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COOPERATION IN THE FIGHT AGAINST CONTRABAND AND ILLEGAL PRODUCTION OF CIGARETTES

The protection of the financial interest of the European Communities is a shared responsibility of the Community and the Member States. Pursuant to Article 280 of the Treaty Establishing the European Community (EC Treaty), the Member States are required to adopt a unified approach by taking the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.

Community law provides for measures for the protection of the financial interests of the Community in two main areas – criminal matters (intergovernmental cooperation) and administrative legal matters (conducting of investigations and inspections).

The model for countering fraud chosen in Bulgaria aims not to duplicate but to coordinate and combine the efforts of the competent state authorities, including the bodies of the independent judiciary. A Council Coordinating the Fight against the Infringements Affecting the Financial Interests of the European Communities (AFCOS) was set up by Decree of the Council of Ministers of the Republic of Bulgaria No. 18 of 4 February 2003.

The AFCOS Council offers guidance, monitors and coordinates the activities of the government bodies in relation to countering and fighting infringements – fraud, abuse, ineffective management or use of funds and property belonging to the European Union or provided to the Bulgarian government from European Union funds and programmes, including the national co-funding in this regard.

Chairperson of the AFCOS Council is a Deputy Prime Minister and Minister of the Interior. The Council has three Deputy Chairpersons: a Deputy Minister of Finance, a Deputy Minister of the Interior and a Director General of a Directorate General of the State Agency for National Security. The Council members are Deputy Ministers and Directors of institutions with competences to counter fraud affecting the financial interests of the European Community, including the Director of the Customs Agency – Ministry of Finance, the Director of the Criminal Police Directorate General and the Director of the Border Police Directorate General – Ministry of the Interior.

In the performance of its activities, the AFCOS Council is supported by the Directorate for

Coordination of the Fight against the Infringements Affecting the Financial Interests of the European Communities (AFCOS Directorate) with the Ministry of the Interior which, in accordance with Article 10, item 2 and item 3, is a contact point for the European Anti-Fraud Office (OLAF) and the respective competent authorities in the area of protection of the financial interests of the European Communities in the Member States and other countries and carries out the obligatory coordination of the operational cooperation between OLAF and the Council members when investigations are conducted on the territory of the Republic of Bulgaria.

The cooperation between OLAF and the Bulgarian authorities protecting the financial interests of the European Communities, including in the field of combating contraband and illegal production of cigarettes and tobacco products (especially the Customs Agency), dates back to the setting up of the European Anti-Fraud Office. It is enshrined as a priority in the Strategy for the Fight against Fraud Affecting the Financial Interests of the European Community adopted by the Council of Ministers on 13 October 2005 (updated in 2007 and 2009). The Strategy outlines the goals of the national authorities tasked with countering and fighting fraud and irregularities; the future tasks for the implementation of the goals and the ways and means of implementing them. The Strategy embodies the commitment of the Republic of Bulgaria to combat the fraud affecting the financial interests of the European Communities.

Specific instances of cooperation in the period are: the five consecutive visits to Bulgaria of the Director General of the European Anti-Fraud Office from 2002 till 2006; the meetings and talks held with the Chairperson and the Deputy Chairperson of the AFCOS Council and representatives of the executive, the legislature and the judiciary of the Republic of Bulgaria at the highest level; the three framework agreements signed between the Ministry of the Interior and the European Commission for the provision of financial assistance to counter fraud affecting the financial interests of the European Union under which more than 700 civil servants from the institutions which are members of the AFCOS Council were trained in various internships and seminars dedicated to the prevention and countering of financial fraud. In this period, the cooperation in the operational activities was carried out with AFCOS Bulgaria coordinating the work on specific cases of fraud, information about which had come from direct enquires from OLAF to the Council Secretariat or the respective competent institution.

The cooperation between OLAF and AFCOS Bulgaria has been elevated to a new and higher level with the signing of the Cooperation Arrangement between OLAF and Anti-Fraud Coordination Service – AFCOS Bulgaria and it has also found an expression in the deepening of the cooperation in the field of fighting the contraband and illegal production of cigarettes and cigarette items. In October 2006, the issue about the functions, status and work of the newly created structure in support of the activities of the Council – the AFCOS Central Unit Department, currently AFCOS Directorate with the Ministry of the Interior – was raised during the visit to Bulgaria of Mr. Franz-Hermann Brüner, OLAF Director General. During the preparation of the signing of the Cooperation Arrangement, one of the main topics suggested by OLAF for discussion with AFCOS Bulgaria was the European Commission's request that Bulgaria sign the Agreement with Philip Morris International to combat contraband and counterfeit cigarettes. The Cooperation Agreement signed by the OLAF General Director and the Chairperson of the AFCOS Bulgaria Council sets out that OLAF supports AFCOS in its activities at the national level to ensure the coordination of all types of activities (legislative, administrative and operational) which are related to the protection of the

financial interests of the Community and AFCOS, on its part, will assist in the cooperation between the national administrative, investigating and judicial prosecutorial authorities and also between these authorities and OLAF to help with the protection of the financial interests of the Community.

The accession of the Republic of Bulgaria to the European Community on 1 January 2007, in accordance with the Cooperation Arrangement between OLAF and AFCOS Bulgaria, found an expression in Bulgaria's joining the EU initiatives with respect to the tobacco producers Philip Morris International and Japan Tobacco International. The talks held with the Chairperson and the Deputy Chairperson of the AFCOS Council and the agreements reached during the visit to Bulgaria of the OLAF Director General in the beginning of 2007 were embodied in the Republic of Bulgaria's joining the Agreement between the European Commission and Philip Morris International and the civil claim before the US Court against the tobacco producers Reynolds and Japan Tobacco International by virtue of Decision of the Council of Ministers No. 82/9 February 2007.

The steps to sign an Agreement with Japan Tobacco International are in the same vein. After meetings in Brussels, including with the participation of representatives of institutions which are members of the AFCOS Council, an agreement was reached to sign a 15-year Agreement between the European Commission, 26 Member States and Japan Tobacco International for cooperation in the fight against cigarette smuggling and counterfeiting.

The Agreement with Japan Tobacco International was signed officially on 14 December 2007 in Brussels and Bulgaria joined the other Member States implementing Decision of the Council of Ministers No. 640 of 2 October 2007 which authorises the Minister of Finance to sign the Agreement and the documents related to it on behalf of the Republic of Bulgaria. The coordination between the institutions was carried out by the AFCOS Directorate and the proposal was put forward in the Council of Ministers by the Minister of the Interior and Chairperson of the AFCOS Council. The AFCOS Directorate handled the necessary organisation to: prepare the official position of the Republic of Bulgaria on the financial framework of the payments under the Agreement; ensure the participation of representatives of the Customs Agency in meetings of the Task Group Cigarettes in Brussels to reach the Agreements with Philip Morris International and Japan Tobacco International; open a special bank account for the receipt of funds in accordance with the Agreement.

In relation to the functions of the AFCOS Council to discuss issues proposed by the Council members which concern the fight against irregularities and fraud affecting the financial interests of the European Communities and to take decision on appropriate measures how to optimise it, which are binding on the Council members, a proposal of the Customs Agency was accepted to discuss as an item on the agenda of a Council meeting the issue about the use of the funds received under the Agreement with Japan Tobacco International for the purposes of combating cigarette smuggling and counterfeiting.

After the necessary organisation and coordination to determine representatives of the respective Council members which have competences to combat contraband and counterfeit cigarettes were set up by the AFCOS Directorate, an Expert Working Group (EWG) was created by virtue of an order of the Chairperson of the AFCOS Council with the following tasks:

- To make ongoing analyses and assessments of the needs in relation to the necessary technical equipment and training for the institutions in the Republic of Bulgaria which

have competences to combat the contraband and counterfeiting of cigarettes and cigarette items;

- To prepare reasoned proposals to the Chairperson of the AFCOS Council for the use of the funds provided to the Republic of Bulgaria in relation to the performance of the Agreement signed between the European Commission, 26 Member States and Japan Tobacco International.

At its meetings in 2008 and 2009 the Council discussed as items on its agenda issues related to the performance of the Agreement with Japan Tobacco International. The EWG report with a proposal to purchase specialised X-ray equipment for the fight against smuggling and counterfeiting cigarettes with funds provided to the Republic of Bulgaria under the Agreement with Japan Tobacco International was discussed at a special extraordinary meeting on 22 December 2009. The AFCOS Council decided, on the basis of the EWG report with the information provided and in relation to the funds received from the first three payments under the Agreement, to propose to the Minister of Finance that a procedure for the purchase of the above equipment be started and that the equipment be provided to the Customs Agency but also used by the Border Police Directorate General and the Criminal Police Directorate General.

In continuation of what has been said and as an expression of the cooperation between OLAF and AFCOS Bulgaria come the visits to Bulgaria of OLAF staff in relation to the development of a plan to include the Bulgarian law-enforcement agencies in the technical assistance programme HERCULE II. In view of the fact that the fight against the contraband and counterfeiting of cigarettes would not be successful without the effective use of technical equipment, this is included as one of the main goals during the visits to Bulgaria of the Head and staff of the C.4 Operational Intelligence Unit, OLAF Directorate C in the end of 2006 and the beginning of 2008 and in the meetings they had with members of the AFCOS Council with competences in the field which were organised by the AFCOS Directorate. The respective Bulgarian institutions were acquainted with the possibilities to apply for technical assistance projects, including purchase of X-ray equipment, automated system of container code recognition, equipment and other means assisting in the effective fight against contraband and counterfeit cigarettes. In accordance with the coordination mechanism established between OLAF and AFCOS Bulgaria, every notice for applications for the purchase of X-ray equipment for detection of contraband consignments with tobacco items under the HERCULE II Programme of the European Anti-Fraud Office is sent by the B.3 Investigations and Operations II Unit, OLAF Directorate B to the AFCOS Directorate which respectively notifies the competent Bulgarian institutions.

Another area in the cooperation between OLAF and AFCOS Bulgaria in combating the contraband, counterfeiting and illegal production of cigarettes is the preparation and participation in the annual OLAF Task Group Cigarettes Conferences. In accordance with the Cooperation Arrangement, OLAF extends an invitation to the AFCOS Directorate, in its capacity of contact point for Bulgaria, to nominate two representatives of the competent Bulgarian authorities and to propose topics and presentations with a request that a brief report about the situation in Bulgaria in relation to the contraband and counterfeiting of cigarettes be drawn up. The AFCOS Directorate sets up the necessary organisation to ensure the participation in the conferences of representatives of the customs and police authorities which have competences in the fight against the contraband and counterfeiting of cigarettes and sends information about the participants nominated to the Head of the B.3 Unit. The questions and topics posed by OLAF which must be included in the annual report are brought

to the attention of the Customs Agency, the Border Police Directorate General and the Criminal Police Directorate General which prepare information in view of their competences and activities for the respective period. Based on this, the AFCOS Directorate summarises, analyses and draws up the situation report on the contraband and traffic of cigarettes in the Republic of Bulgaria for the respective period, which is sent to OLAF.

On the topic of the cooperation between OLAF and AFCOS Bulgaria in combating the contraband, counterfeiting and illegal production of cigarettes, after the information about the institutional and regulatory arrangements and activities in the field, the necessary attention must be paid to the close operational cooperation in specific cases. A typical example of the specific operational cooperation is the work for more than eight months on the case with the contraband of Jin Ling cigarettes. In mid 2008, the European Anti-Fraud Office sent a letter to the partners on the Task Group Cigarettes requesting information about cases of seizure of Jin Ling cigarettes on the territory of EU Member States. The Bulgarian side sent the respective information on the case. The AFCOS Directorate received a follow-up letter notifying us that in relation to the contraband of Jin Ling cigarettes in large volumes in several Member States, on Germany's request, OLAF had opened a coordination case and in this regard was requesting information about a Bulgarian company. After an inspection conducted by the respective competent staff of an institution which is a member of the AFCOS Council, the information requested was provided by the AFCOS Directorate to OLAF. Following an analysis, OLAF sent a request to the AFCOS Directorate to organise the preparation of a mission of staff of the B.3 Investigations and Operations II Unit, OLAF Directorate B in Bulgaria. In the end of 2008, a team from the B.3 Unit arrived in Bulgaria headed by the contact point for Bulgaria from the OLAF Task Group Cigarettes in relation to the issues of countering the contraband and counterfeiting of cigarettes and cigarette items. In the meetings held at the AFCOS Directorate, the Customs Agency, the Combating Organised Crime Directorate General and the Border Police Directorate General, issues about the operational cooperation between OLAF and these institutions were discussed. The topic of the contraband of Jin Ling cigarettes in Bulgaria and the EU was also discussed at the meetings as was the participation of Bulgarian companies in the process and, more specifically, the information about customs offences and cases of contraband and illegal production of cigarettes found by police officers. In the beginning of 2009, the B.3 Unit sent another letter to the AFCOS Directorate thanking it about the organisation and conducting of the visit and emphasising its importance to the OLAF investigation, mentioning also the significance of the issue about the seizure of Jin Ling cigarettes, stressing on the enormous financial losses of the European Community and the Member States in 2007 and 2008. The letter posed additional questions which were forwarded for inspections to the respective Bulgarian institutions. In the end of March 2009, the AFCOS Directorate provided OLAF with very detailed information about the questions raised concerning the participation of individuals and companies from several European countries (including Germany, Italy, Belgium, etc.), vehicles, *modus operandi* and others.

On the topic of the specific operational cooperation, one may also refer to the requests for cooperation made by OLAF for: seizure and confiscation of cigarettes in the period 2004 – 2006 in Bulgaria; seizure and confiscation of cigarettes on the Bulgarian – Macedonian border; for cigarettes stopped in postal consignments and packages; for contraband from the United Arab Emirates to the European Community; and many others.

This is also the place to mention the participation of staff of the Customs Agency in 2008 in joint customs operations organised and conducted under the operational guidance of OLAF to

counter the illegal import of counterfeit cigarettes through control of postal packages from China to the EU sent by air.

The cooperation between OLAF and AFCOS Bulgaria in combating the contraband, counterfeiting and illegal production of cigarettes has recently been embodied in two very typical cases. In the end of September 2009, the European Anti-Fraud Office sent a request to the AFCOS Directorate for administrative assistance in relation to criminal investigations of Guardia di Finanza – Italy of contraband of cigarettes. OLAF notified us that the Italian Guardia di Finanza was investigating an organised crime group headed by a national of Moldova who lives in Italy which takes part in the contraband of cigarettes in Italy in large volumes. It was found that other nationals of Moldova living in Italy, Portugal, Moldova and the Ukraine were also part of it as was a vehicle registered in Bulgaria and driven by a Bulgarian. To be contraband, the cigarettes were hidden behind wooden boxes with glass which were covered with lead-plated sheets to protect them from being detected by a scanner. In accordance with Council of Ministers Decree No. 18/2003, the AFCOS Directorate requested through the Chairperson of the AFCOS Council that an inspection be conducted by the Customs Agency, the Border Police Directorate General and the Countering General Crime Directorate, Ministry of the Interior, and that information about the respective person and company be provided. The information received was analysed and appended with the respective customs documents and then provided to OLAF. Gratitude was expressed for this.

To leave open the topic of the cooperation between OLAF and AFCOS Bulgaria in the fight against the contraband, counterfeiting and illegal production of cigarettes, I would only emphasise that the second case mentioned before concerns a request from the European Anti-Fraud Office to the AFCOS Directorate for administrative assistance in relation to an investigation of Guardia di Finanza – Italy of illegal production and counterfeiting of cigarettes and we are currently working on it. The matter is about the participation of a vehicle registered in Romania which delivered 12,000 kg of tobacco from Moldova to Greece and about the sending later, by the same vehicle, of paper and filter through a Greek and Bulgarian company from Greece to Belgium with the purpose of illegal production of cigarettes. The work on the case to establish the companies and vehicles involved is continuing.

Thank you for your attention!