK, 15 June 2018.
  \item \textsuperscript{82} A cigarette pack contains 20 cigarettes. A carton (or ‘sleeve’) is a multi-pack of 10 cigarette packs.
  \item \textsuperscript{83} Interview with L1, representative of law enforcement/government agency, UK, 12 June 2018 (telephone).
  \item \textsuperscript{84} Interview with P10, representative of digital investigation consultancy firm, France, 5 July 2018.
  \item \textsuperscript{85} Interview with L4, representative of law enforcement/government agency, UK, 15 June 2018.
  \item \textsuperscript{86} Interview with L3, representative of law enforcement/government agency, UK, 15 June 2018; Interview with L19, representative of law enforcement/government agency, UK, 22 June 2018 (telephone).
\end{itemize}
be used to advertise Facebook listings, or Facebook sellers may instruct buyers to contact them via Snapchat to arrange a transaction.\textsuperscript{87} One piece of digital evidence reviewed as part of this research showed a Facebook seller in France advertising illicit cigarettes on his profile, instructing buyers to ‘Contact me on Snapchat’\textsuperscript{88} By using multiple platforms simultaneously, offenders are able to maximise the exposure of their online advertisements. Over time, as sellers develop relationships with regular buyers, the trade may become less and less visible as transactions are increasingly made through private or offline communications channels, such as personal mobile phones.\textsuperscript{89}

\textbf{Figure 1: Potential Distribution Model for Illicit Tobacco Products}

\begin{figure}[h]
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\caption{Potential Distribution Model for Illicit Tobacco Products}
\end{figure}

\textit{Source: Authors’ research.}

\textsuperscript{87} Interview with P8, private sector representative, France, 3 July 2018.
\textsuperscript{88} Interview with P3, private sector representative, France, 5 July 2018.
\textsuperscript{89} Interview with L1, representative of law enforcement/government agency, UK, 12 June 2018 (telephone).
While not as prevalent as social media, a significant proportion of the online illicit tobacco trade continues to take place over purpose-built hosted websites. In France, for example, digital analysis has identified numerous websites offering to deliver cigarettes illegally, with around 20 highly active websites targeting French consumers with adverts in French. Many of the websites detected were based outside France, for instance in Belgium or Spain.

In some cases, websites can receive many thousands of visitors each month: one interviewee recalled the case of a large Luxembourg-based website distributing illicit tobacco to the French market. The website reportedly received approximately 160,000 visitors per month, around 90% of whom were French. Website traffic reportedly spiked to around 240,000 visits immediately following the tobacco price increases imposed in France on 1 March 2018. Similarly, the UK has seen an increase in purpose-built websites targeting migrant communities with illicit tobacco listings in their own language, including UK-based websites written in Polish.

In addition to cartons of illicit cigarettes, counterfeit loose tobacco, forged tax stamps and counterfeit empty pouches are also available online. Evidence provided to the House of Commons Home Affairs Committee in 2013 details how one witness was able to purchase counterfeit loose tobacco, fake tax stamps and counterfeit empty pouches on the internet, comprising a ‘do-it-yourself kit’. Interviews with law enforcement officers confirmed the prevalence of this method, with one officer explaining that they commonly intercept ‘one box filled with raw tobacco, then in another box empty pouches, and in a third box the stickers and holograms’.

### Investigation and Enforcement

At present, when a brand holder identifies a web page or social media or marketplace listing that violates their intellectual property, they will typically send a cease-and-desist notice to the platform or report the listing through online referral buttons. Initiatives such as eBay’s Verified Rights Owners Program provide straightforward processes by which brand holders can submit such reports.

According to a private sector representative, the larger, US-based marketplace websites are reportedly responsive and proactive in removing listings, which are often taken down within one to two working days. One private sector respondent estimated that the company they
represent achieves a rate of 600–700 takedowns per month as a result of cease-and-desist notices.\footnote{Interview with P4, private sector representative, UK, 8 June 2018 (telephone).} Listings are also frequently removed by the marketplace in question without a cease-and-desist notice being issued.\footnote{Interview with P1, private sector representative, UK, 9 May 2018 (telephone).} However, as discussed in the following section, there is very little preventing sellers from simply creating a new account and reposting listings using a different name.

Nevertheless, there is significant variation between platforms, with some marketplaces being more proactive than others in removing offending listings.\footnote{Interview with P3, private sector representative, UK, 24 May 2018 (telephone).} For less compliant platforms, it can take weeks or even months for listings to be removed, and cease-and-desist notices often need to be repeatedly followed up.\footnote{Interview with P2, private sector representative, UK, 23 May 2018 (telephone).} It is particularly difficult to action legal proceedings against purpose-built hosted websites selling illicit tobacco products based outside of the EU.\footnote{Stephanie Leguay, ‘French Initiatives to Prevent and Combat Cyber-Counterfeiting’, World Intellectual Property Organization, WIPO/ACE/10/18, 2015, <http://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_10/wipo_ace_10_18.pdf>, accessed 9 August 2018.}

Meanwhile, in contrast to social media platforms, many different intermediaries are involved in hosting a purpose-built website, such as the web host, access provider and payment portal provider. Interviewees reported that it has sometimes taken up to two years to successfully take down an illegally operating hosted website.\footnote{Interview with P3, private sector representative, UK, 24 May 2018 (telephone).} Even if the website is successfully shut down, it can reopen almost immediately, with an identical structure, simply by changing domain name. For this reason, efforts should be made to also engage with intermediary services such as payment portal providers that (often unwittingly) facilitate the transfer of funds in exchange for illicit tobacco products.

One interviewee described this closing and reopening process as ‘a never-ending story’.\footnote{Interview with P8, private sector representative, France, 3 July 2018.} This is consistent with previous research conducted by NetNames, which notes that ‘[a]ny intervention by law enforcement and pharmaceutical brands has been likened to a game of “whack-a-mole”; websites can simply be launched more quickly than the authorities can shut them down’.\footnote{NetNames, ‘The Risks of the Online Counterfeit Economy’, p. 16.} On social media, platforms such as Facebook and Instagram may block a user’s account if a single account is responsible for a large number of infringing listings, but there is nothing to prevent a seller from simply setting up a new account under a different name.\footnote{Interview with P2, private sector representative, UK, 23 May 2018 (telephone).}

As noted by the UK Intellectual Property Office, ‘at a strategic level, more training of online trading platforms takedown procedures needs to be done to simplify the process of take down and track down’.\footnote{Intellectual Property Office, ‘IP Crime and Enforcement Report 2016/17’.} However, on social media in particular, the sheer volume of infringing posts
and listings renders a case-by-case approach impractical. Here, there is clear potential for social media platforms to implement content-filtering algorithms (in combination with human review) to prevent listings for products such as illicit cigarettes from remaining live. These platforms currently make extensive use of algorithmic detection technology – in combination with a large number of human content reviewers – to remove millions of posts each month that contain graphic violence, nudity, terrorist content and hate speech.\(^\text{107}\) However, it does not appear that the same measures are taken in relation to content that violates the platforms’ commerce policies concerning illicit trade.

In the EU, while it is legal in some countries to buy and sell tobacco products online through government-authorised websites, there is no legal market for tobacco products on social media platforms, which are not authorised outlets. However, few social media platforms make this point explicitly in their commerce policies. An exception in this regard is Facebook, whose Commerce Policy expressly prohibits the sale or promotion of ‘tobacco products and related paraphernalia’.\(^\text{108}\) However, this restriction does not appear to be adequately enforced: a 2018 study by researchers at Stanford University found that legitimate tobacco companies were using Facebook to market tobacco products, concluding that ‘[b]rand-sponsored pages by tobacco marketers are widespread on Facebook and these often include offers to sell tobacco products’.\(^\text{109}\) Additionally, there is no algorithmic content filter preventing individuals from posting photographs of tobacco products on Facebook, with captions as blatant as ‘cigarettes for sale’. Such technology has already been implemented for other purposes – for instance, to prevent the sharing of pornographic material, graphic violence and hate speech.\(^\text{110}\) There is no reason why such automated content removal should not also be applied to the advertising of illicit cigarettes, drugs and other illicit commodities.\(^\text{111}\)

In May 2017, Mark Zuckerberg, Facebook’s CEO, announced that the company would be increasing its number of content removal staff from 4,500 to 7,500 over the following year, in order to ‘help us get better at removing things we don’t allow on Facebook like hate speech and child exploitation’.\(^\text{112}\) Given the resources available, there is clear potential for a number

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of these staff to be tasked with removing content from buy-and-sell groups that violates the company’s Commerce Policy.

Unlike Facebook, most other social media platforms do not explicitly state that the sale of tobacco products is prohibited, although their terms and conditions typically prohibit criminal behaviour in general terms. For example, Instagram’s Community Guidelines state that:

Instagram is not a place to support or praise terrorism, organized crime, or hate groups. Offering sexual services, buying or selling firearms and illegal or prescription drugs (even if it’s legal in your region) is also not allowed. Remember to always follow the law when offering to sell or buy other regulated goods.\textsuperscript{113}

As Instagram is owned by Facebook, it seems incongruous that the platform should not state explicitly that the sale of tobacco products through this medium is prohibited in the same way that Facebook does. Instagram’s Community Guidelines should align directly with Facebook’s Commerce Policy and be updated to include a clause akin to Facebook’s explicit statement about the prohibition of the sale through this medium of ‘tobacco products and related paraphernalia’.

Snapchat’s Community Guidelines also fail to mention illicit tobacco products in their definition of illegal activity, instructing under the heading ‘Illegal Content’: ‘Don’t use Snapchat for any illegal activities — including to buy or sell illegal drugs, contraband, counterfeit goods, or illegal weapons’.\textsuperscript{114} At the very least, these guidelines require a definition of what constitutes ‘contraband’ and ‘counterfeit goods’ to guide their users and staff. It is recommended that Snapchat’s Community Guidelines be updated to align with Facebook’s and include a clause that expressly states that the sale of tobacco products and related paraphernalia on this platform is prohibited.

The major online marketplaces provide clear guidelines regarding goods that are prohibited for sale through their platforms. Amazon, eBay and Alibaba all explicitly state that the sale of tobacco products using their services is prohibited (although Alibaba permits the sale of e-cigarettes).\textsuperscript{115} Rakuten and Gumtree do not expressly state that the sale of tobacco products through their services is prohibited, but do so in relation to the sale of counterfeit or copyright-


infringing products. Each should update their respective terms of use to expressly reference tobacco products.

Preventing and disrupting online illicit trade is not solely the responsibility of law enforcement and manufacturers. Online platforms themselves have a crucial responsibility to prevent their services from being used to facilitate illegal activity, and to protect their users from becoming involved in online criminality. This is not to say, however, that several platforms have not developed community guidelines or policies to prohibit illicit trade; rather, these standards should be more proactively monitored and consistently enforced. Specifically, these platforms must have clear processes in place for dealing with users who violate their policies, and appropriate disciplinary measures should be taken against those who sell tobacco products illegally in order to deter future offenders. Going forward, online platforms should work more collaboratively with law enforcement agencies to ensure digital evidence is available in order to bring offenders to justice.

Consistent with observations in the wider crime analysis literature, research conducted for this study suggests that a small minority of prolific offenders are responsible for a very large proportion of all online listings, with law enforcement officers reporting the same names coming up week after week in online investigations. This is also consistent with previous research examining online criminality: a 2015 study by Kyle Soska and Nicolas Christin found that the top 1% of the most successful cryptomarket vendors were responsible for 51.5% of all transactions on darknet markets, concluding that ‘[t]here is a clear discrepancy between sellers that experiment in the marketplaces and those who manage to leverage it to operate a successful business’. This has important practical implications, as it is likely that sizeable reductions in the number of illegal transactions made online can be achieved by targeting the most prolific offenders, rather than simply attempting to shut down the web pages themselves.

Here, the collection, dissemination and analysis of intelligence from multiple public and private sources is key. Some tobacco companies collect a large quantity of actionable intelligence on online illicit trade, but in some cases law enforcement agencies choose not to engage. Indeed,

118. Interview with L16, representative of law enforcement/government agency, UK, 21 June 2018 (telephone).
tobacco companies appear to have a comprehensive understanding of the online illicit trade in priority markets such as the UK and France. This intelligence could prove invaluable to enforcement agencies in building cases to prosecute the most persistent online offenders. Although there has been limited information sharing in some countries to date, enforcement agencies should consider the potential benefits that could be gained by engaging with the private sector in this area.

In the UK, there is generally good cooperation between tobacco companies and law enforcement, with the industry regularly sharing intelligence with enforcement agencies for investigative purposes. As one law enforcement officer in Scotland explained, ‘we’re not shy about dealing with the tobacco industry ... they have the resources and they have the knowledge of their industry – why would we not use that?’\textsuperscript{120} Intelligence provided by the private sector was described by other respondents as ‘more important than ever’ and ‘indispensable’ in identifying criminals involved in illicit trade.\textsuperscript{121} Interviewees referred to numerous successful cases in which intelligence referrals provided by tobacco manufacturers have resulted in investigations and subsequent prosecutions, including in relation to online sales of illicit cigarettes.\textsuperscript{122} In other countries, intelligence sharing between the tobacco industry and law enforcement appears less developed, although some promising steps have been taken to improve this in recent years.

A further issue concerns investment in capabilities to ensure that law enforcement agencies are able to act against online illicit trade. Here, the French experience offers a positive example, with France’s customs agency (Direction générale des douanes et droits indirects, or DGDDI) having invested considerably in this capability since 2009. Measures include a new Cyberdouane (cyber-customs) unit, which aims to disrupt individuals using the internet to sell illegal and illicit commodities, and the implementation of the Plateforme d’harmonisation, d’analyse, de recoupement et d’orientation des signalements – a software platform where the public can report illicit content on the internet.\textsuperscript{123} Additionally, as part of a recent memorandum of understanding between the French government and tobacco retailers, the government has committed to develop new capabilities to allow Cyberdouane officers to more readily identify the senders of illicit cigarette consignments.\textsuperscript{124} Yet while the Cyberdouane’s resources have increased, the unit has a broad remit, and there is a risk that illicit tobacco trade will receive less attention than online fraud and trade in commodities such as illegal drugs. Meanwhile, German customs have recently adopted a similar approach by establishing a new online unit akin to the Cyberdouane to proactively target illicit trade online.

\textsuperscript{120} Interview with L6, representative of law enforcement/government agency, UK, 18 June 2018.
\textsuperscript{121} Interviews with L6, L8, representatives of law enforcement/government agency, UK, 18 June 2018.
\textsuperscript{122} Interview with L1, representative of law enforcement/government agency, UK, 12 June 2018.
While certain measures can be taken to improve enforcement strategies against online illicit trade, enforcement action will only be effective if it is accompanied by meaningful and high-deterrent custodial sentences for the most serious offenders. Across Europe, despite the strong legal penalties available to sentence individuals involved in illicit tobacco trade, these laws are rarely enforced, with custodial sentences remaining rare.\(^\text{125}\) In light of the very high potential profits deriving from this form of organised criminality, financial investigation tools should be used in parallel to target the proceeds of this form of criminal activity.

This is particularly important as the dispersed network model favoured by OCGs involved in illicit tobacco trade has rendered traditional law enforcement tactics increasingly ineffective, with seizures far less financially damaging to groups that favour low-volume, high-frequency smuggling methods. With this in mind, a greater emphasis on prevention and consumer demand-reduction is also crucial to curb the number of internet users engaging in online illicit trade. Indeed, the importance of demand-reduction activities was acknowledged in the 2017 review of the EU’s 2013 proposed strategy to combat the illegal tobacco trade, which noted that the ‘potential of measures focusing on demand could be exploited more routinely’.\(^\text{126}\)

Recognising this, in the past few years, Police Scotland has adopted a prevention-focused approach to illicit trade, prioritising demand reduction through public education campaigns.\(^\text{127}\) In 2017, the UK Tobacco Manufacturers’ Association delivered messaging campaigns specifically targeting certain groups on social media with messages in users’ native languages.\(^\text{128}\) However, campaigns of this nature are at times developed and implemented on an ad hoc basis without a transparent or rigorous conceptual framework. Moreover, there is little evidence on how successful such campaigns have proved in changing consumer behaviour, and there is a pressing need to develop more robust empirical methods for assessing the effectiveness of such crime prevention messaging campaigns.

More widely, public understanding of the law concerning online tobacco purchases often appears to be poor. In France, focus groups and questionnaire-based studies suggest that roughly 40% of consumers who reported buying tobacco products online did not realise it was


illegal to do so. Investments in public awareness campaigns would be particularly helpful in this regard. For example, government agencies could run public awareness campaigns on the most popular social media and marketplace websites, displaying messages about the laws concerning online purchasing. Respondents noted that it is difficult to demonstrate the impact of demand-reduction activity, making it hard to justify extra investment in these activities. For this reason, further criminological research should seek to develop more advanced frameworks to assess the effectiveness of demand-reduction campaigns, for instance by using survey-based methods to track consumer perceptions over time.


130. Interview with L6, L7, representatives of law enforcement/government agency, UK, 18 June 2018; Interview with N5, N6, representatives of NGO, France, 6 July 2018.
III. Distance Selling of Illicit Tobacco Products

The rapid growth of e-commerce platforms and postal and parcel delivery services has benefited criminal actors just as it has legitimate ones. Indeed, the falling prices offered by many delivery providers have provided an affordable means to transport all manner of legal and illegal goods. Many OCGs have capitalised on these opportunities to send illicit consignments through postal channels, hidden in plain sight among a sea of other packages. They are aware that only a small proportion of parcels are subjected to detailed scans; even if a parcel is intercepted, the low volume of products contained represents no more than a minor loss.

Recognising this threat, several European governments have included the risk of OCGs exploiting the postal and parcel system in their national threat assessments.\textsuperscript{131} This risk applies to a range of forms of trafficking: for example, the UK National Crime Agency’s 2018 National Strategic Assessment of Serious and Organised Crime addresses the growing volume of small parcels used in the transportation of weapons and drugs.\textsuperscript{132} Europol’s 2015 assessment of the future of organised crime devotes significant attention to the postal system, including the risk posed by automation and new technologies.\textsuperscript{133} In a 2016 OECD survey, seven out of 15 respondents identified the growing volume of small parcels in the postal system as a ‘major threat to [law enforcement agencies’] ability to combat illicit trade’\textsuperscript{134}

Owing to the sheer diversity of the delivery sector, terminology here is critical. Importantly, it must be noted that there is no accepted or universal definition of the services referred to variously as fast parcel, courier and express delivery services. These terms cover a multitude of operators and business models, of varying degrees of sophistication, integration and security.

The international postal system, first, is comprised of ‘national designated postal operators’ (DPOs) such as La Poste in France and Royal Mail in the UK. These are national entities with an obligation to provide a universal service governed by the Universal Postal Union’s (UPU) international legal framework and the European Postal Services Directive.\textsuperscript{135} Under the UPU Convention, every country must have a designated operator, but in some countries these

\textsuperscript{131}. Europol, 2017 European Union Serious and Organised Crime Threat Assessment.
\textsuperscript{132}. National Crime Agency, ‘National Strategic Assessment of Serious and Organised Crime’.
\textsuperscript{133}. Europol, Exploring Tomorrow’s Organised Crime, p. 17.
operators are private entities. One such country is Germany, where Deutsche Post AG (DPAG), a private company, is the designated universal service provider responsible for the rights and obligations arising from the UPU Acts.\textsuperscript{136} Whether privately or publicly owned, DPOs are governed by the UPU Convention and have a universal service obligation. It is here that privately run DPOs differ from other private delivery companies, which are not governed by the UPU Acts.

In light of this, the public–private distinction often made between DPOs and private providers has become blurred. In general, however, the private delivery market can be broken down into several types of operator based on size, geographic remit, supply chain integration and service offering.\textsuperscript{137} Globally, the private delivery market is dominated by the ‘big four’ (following a merger, now the ‘big three’) delivery giants, with a similar number of medium-sized operators active in the European market. There are also numerous smaller operators, many running ‘one man, one van’-style cross-border deliveries across Europe.\textsuperscript{138} As such, the UPU describes the global cross-border mail and parcel market as ‘mature, highly competitive, and highly fragmented’.\textsuperscript{139}

One way in which these providers can be differentiated is by their business models. While both private operators and DPOs may operate ‘fast parcel’ delivery services, the ‘big four’ can be distinguished from other carriers by the end-to-end integration of the services they offer and the advanced security systems they have in place. These features contribute to the significantly higher prices of these services and their reduced vulnerability to illicit trade, relative to smaller providers. By contrast, smaller providers’ lack of end-to-end integration means that consignments may pass through the hands of multiple operators, with numerous junctures between supplier and recipient. This fact, combined with their significantly cheaper prices and less advanced security provisions and procedures, creates vulnerabilities to illicit trade. In addition, a lack of advanced electronic data makes it particularly difficult to effectively profile suspicious consignments carried by these smaller operators.

To capitalise on changing e-commerce patterns, delivery services once geared to serve the needs of business-to-business (B2B) and increasingly business-to-consumer (B2C) customers have adapted their services to cater to the growing consumer-to-consumer (C2C) market.\textsuperscript{140} The B2C and C2C sectors now serve everyone from individual marketplace patrons selling online, to customers using buy-and-sell social media marketplaces and small-to-medium enterprises

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\textsuperscript{138}. Ellis, ‘On Tap Europe’, p. 32.
\textsuperscript{140}. \textit{Ibid.}, p. 10.
\end{flushright}
establishing purpose-built websites. The services offered have evolved over time, with many companies now offering customised delivery options. Meanwhile, competition among delivery service providers and improvements in the automation and sophistication of freight infrastructure have driven the prices of some operators down, providing an affordable option for OCGs and regular customers alike.

At present, there is no baseline strategic threat review of the transport of illicit tobacco through delivery services in Europe. Yet the evidence overwhelmingly shows that some OCGs are using small parcels, alongside large containers, to move counterfeit and contraband tobacco products in and around Europe. Illicit tobacco products are often assigned a lower priority by law enforcement than other illegal commodities transported by post, with little published research on the approaches and mechanisms used. The next section addresses this gap, drawing on findings from research in the UK, France and Germany. It then considers the available options in terms of enforcement and investigation.

Tactics and Methods

A growing knowledge of the profiling techniques used by law enforcement has seen OCGs exploit a range of opportunities to send illicit tobacco products through postal and parcel services undetected. There are three important methods used by OCGs to evade detection: consolidation and/or fragmentation of illicit consignments; misdeclaration; and switching between carriers.

The decision to consolidate consignments commonly depends on whether or not a sender is based outside the EU. Much of this decision relates to the EU’s principles of free movement of goods and frictionless trade. Indeed, unlike parcels entering from outside the EU’s external border, because the EU customs union is a common market offering free movement of goods and unified product standards, it is not mandatory to declare the contents, weight or value of intra-EU consignments. For these intra-EU consignments, only minimal information must be provided, such as the importer’s address, exporter’s address and perhaps a phone number, creating unique vulnerabilities that can be exploited by OCGs.

Owing to these minimal declaration requirements, the lack of advance electronic data on postal items limits the effectiveness of the risk-management measures undertaken by customs agencies. One UK law enforcement officer suggested that, for their agency, ‘the intelligence risk at the moment is the near continent’. Law enforcement officers stationed in Germany shared

143. Interview with L14, L15, representatives of law enforcement/government agency, UK, 20 June 2018.
this view, describing the sending of packages within the EU as a ‘low-risk strategy’ for OCGs moving illicit tobacco products into high-value markets like the UK.\textsuperscript{144}

In the absence of more extensive information about consignments arriving from within the EU, the decision about which items to check is largely driven by visual information. This includes information on where the parcel is sent from, the volume and type of goods declared and the trading history of the importer or exporter. For example, a small package from an unknown trader is often treated with greater suspicion than a regular consignment from a company with an established track record in legitimate cross-border commerce.\textsuperscript{145} One UK law enforcement agent described the process of profiling intra-EU traffic as ‘going in blind’ in comparison to working with the declarations accompanying consignments from beyond the EU.\textsuperscript{146}

OCGs exploit this situation through the strategic consolidation or fragmentation of consignments. Notably, for senders outside the EU, a preferred method involves consolidating multiple parcels into one larger consignment to be sent into an EU member state with weaker customs checks. Once the parcel has reached its first recipient, it is broken up into multiple smaller packages for further distribution across the EU.\textsuperscript{147} This allows the sender to take advantage of the free movement of goods, tactically manipulating the trust inherent in the single market. This method is also used to send separate components such as raw tobacco, packaging and tax stamps to one location for assembly before end-products are distributed manually or in small parcels to end-markets.\textsuperscript{148}

Conversely, for senders within the EU, the consolidation of illicit products sent by post is a risky strategy that is likely to attract more attention and generate greater losses in the event of a seizure. Instead, the sending of lower-volume parcels spread across numerous recipient and sender addresses is often preferred. A popular method used by OCGs smuggling contraband tobacco within the EU is to purchase low-tax products in Eastern Europe and drive them into countries with trusted postal systems such as Germany. The products are then posted to distributors in higher-priced markets such as the UK or France.\textsuperscript{149}

Law enforcement in Germany characterised some of the OCGs involved as highly sophisticated and capable of coordinating long-running operations using multiple addresses, breaking up consignments across service providers and registering addresses at self-storage units in

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\textsuperscript{144} Interview with L22, L23, representatives of law enforcement/government agency, Germany, 24 July 2018.
\textsuperscript{146} Interview with L12, L13, representatives of law enforcement/government agency, UK, 20 June 2018.
\textsuperscript{147} Interview with L8, representative of law enforcement/government agency, UK, 18 June 2018.
\textsuperscript{148} Interview with L6, L7, representatives of law enforcement/government agency, UK, 18 June 2018.
\textsuperscript{149} Interview with L22, L23, representatives of law enforcement/government agency, Germany, 24 July 2018.
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destination countries such as the UK.\textsuperscript{150} In October 2017, for example, Emmanuel Cieply, aged 57, was jailed for 38 months after a package sent from Germany containing 76 kg of HRT broke open at a sorting hub. An investigation found that Cieply had rented properties in Liverpool, Bradford and Leeds, where a total of 1,041 packages containing illicit tobacco worth over £3 million in duty and VAT was received between October 2014 and February 2016.\textsuperscript{151}

A further method used by those smuggling illicit tobacco products into and across the EU relates to the misdeclaration of goods.\textsuperscript{152} In Ireland, for example, in an investigation that led to the seizure of 365 kg of HRT and 20,000 cigarettes, one group consistently misdeclared 30 kg parcels transported by a private delivery operator from Poland as ‘art work and clothes’.\textsuperscript{153} While there are some commonalities across the misdeclarations used to smuggle illicit tobacco, developing red flags for circulation among officers in sorting hubs is challenging as it relies upon the ability to manually identify consistent patterns across a high volume of traffic. It is also difficult because many of the OCGs involved are highly adaptable, altering their tactics frequently.\textsuperscript{154}

Finally, several law enforcement officers in the UK expressed particular concern about the ease with which smugglers can switch back and forth between carriers.\textsuperscript{155} Where criminal enterprises become dependent on one carrier, they are more likely to be detected. This was the case in October 2015, when an investigation by the French customs intelligence agency, La Direction Nationale du Renseignement et des Enquêtes Douanières (DNRED), identified a Belgian-based website selling directly to at least 322 French customers. Working with the private delivery operator and over the course of a week, the DNRED was able to seize more than 535 kg of tobacco dispatched from this website in parcels of 1–10 kg.\textsuperscript{156} Based on calculations by French customs, this volume of seizures equates to nearly 30 tons of tobacco a year, demonstrating the potential cumulative scale of low-volume, high-frequency smuggling by post.\textsuperscript{157}

\textsuperscript{150} Ibid. 
\textsuperscript{151} Gary Stewart, ‘This Man Helped Smuggle 14 Tonnes of Tobacco Worth £3m into the UK’, \textit{Liverpool Echo}, 3 October 2017.
\textsuperscript{154} Interview with L10, L11, representatives of law enforcement/government agency, UK, 18 June 2018.
\textsuperscript{155} Interview with L12, L13, representatives of law enforcement/government agency, UK, 20 June 2018.
\textsuperscript{157} Douane.gouv.fr, ‘La Douane met fin à un important trafic de tabac sur internet’, 13 October 2015, <http://www.douane.gouv.fr/articles/a12583-la-douane-met-fin-a-un-important-trafic-de-tabac-
Investigation and Enforcement

In the UK, the use of postal and parcel services to smuggle illicit tobacco products – and counterfeit products more widely – is perceived as a prevalent and growing issue. For this reason, the UK Border Force and Her Majesty’s Revenue and Customs (HMRC) have devoted increased resources to develop a fast parcel and postal-specific strategy that includes the development of new capabilities to assist with the management of big data analytics and intelligence-led risk profiling. The establishment of a National Fast Parcel Targeting Team embedded in the Border Force Intelligence Directorate also represents a new resource. This team is responsible for profiling cargo moved by medium-sized and small carriers with more decentralised supply chains and fewer procedures to ensure the referral of suspicious consignments.

In France, the abuse of postal and parcel services to smuggle illicit tobacco products is recognised as a national threat. This is evidenced by a number of regulatory measures enacted over the past five years. Of particular note, the ban on online sales has been accompanied by a focus on suppressing distance selling. In March 2014, with an explicit emphasis on illicit tobacco products, France’s Senate introduced new powers under Article 66 of France’s customs code (Code des douanes), allowing customs operators access to parcel operators’ premises, a privilege previously only extended to La Poste.

In 2016, under former secretary of state for the budget Christian Eckert, a Convention de Coopération was also signed by France’s DGDDI and association of express couriers (l’Union Francaise de l’Express, or UFEX) to improve cooperation in the fight against illicit tobacco products, narcotics and weapons in the post. Eckert also announced a second axis to the arrangement, which would see customs provide these operators with a comprehensive list of websites selling illicit tobacco. This would provide the option to cease delivery to linked addresses. It is unclear, however, to what extent this aspect of the government’s plan has been actioned.

158. Interview with L12, L13, representatives of law enforcement/government agency, UK, 20 June 2018.
160. DGDDI, ‘Signature convention de coopération’.
In Germany, by contrast, although there are a few notable cases that demonstrate the potential for abuse of postal and parcel services to smuggle illicit tobacco products into the country, this is perceived as a less prominent issue by German customs. Instead, greater emphasis is placed on the threat posed by illicit tobacco arriving by vehicle or container. Yet in recognition of the potential threat, the German government has taken several precautions. These include the passing of legislation that obliges all carriers – including private operators – to refer suspicious items to German customs and submit to both random and risk-led spot checks – conditions previously only applied to DPAG. In its justification, the introduction to this law ‘highlight[ed] the need to extend controls’ in the postal system to stem tobacco smuggling. It did so citing the concern that Germany is used as a transit country for illicit tobacco products sent from Germany to other EU countries.

As noted previously, across all three countries, levels of vulnerability to OCGs dealing in illicit tobacco products are unevenly spread across the postal and delivery sector. This owes to the considerable variation in procedures to prevent and report illicit trade between carriers. Indeed, at one UK postal hub, interviewees reported that the ‘big four’ (now ‘big three’) delivery providers are typically very keen to cooperate to prevent illicit trade, and that recent years have seen law enforcement agencies working more closely with the private sector to facilitate risk profiling and securing of the supply chain. Other cooperation agreements exist between delivery companies and customs agencies, with examples from other regions including a memorandum of understanding signed in 2015 between Hong Kong’s customs authority and five major delivery operators, including commitments to take more stringent enforcement measures against illicit trade.

As noted, whereas the largest Europe-wide carriers have fully integrated supply chains, many medium-sized and small operators run more fragmented operations. Here, there is a greater likelihood of illicit tobacco products transiting the system undetected. One UK law enforcement agent explained that the ‘experience, policy and procedures’ of the carrier in question have a strong bearing on the rate of referrals from that operator, with the more experienced

163. Interview with L24, L25, representatives of law enforcement/government agency, Germany, 26 July 2018.
165. Ibid., p. 25. Quotation is authors’ translation.
operators providing many more referrals than smaller, more recently established companies.\textsuperscript{168} There are concerns that while many of these smaller operators have expanded their EU-wide services, they have not invested in the necessary internal systems to share relevant information with customs.\textsuperscript{169}

As one law enforcement officer clarified, in many cases, ‘the data is there, but it is not provided to us because there is no legal obligation’.\textsuperscript{170} It was suggested that some carriers are reluctant to increase information sharing, fearing their cargo will be wrongfully intercepted and delayed, compromising delivery times and customer satisfaction. This is undoubtedly an important consideration for operators whose business models rely on more rapid and predictable delivery than their competitors. In a sentiment echoed by many of those interviewed, one French customs official is quoted as saying: ‘You cannot transform La Poste or private operators into customs agents. They are businesses ... For their part, everything is done to simplify the flow, to accelerate it.’\textsuperscript{171}

Other experts were more positive about the potential for improved cooperation between smaller private operators and law enforcement. Some suggested that smaller carriers could be persuaded to provide advance consignment data if they were convinced that it would lead to early risk assessments, minimising the need for unforeseen physical interventions and ensuring speedier clearance through arrival hubs.\textsuperscript{172} Crucially, however, even where information pipelines exist between customs agencies and private carriers, the resources required to synthesise and analyse data provided by numerous disparate sources remain limited among many customs agencies.\textsuperscript{173} Meanwhile, research by the OECD suggests that postal operators also face a distinct set of challenges, owing to difficulties with processing and accessing useable, high-quality data before a package’s arrival.\textsuperscript{174}

As such, investment in the systems and personnel required to collect, analyse and disseminate intelligence based on new data pipelines should be prioritised. One way in which profiling methods could be improved is through the automated collection and analysis of big data to identify patterns among suspicious packages.\textsuperscript{175} Indeed, the ability to analyse big data may also

\begin{itemize}
\item \textsuperscript{168} Interview with L12, L13, representatives of law enforcement/government agency, UK, 20 June 2018.
\item \textsuperscript{169} Ibid.
\item \textsuperscript{170} Interview with L14, L15, representatives of law enforcement/government agency, UK, 20 June 2018.
\item \textsuperscript{171} Rémi Noyon, ‘En fait, vous pourrez sûrement continuer à acheter vos clopes en ligne’, L’Obs, 7 December 2014. Quotation is authors’ translation.
\item \textsuperscript{172} Interview with L22, L23, representatives of law enforcement/government agency, Germany, 24 July 2018.
\item \textsuperscript{173} OECD, Governance Frameworks to Counter Illicit Trade, p. 77.
\item \textsuperscript{174} Ibid., p. 29.
\item \textsuperscript{175} Interview with L24, L25, representatives of law enforcement/government agency, Germany, 26 July 2018; Interview with L12, L13, representatives of law enforcement/government agency, UK, 20 June 2018.
\end{itemize}
improve investigations into the OCGs behind the parcels. It is often difficult to differentiate between organised groups abusing the postal and parcel systems and opportunistic individual criminals, because sometimes what looks like opportunist behaviour is in fact a fraction of a large and networked criminal operation. In Germany, law enforcement officers reported that, at times, they considered the term ‘organised crime’ a hindrance, affecting the resources that can be assigned to an investigation at an early stage. Unless the volume of suspicious traffic is conspicuously large, a decision must be taken around whether suspicious parcels should be treated as part of a pattern related to an OCG or simply a one-off. Where there is insufficient evidence to establish a full investigation, OCGs slip through the net.

Alongside investment in new data analytics capabilities, it is essential to ensure sufficient availability of basic equipment such as scanners, sensors and belts capable of pulling a parcel out of a rapidly moving sorting line, as well as canine units. Given the decentralised nature of private operators, it is also crucial that the technology provided to enforcement agencies is mobile, allowing on-site inspections where required. Indeed, in 2015, Europol warned that regionalised and decentralised postal and parcel supply chains will become increasingly difficult to secure against OCG activity. Similarly, the World Customs Organization highlights the challenges posed by the increasing dominance of dispersed private sector actors ‘who concentrate, through their marketplaces; logistics, financial and commercial functions’.

The labour-intensive nature of profiling and interception remains a further crucial vulnerability in the sector. Based on internal analysis, one interviewee from UK law enforcement estimated in broad terms that only around 10% of parcels containing illicit tobacco may need to get through for a group to remain profitable, reflecting the high profit margins to be made. When customs are understaffed, this issue is inevitably compounded.

Ultimately, all improvements in detecting illicit traffic will require a combination of technology and personnel investment. At present, several customs agencies across Europe are critically under-resourced. Germany’s customs authority has 40,000 staff, with 1,600 new positions to be filled by 2022, but Customs and Financial Trade Union leader Dieter Dewes has described the force as only ‘conditionally operational’ under current staffing levels. There are also concerns that with Brexit looming in the UK, HMRC and the UK Border Force will be understaffed during any customs transition from March 2019. As detailed in a recent study by Policy Exchange, the

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176. Interview with L24, L25, representatives of law enforcement/government agency, Germany, 26 July 2018.
180. Interview with L6, L7, representatives of law enforcement/government agency, UK, 18 June 2018.
Home Office budget for border-related functions fell by 21% (adjusted for inflation) between 2011/12 and 2016/17.\(^{183}\) If – as many predict – goods and people are no longer able to move freely between the UK and EEA countries, a large proportion of Border Force resources will likely be diverted to immigration functions and to dealing with newly required checks and inspections on some previously exempted EU traffic. This will leave fewer officers available to process and act upon intelligence related to potential threats through the delivery system – including those linked to the illicit tobacco trade.\(^{184}\)


Conclusion

Across Europe and beyond, the e-commerce of today is shaping the future of cross-border trade. As small parcels proliferate and responsibilities for managing them blur, this raises new questions around data collection and analysis, regulation, transparency and, most critically, security. Indeed, the structural changes driven by e-commerce have fundamentally altered the way trade is controlled. The significance of these shifts must be recognised; it is crucial that responses are tailored to address the threats they pose.

The case of illicit tobacco exemplifies clearly the challenges embodied in the abuse of e-commerce and delivery services. Across the three countries under consideration, research for this paper has illustrated both the use of online channels to sell illicit tobacco products, and the ability of OCGs to send small volumes undetected through postal and parcel services.

These trends are not uniform. In particular, the use of social media appears less pronounced in Germany than across the UK and France. The exploitation of postal and parcel services also manifests differently in Germany, compared to the UK and France. The reasons for these divergences are unclear, but likely stem from the fact that Germany functions to a greater degree as a transit country for illicit tobacco products (with illicit consumption in Germany also shown by Project SUN to be lower by volume than in the UK and France).185 Yet the overall number of cases studied in the research demonstrates clearly a broad shift towards a 'little-and-often', low-risk and cumulative illicit trade business model (at times, alongside the ongoing use of high-volume containerised consignments).

In some cases, there is a direct link between illicit tobacco products ordered online and those seized at postal hubs along delivery routes. In other cases, the two methods diverge: postal and parcel services are exploited independently of online sales, and online sales may function post-free – particularly when conducted through social media. These sales often result in face-to-face exchanges of illicit products for cash, as part of what may be termed a ‘digitalisation of street selling’.186 In the UK and France, this social media-generated street selling now appears to account for the majority of illicit tobacco sold online.

These emerging tactics challenge traditional law enforcement methods, requiring agencies across Europe to rethink their responses. A potential consequence of the shift towards ‘little-and-often’ smuggling methods is that – due to the relatively small volumes that may at first appear to be involved – law enforcement agencies may not perceive the use of the internet to be of great significance to the broader illicit tobacco trade. As such, enforcement strategies may fail to prioritise online methods. It is crucial that they do, but this must not occur in isolation.

185. KPMG, ‘Project SUN’.
186. Carcaly, ‘L’entreprise face au commerce illicite en ligne’.
Coordinated efforts must continue to target the importers who bring illicit tobacco products into a given country in wholesale quantities, while simultaneously disrupting those selling to consumers online.

In this context, it is clear that a different set of capabilities is needed to combat the increasingly digitised illicit trade environment witnessed today. But responding to these threats is not the sole responsibility of law enforcement. One of the major shifts inherent in the growth of e-commerce is the decentralisation of financial and commercial functions, as well as the collection and storage of data. Where states were once the principal data collectors, the private sector is now often better placed to collect and analyse information related to illicit trade activity and impose measures to prevent the abuse of their services. In this context, the priority must lie in developing new and effective partnerships and mechanisms to exchange information, both within and between the private and public sectors.

It is crucial that these initiatives are prioritised. The growth of e-commerce and a commensurate increase in the use of postal and delivery services are trends that only look set to magnify. Governments, international organisations, law enforcement agencies and the private sector must now work together and prioritise developing new and innovative approaches to effectively combat this new generation of organised criminality.
Recommendations

Countering Online Trade in Illicit Tobacco Products

- Enforcement action should be strengthened against online sellers, with law enforcement, social media platform providers and online marketplaces ensuring that those illegally selling tobacco products on their platforms face – and are seen to face – consequences, including disciplinary action. Research for this study suggests that a small number of prolific offenders are responsible for a large proportion of all illicit online sales. As such, social media platforms and online marketplaces must collaborate closely with law enforcement agencies to ensure that these prolific sellers are effectively targeted, while ensuring the lawful provision of data to aid successful prosecutions.

- Research for this study highlights the ease with which websites hosted for the purpose of selling illicit tobacco products can reopen following enforcement action. Alongside targeting websites themselves, authorities should engage with intermediary services such as payment portal providers, in order to assist them in preventing their services from being used to facilitate illegal activity.

- A new taskforce should be created within Facebook’s community operations team, tasked with removing content that violates the platform’s Commerce Policy – including as it relates to tobacco products. This should be accompanied by the implementation of algorithmic content filters that prevent posts advertising illicit tobacco from remaining online.

- Instagram, Snapchat, Rakuten and Gumtree should each update their respective Community Guidelines and Terms of Use to match those of Facebook in expressly stating that the sale of tobacco products is prohibited. This restriction should be enforced as proposed in the previous recommendations.

- Government agencies should invest in public awareness campaigns on the most popular social media and marketplace websites to display information about the laws concerning online purchases of tobacco products. Where appropriate, these should detail the enforcement action that individuals can expect to face for facilitating the illicit tobacco trade online.

Countering Illicit Distance Selling and Abuse of the Postal System

- Efforts should be made to improve two-way information-sharing mechanisms between public and private postal and parcel operators and customs agencies. For example, addresses known to be associated with websites selling illicit tobacco products should be distributed to delivery operators to enable them to deny service.
• Voluntary codes of conduct should be developed and signed at a domestic level to bind postal and parcel service providers to look specifically for illicit tobacco products among their cargo.

• The cooperation agreement signed between France’s customs authority and association of express couriers (l’Union Française de l’Express, or UFEX) to improve cooperation in the fight against illicit trade should be built upon domestically to establish common working practices between delivery service providers and customs. If this proves over time to be effective, this should be replicated in other countries.

• European governments should ensure that adequate technical training is provided to customs and border officers to enable them to make effective use of new technologies, particularly those that use big data analytics to identify suspicious consignments.

• Given the decentralised nature of many private delivery operations, future investment in equipment for law enforcement and customs should prioritise mobile scanning facilities, allowing on-site inspections where required. Additional funding should also be made available for canine units.

Strengthening Broader Government Responses to Illicit Tobacco Trade

• Law enforcement and other government agencies should ensure that there are clear structures and processes in place to share information with the private sector. This includes ensuring that law enforcement agencies can receive illicit trade-related information collected by the private sector, and that internet companies provide data on suspects that is needed for evidential purposes.

• As low-volume, high-frequency smuggling renders seizure-focused enforcement action increasingly ineffective, European governments should invest more resources into consumer-focused demand-reduction campaigns around illicit tobacco, including through social media.

• Future criminological research should prioritise the development of frameworks to assess the effectiveness of consumer-focused demand-reduction campaigns in relation to illicit tobacco products, for instance by using survey-based methods to track consumer perceptions over time.
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