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Action plan to fight against smuggling of cigarettes and alcohol along the EU Eastern border

Accompanying the document

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE, AND THE COMMITTEE OF THE REGIONS AND THE COURT OF
AUDITORS**

ON THE COMMISSION ANTI-FRAUD STRATEGY

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1. INTRODUCTION

Large-scale smuggling of cigarettes and alcohol into the EU takes place via its Eastern border. This illegal activity is leading to important financial losses for the EU budget and the budget of the Member States. While there are no accurate statistics on the total fraud situation, the direct loss in customs revenue as a result of cigarette smuggling is estimated to amount to more than €10 billion a year. Tackling the influx of smuggled excisable goods, especially cigarettes originating in particular in Moldova, Ukraine, Russia and Belarus has therefore become a priority for the European Commission.

There are several factors contributing to this large-scale smuggling. Exchange of operational information between competent authorities on the national and international level in the region is not always sufficient. Gaps still remain in the infrastructure and equipment at the external borders. Corruption remains a prevalent tool used by the smugglers to cover their illegal activities¹. Significantly diverging legislative provisions on penalties in Member States can give smugglers an incentive to use entry points to the EU where the lowest penalties are foreseen and/or actually applied. The high price and tax difference between the EU and its neighbours with lower tax levels is also an important factor. The fight against this type of fraud is a shared responsibility. It requires urgent and streamlined action at all levels, i.e. from the Commission, the Member States and the neighbouring countries. We need to build on the successes of our cooperation so far by further exchanging information and building strong relationships to jointly tackle the problem of cigarette and alcohol smuggling at the Eastern border.

Member States with high excise rates need to exercise the appropriate internal control. Those bordering third countries need to increase controls both on internal consumption and on smuggling from their neighbours, contributing towards stopping outflows from their territory towards other Member States.

To provide an effective answer to these challenges, the European Commission has identified a number of mainly short and medium-term actions to be carried out with the help of the Member States as well as Russia and the Eastern Partnership countries (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine). The specific actions are outlined in the table in the Annex.

Although this Action Plan focuses on a particularly problematic geographical area several actions envisaged will address the issue of cigarette smuggling at a wider level and will therefore also be relevant for other regions. Smuggling of cigarettes and alcohol is of course a global phenomenon requiring also global solutions. By proposing actions focusing on the Eastern Border the Commission also aims at contributing to these global efforts against smuggling.

¹ In order to take additional measures to tackle the corruption on the EU's side, the Commission adopted a Communication on Fighting Corruption in the EU, COM(2011)308 final

2. THE SCALE, IMPACT AND NATURE OF SMUGGLING AT THE EASTERN BORDER

2.1. Cigarettes

The evolution and growth of the illicit tobacco market in the European Union has been remarkable in the past years. Contraband and counterfeit cigarettes can be found in all of the EU Member States.

Preliminary statistics indicate that EU law enforcement agencies seized 4.7 billion illicit cigarettes in 2009. Eastern Partnership countries, in particular Moldova, Ukraine and increasingly Belarus and Russia are one of the main sources, and this trend appears to have increased in 2010².

Cigarette seizures include the following three categories:

- genuine cigarettes produced by multi-national manufacturers which are smuggled into the EU (contraband);
- "cheap whites" which are cigarettes produced legitimately in their country of origin at very low cost and which are smuggled; and
- counterfeit cigarettes.

In the early 2000s, the problem of smuggling at the Eastern border of the EU related largely to the smuggling of genuine product. Today the situation is somewhat different. The majority of cigarettes entering the EU illegally via the Eastern border are either cheap whites or counterfeit. Cheap whites now account for approximately 20% of seizures in the EU and are an increasing feature of the illicit tobacco trade.

Although many of the illegal cigarettes that enter the EU via the Eastern border are destined for the illegal markets in Western Europe, particularly Germany and the United Kingdom (because of the higher prices they can be sold for), a significant portion of the smuggled cigarettes is targeted on the local markets. It is estimated that in some border regions consumption of illegal cigarettes exceeds 90% of the total. Tax rises in the twelve new Member States in line with the EU acquis have led to an increase in consumption of illicit cigarettes in some new Member States. Besides large-scale smuggling, "ant-smuggling", making frequent journeys across the border with small amounts of cigarettes, is still a significant problem at certain border crossings.

The negative impact of the illicit trade in cigarettes is manifold. From an economic point of view it results in significant revenue losses and harms legitimate business interests at both manufacturing and retail level. It is also leading to sales and consumption of tobacco not complying with EU tobacco control legislation. From a health point of view it may result in the rise in consumption of tobacco products and decrease public health protection, especially involving vulnerable groups such as young people.

One of the less obvious but more serious impacts of cigarette smuggling is that it is almost exclusively the domain of organised crime groups who are making substantial financial gains

² Europe has been recently flooded by smuggled Jin Ling cigarettes, a new brand virtually unknown to the authorities a few years ago.

from their illegal activities. As cases show, these groups operate internationally and are often involved in other types of serious organised crime³.

Cigarette smuggling thus impacts significantly on the economic prosperity, health and public order of our communities.

2.2. Other smuggled products

Although involving less revenue than cigarettes, the smuggling of alcohol from countries such as Ukraine and Russia into bordering EU Member States is also a criminal activity detrimental to the EU's and Member States' interests. The alcohol can be smuggled either in beverage form - often counterfeits of established brands - or in bulk consignments declared for industrial usage (the alcohol is then diverted for the illicit manufacture of counterfeit products within the EU).

Also, the difference in excise duty rates inevitably encourages smaller-scale smuggling of authentic products that have been legitimately marketed outside the EU.

The seizures from non-commercial traffic and passengers are not recorded in databases, because individual seizures are not quantitatively significant. Significant seizures have only been reported in the course of joint customs operations (targeting mainly cigarettes): operation MATTHEW II⁴ in December 2009 led to seizures of 6.400 litres of alcohol, whereas operation SIROCCO⁵ (June 2010) saw a seizure of 7.038 litres of alcohol.

3. EXISTING MEASURES TO FIGHT SMUGGLING

The Commission and EU Member States have a number of instruments at their disposal to tackle the problem of smuggling at the Eastern border. These include operational cooperation, including joint investigations and exchange of intelligence and information, technical and financial assistance to Member States and third countries, engagement with legitimate traders, negotiation of agreements with the neighbouring countries and within a global context, approximation of excise rates and legal provisions concerning penalties.

3.1. Anti-fraud measures

- OLAF, the Commission's Anti-Fraud Office, coordinates a number of large-scale **investigations** covering several Member States and third countries on the basis of requests for assistance from Member States under Council Regulation (EC) No 515/97⁶ or requests

³ See also in EU Organised Crime Threat Assessment OCTA 2011 Report by Europol at [http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_\(OCTA\)/OCTA_2011.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA_2011.pdf), p. 24-25.

⁴ See Press Release IP/10/418 of 13 April 2010 available under the following link: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/418&format=HTML&aged=1&language=EN&guiLanguage=en>

⁵ See Press Release IP/10/1275 of 1 October 2010 available under the following link: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1275&format=HTML&aged=0&language=EN&guiLanguage=en>

⁶ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

under Mutual Assistance Agreements in customs matters (MAA) entered into with third countries⁷.

- Under the **HERCULE II Programme**⁸, Member States receive co-funding for the purchase of technical equipment as well as for technical assistance and training.
- OLAF holds an **Annual Task Group Cigarettes Conference** with experts from the Member States and key third countries which brings together OLAF's designated national contact points for tobacco issues from the Member States and third countries. The 15th Annual Task Group Cigarettes Conference took place from September 9-13 in Marseille, France. The 16th Annual Task Group Cigarettes will take place in Austria in October 2011. The Annual Task Group Cigarettes Conference brings together investigators, analysts and policy makers to review the results achieved over the previous 12 months and to identify emerging trends and threats in order to set priorities. The Conference also helps to cement operational relationships between the Member States and other countries so that there can be rapid exchanges of operational information to target smuggling and counterfeiting.
- **Engagement with legitimate traders** is also an important part of the Commission's strategy to combat contraband and counterfeiting. The European Union and the Member States have signed four legally binding and enforceable multi-year Cooperation Agreements with the four largest tobacco manufacturers⁹. These Agreements ensure that the manufacturers carry out certain procedures to prevent the diversion of their product into illicit trade channels. These agreements and the resulting cooperation with the tobacco manufacturers have been very successful, notably in reducing the illicit trade in genuine products.
- **Framework Convention on Tobacco Control (FCTC)**, a binding WHO Treaty currently ratified by 172 parties, entered into force in 2005. The Commission is the EU negotiator for the EU and the 27 Member States at the International Negotiating Body (INB) to negotiate a Protocol to the FCTC to eliminate the illicit trade in tobacco products. It is hoped that the Protocol will be adopted at the Conference of the Parties in late 2012.

3.2. Customs and tax measures:

- The **Customs 2013 and Fiscalis 2013 programmes**, administered by the Commission's Directorate-General for Taxation and Customs Union (TAXUD) are used in support of political or operational initiatives in the customs and tax areas. In the framework of the Fiscalis programme, a first working visit of experts from a number of Member States took

⁷ Among the Eastern Partnership countries the EU has an MAA with Armenia (OJ L 239, 9.9.1999, p. 37.), Azerbaijan (OJ L 246, 17.9.1999, p. 39), Georgia (OJ L 205 of 4.8.1999, p. 39), Moldova OJ L 181, 24.6.1998, p. 36) and Ukraine (OJ L 49, 19.2.1998, p. 40). It takes the form of a Protocol on mutual assistance between administrative authorities in customs matters annexed to the Partnership and Cooperation agreements. The EU also has such an MAA with Russia (OJ L 327, 28.11.1997, p. 48).

⁸ Decision No 878/2007/EC of the European Parliament and of the Council of 23 July 2007 amending and extending Decision No 804/2004/EC establishing a Community action programme to promote activities in the field of the protection of the Community's financial interests (Hercule II programme, OJ L 193, 25.07.2007, p. 18)

⁹ Philip Morris International (July 2004), Japan Tobacco International (December 2007), British American Tobacco (July 2010) and Imperial Tobacco Limited (September 2010), see on http://ec.europa.eu/anti_fraud/budget/index_en.html

place in Romania in October 2010. The discussions centred on sharing experiences, elaborating best practices and coordinating common actions.

- **Technical assistance**, including expert opinions and logistical assistance, **in tax administration issues and the fight against fraud** is provided by the Commission upon request of Member States¹⁰.
- **Approximation of legislation**. The approximation of excise rates between the EU and its neighbours would be the most effective medium to long-term solution to the smuggling of tobacco and other excisable products. The Commission has proposed provisions in this respect in the negotiations for the new Association Agreements with Ukraine and Moldova.

3.3. Penalties

- The EU's current **Customs code**¹¹ does not contain specific provisions on criminal penalties. Article 21 of the Modernised Customs Code¹², however, sets out the obligation for Member States to provide for penalties in case of failure to comply with customs legislation and confirms that these penalties should be effective, proportionate and dissuasive. Member States must also notify their penalty regimes to the Commission.
- The 1995 **Convention on the protection of the financial interests of the EU**¹³ (and its protocols¹⁴) covers fraud also on the revenue side and fixes a minimum standard for penal law protection¹⁵. In two reports (2004 and 2008)¹⁶ the Commission identified gaps and loopholes in the national legislation transposing the Convention, thereby allowing certain offences to go unpunished, and noted the considerable differences between Member States as regards criminal penalties, leading to doubts as to whether these are always effective, proportionate and dissuasive. The Commission recently set out its vision for a strengthened protection of financial interests by criminal law and by administrative investigations¹⁷. The new tools suggested in this Communication include an initiative on substantive criminal law which would build upon the Convention on the protection of the financial interests of

¹⁰ Council Regulation 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ L 268, 12.10.2010, p.1).

¹¹ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p.1).

¹² Regulation (EC) N°450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ L 145, 04.06.2008, p.1).

¹³ OJ C 316, 27.11.1995, p. 49, hereinafter referred to as "the PFI Convention".

¹⁴ Protocol to the Convention on the protection of the European Communities' financial interests (OJ C 313, 23.10.1996, p. 2); Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests (OJ C 151, 20.5.1997, p. 2) and second Protocol to the Convention on the protection of the European Communities' financial interests (OJ C 221, 19.7.1997, p. 12).

¹⁵ Article 1(b) and article 2 of the PFI Convention

¹⁶ First report on the implementation of the Protection of Financial Interests instruments - COM(2004) 709; Second Report - COM(2008) 77, which sets out in the annex the concrete implementation issues encountered in Member States, such as significant differences regarding the scope of fraud and corruption offences, as well as lacking consideration for the specificities of the EU framework.

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the protection of the financial interests of the European Union by criminal law and by administrative investigations of 26 May 2011, COM 2011(293).

the EU, taking into account the remaining loopholes and the deficiencies identified in its implementation.

- A comparative study of **Member States' legislation** on customs infringements and penalties national regimes carried out in 2010 has shown significant differences in criminal penalties part of which are applicable also for cigarette smuggling¹⁸.

3.4. Regional and cross-border measures

- The trade and customs objectives of the **Eastern Partnership** include combating customs fraud and facilitating the development of legitimate trade at the Eastern border. Specific actions include support to Partner countries' customs reforms, the promotion of joint border controls at EU borders with Ukraine, Belarus and Moldova¹⁹ and multi-country seminars on specific subjects. Smuggling of tobacco products is covered under the Eastern Partnership's Integrated Border Management Flagship Initiative (IBM Flagship Initiative). These activities can be further supported by measures on preventing and combating corruption among border police and customs as foreseen in the work programme of the IBM Flagship Initiative.
- One of the main objectives of the **Cross-Border Cooperation programmes²⁰ of the ENPI (European Neighbourhood and Partnership Instrument)** is to ensure efficient and secure borders. Some of the ongoing programmes foresee measures under this objective.
- A high-level Conference on Customs co-operation at the Eastern border of the EU took place on 13-15 April 2011 in Budapest. The agenda included discussions on cooperation in prevention of smuggling of cigarettes and other goods. The Seminar resulted in the Budapest Declaration, which included recommendations to "*Strengthen and coordinate joint customs actions to fight smuggling of high-taxed goods, such as cigarettes and other goods posing an economic risk or security and safety threats*" and to "*Increase efforts in the fight against the illicit trade in tobacco products and finalise a strong Protocol under the Framework Convention on Tobacco Control as soon as possible to eliminate such trade*"²¹.
- Within the context of the **Eastern Partnership a Panel on the Fight against corruption** was established in order to enhance the anti-corruption and good governance reform processes in the Eastern Partnership countries through a multilateral approach and with a view to bring them closer to the international standards (particularly those formulated in

¹⁸ Study on national regimes for customs infringements and penalties prepared by a Project Group under the Customs 2013. The final report was presented at the Customs Policy Group meeting of 8 and 9 of July 2010 and the Executive summary was finalised in November 2010.

¹⁹ Once the necessary legislative framework will be in place: on 10 March 2011, the Commission proposed to amend the existing Regulation (The Schengen Borders Code, Regulation (EC) No 562/2006), responding to practical problems that have arisen during the first years of application of the Schengen Borders Code (COM (2011)118).

²⁰ There are nine Land-Border Programmes (Kolarctic/Russia, Karelia/Russia, South-East Finland/Russia, Estonia/Latvia/Russia, Latvia/Lithuania/Russia, Lithuania/Poland/Russia, Poland/Belarus/Ukraine, Hungary/Slovakia/Ukraine/Romania Romania/Moldova/Ukraine) and two Sea-Basin programmes (Black Sea and Baltic Sea Region) along the Eastern Border.

²¹ http://ec.europa.eu/taxation_customs/customs/policy_issues/conference_events/index_en.htm#budapest

the Council of Europe²² and the United Nations²³) by facilitating the exchange of information and best practices on building integrity, prevention and prosecution of corruption. Participants include the Eastern Partnership Countries, Member States, EU institutions, the Council of Europe and representatives of the Civil Society.

- The **EU Border Assistance Mission to Moldova and Ukraine** (EUBAM) is an advisory, technical body that was established at the joint request of the Presidents of Moldova and Ukraine, to assist these countries in tackling a range of criminal activity taking place across the common border including smuggling and illegal migration and to help with the modernization of management of their border services with European standards. The Mission is entirely funded by the European Union and has a staff of over 200, including around 120 customs and border experts from EU Member States who provide advice and training to the Moldovan and Ukrainian law enforcement agencies. Since it was established the Mission has made a substantial contribution to controlling the Ukraine-Moldova border and reducing smuggling in the region.

4. PROPOSED ACTIONS UNDER AN EASTERN BORDER ACTION PLAN TO FIGHT AGAINST SMUGGLING OF CIGARETTES AND ALCOHOL

Recent trends in smuggling have shown that the ongoing efforts and measures are not sufficient to tackle the problem. As already described in Part 1, gaps and loopholes remain in the infrastructure and equipment at the Eastern border for which it is not always easy to find sufficient financing; operational cooperation among competent services and authorities is sometimes difficult and not always sufficient; corruption of border police and customs remains a prevalent problem at the Eastern border; different penalties in the various Member States and their different application give smugglers a strong incentive to engage into "penalty shopping" and hamper cross-border investigations; and, last but not least, the high price and tax differences between the EU and its neighbours make it worthwhile for criminals and organised groups to take their chance.

Concerted and urgent efforts are therefore needed on behalf of the Commission, the Member States and the neighbouring countries to try to find appropriate solutions in order to tackle those problems and fight against this type of fraud.

4.1. To ensure a coherent response, it is necessary to define clear objectives addressing all contributing factors to the problem

4.1.1. Objective I: Support enforcement capacity with capacity building, technical assistance and training

Strengthening enforcement capacity on both sides of the border particularly controls at key entry/exit points with adequate infrastructure and equipment is part of an effective solution.

²² The Criminal Law Convention on Corruption (ETS173) and its Additional Protocol (ETS 191), the Civil Law Convention on Corruption (ETS 174), Twenty Guiding Principles for the Fight against Corruption (Res (97)24), the Model Code of Conduct for Public Officials (Rec No. R (2000)10)

²³ United Nations Convention against Corruption adopted by the General Assembly by resolution 58/4 of 31 October 2003. A Conference of the States Parties is established to review implementation and facilitate activities required by the Convention. At its third session, held in Doha from 9 to 13 November 2009, the Conference of the States Parties adopted a Review mechanism (Resolution 3/1)

Reinforcing border infrastructure needs to be combined with setting up equipped and trained mobile units to improve control and enforcement on the "green" borders. Adequate equipment includes providing additional tools such as scanners, automated recognition tools, night vision etc. New equipment and infrastructure requires additional funding which may prove to be difficult in these times of economic and budgetary constraints. It is therefore necessary to use existing EU funding in a coherent way and to find flexible solutions for such funding in the medium and long term.

We need to use and further develop existing initiatives in order to exchange best practices, design guidelines and benchmarks for future actions. This should include supporting the setting up and further development of sound mechanisms for prevention, detection and repression of corruption among border police and customs officers.

Strengthening the enforcement capacity can also be done by providing the necessary training to customs and police officers and border guards in order to enable them to detect illicit goods, as well as to prevent and report any corrupt practices.

4.1.2. Objective II: Strengthen the disincentives and raise awareness (make smuggling less profitable)

The national regimes on sanctions for smuggling activities need to be sufficiently tough and provide for effective and equivalent protection in all Member States in order to avoid penalty shopping and the negative impact on the economy. These regimes should send a clear dissuasive message to all the actors (both legal and natural persons) engaged in smuggling activities and thus also have a strong preventive effect. Member States' authorities should be encouraged to translate the available sanctions into practice by applying the existing penalties to maximum effect.

One of the most important factors behind the increased smuggling through the Eastern Border is the difference that exists between taxes and excise rates in the EU and in the Eastern Partnership countries and Russia. The approximation of excise rates between the EU and its neighbours would be the most effective medium to long-term solution to the smuggling of tobacco and other excisable products. Although it may not be possible to achieve this in the near future, the momentum is there for the EU to negotiate with these partner countries legally binding commitments in the framework of on-going negotiations of new bilateral agreements, such as those under discussion in the negotiations for the new Association Agreements with Ukraine and Moldova.

Raising awareness can also be a strong tool in order to discourage people from buying illicit cigarettes or other illicit excisable goods. It is also a tool that can be used relatively easily by all actors at all levels. In fact, awareness raising actions can accompany all existing or foreseen measures as well in order to achieve a multiplying effect.

4.1.3. Objective III: Strengthen enforcement through improved operational cooperation including shared intelligence

Fighting against organised crime operating across borders implies smooth cooperation among competent authorities on both sides of the border in the region including sharing information and intelligence among them. Enhanced cooperation and information sharing between national customs authorities and other competent authorities significantly improves the

effectiveness of deterrent action against smugglers. They need to work in a coordinated manner.

Where appropriate, consideration should be given to possible forms of cooperation with Europol in the light of its competences on organized crime, terrorism and other forms of serious crime²⁴.

4.1.4. Objective IV: Enhance international cooperation

Smuggling is not only an EU problem and the EU alone cannot fight it. It is a global phenomenon, requiring global solutions. Since much of the smuggling, especially the tobacco smuggling takes place at the Eastern Border with cigarettes originating mainly in Moldova, Ukraine, Russia and increasingly Belarus, we need to build a strong cooperation with these countries in order to tackle it.

At the same time we need to step up our efforts on the global level as well in order to reinforce the worldwide binding commitments (FCTC).

4.2. In order to attain these objectives, the following actions could be undertaken under an Action Plan to fight against smuggling of cigarettes and alcohol along the EU Eastern Border

The actions can be classified under the following four categories corresponding to the above described objectives: 1) Capacity building, technical assistance and training; 2) Disincentives and awareness raising; 3) Strengthening operational cooperation; and 4) Enhanced international cooperation.

The actions proposed and their implementation will be regularly reviewed and adjusted as necessary. On various occasions, Member States and stakeholders have been encouraged to share suggestions for further actions. When budgetary prospects have stabilised, a stock-taking exercise will be conducted to review and consolidate the Action Plan and consider an extension to other products and to include longer term actions.

4.2.1. Capacity building and technical assistance

4.2.1.1. Control actions on technical capacity at land borders (short term)

"The C2013 Land Frontier contact group" is a network of the Member States' customs officials working at the external EU land border (operational and managerial staff). This group meets twice per year and can plan and fund operational activities. In appropriate cases in the future, participation of neighbouring countries could be envisaged. The group has already carried out in the past one operational risk based control action, the purpose of which was to test the implementation of the security amendments i.e. implementation of common risk criteria for security and safety at the external land border, supported by the CRMS (Custom Risk Management System, exchange of risk related information in real time to support risk based controls on the commonly agreed risk profiles). At that time the action involved 50 Eastern land frontier border points (out of 85 in total) which were directly connected to the CRMS. In addition, a subgroup was established to collect statistics each year.

²⁴ Art 4 and Annex of Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), (OJ L 121, 15.09.2009., p. 37)

This network could be used for control actions tailored to this specific objective, on a voluntary basis.

Customs and Fiscalis 2013 joint actions could be used to design guidelines and benchmarks to render border controls more efficient on the smuggling of excisable goods as well as to build better administrative capacities to tackle the illicit trade in the internal market and help strengthening cooperation among Member States. Based on these guidelines and benchmarks the Commission could provide technical assistance to Member States.

4.2.1.2. Promotion of integrity and reinforcement of anti-corruption measures

The Commission could also support Member States through the "Prevention of and Fight against Crime" – ISEC programme²⁵ to identify best practices and implement more effective measures for prevention and repression of corruption among border police and customs officers. Such assistance may focus on the capacity of police and customs at local level to more vigorously address corruption.

The Commission will also encourage the Member States to further develop and implement at national level sound strategic documents to tackle this issue.

Improvement of integrity will be an important element of the strategic frameworks on customs cooperation with Eastern Partnership countries currently under preparation (referred to under item 4.2.4.2)

4.2.1.3. Funding for technical equipment (medium term)

The EU Action Programme Hercule II is a tool to fund new technical solutions and equipment in the Member States. However, the current legal basis and financing decision requires a high (50 %) contribution from the beneficiary for funding related to the fight against cigarette smuggling. This seems to be too high in the current financial climate in the Member States.

The current Customs/Fiscalis 2013 Programmes on the other hand do not allow any sponsoring of technical equipment (scanners etc.).

Appropriate solutions could be found in the medium term in order to facilitate the acquisition of relevant equipment without the burden for a participating country to find such substantial national funding for a project which has a wider European interest. This would enable all Member States to fully utilise the programmes and the EU to maximise its investments. Any solution should be reflected in the design of the spending programmes within the future Multi-Annual Financial Framework.

4.2.1.4. Financing under the EU Strategy for the Baltic Sea Region (EUSBSR) Implementation Facility (short and medium term)

Cross-border projects against smuggling are covered by priority 15 of the EUSBSR ("To decrease the volume of, and harm done by, cross border crime"). Total funding available

²⁵ On 12 February 2007, the Council of the European Union adopted the specific programme "Prevention of and Fight against Crime" for the period 2007-2013 with a budget amounting to ca. 600 million € (Council Decision of 12 February 2007 2007/126/JHA establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention of and Fight against Crime', OJ L58, 24.2.2007., p. 7.)

under the Implementation Facility is € 10 m (€ 2.000.000 for 2011) and should be used to its full extent.

4.2.1.5. Automated licence plate and container code recognition (medium term)

As part of the Transition Facility Programme for certain Institution Building actions in the new Member States for the period 2004 – 2006, specific weaknesses were identified at the new external borders in automatically recognising and monitoring suspicious traffic at EU external border without unnecessarily interfering with law-abiding traffic flows. These weaknesses were tackled by strengthening the operational and enforcement capacity of relevant Member States' border control services by providing €10 million for Automated Licence Plate and Container recognition tools at their external borders. Due to the importance of this project and the fact that some clear gaps in this infrastructure still remained – the Kaliningrad region and the south-eastern border (BG, RO, GR) in particular, the Hercule II Programme was used to provide funding to fill identified gaps. However the 50% co-financing condition seems to be an obstacle to expand this useful and ambitious project. The possibility of **reinforcing and upgrading Automated Licence Plate and Container recognition tool infrastructure at the Eastern Border** and to expanding coverage to Eastern Partnership countries and Russia using other EU funds, such as the European Neighbourhood and Partnership Instrument (ENPI) should therefore be explored.

4.2.1.6. Training and workshops

Organising training and workshops are also a useful way of helping Member States and neighbouring countries to enhance enforcement.

Since illicit trade is directly related to the existence of an informal market/retail networks, DG TAXUD is planning to organise a Fiscalis workshop for Member States on best practices in tackling the distribution channels for illicit trade and movements of illicit trade within the internal market, from the tax perspective. The workshop should provide a platform to exchange views, experiences and suggestions for improvement and to identify possible future EU-wide actions to effectively fight illicit trade.

Specific regional and national seminars, training and study tours on fraud, smuggling and anti-corruption are envisaged in the context of the Eastern Partnership IBM Flagship Initiative to improve skills and knowledge necessary to carry-out effective control and examination²⁶. They will involve expert participants from the Eastern Partnership countries, Member States and partner organisations.

4.2.2. Disincentives and awareness raising

4.2.2.1. Penalties and enforcement at EU level (short and medium term)

There is currently no approximation of legal provisions at EU level to ensure that operators or smugglers in one Member State face similar penalties as operators in another Member State. This provides smugglers with an incentive to use ports/entry points to the EU where national legislation imposes the lowest penalties for smuggling (penalty shopping), resulting in "fraud

²⁶ More detailed information is available at <http://www.eap-fit.eu/index.php/en/> (a website created by the organisation responsible for the implementation of the activities under the IBM Flagship Initiative for the EU, the International Centre for Migration Policy Development (ICMPD)).

loopholes" within the EU. Approximation of the levels and severity of penalties would result in an "equally fraud proof" environment.

Therefore, as proposed in the **Stockholm programme and its Action Plan**²⁷ and in the **Communication on the Commission Anti-Fraud Strategy**²⁸, the possibility of approximation of customs penalties could be considered.

As a basis for a possible alignment of Member States' policies and legislation in this area, a **study on the national regimes of customs penalties in 24 Member States was completed in June 2010 and a study on the economic impact on EU businesses of the divergences in customs offences and penalties will be completed in June 2011**²⁹. The results of this study will be available in the second half of 2011.

There is also a need to make the judicial authorities aware of the seriousness of the offence of cigarette smuggling on its own, without linking it necessarily to other possible offences. It is therefore suggested to conduct a **complementary study on penalties and procedures applied in practice by the courts in tobacco-related cases**. The study could be financed under the framework of the Hercule II Programme.

On the basis of these studies, an impact assessment will be carried out which may, depending on its results, lead to a proposal in 2012 to align customs penalties.

4.2.2.2. Identification of common Euro-denaturants in alcohol (short and medium term)

Alcohol smuggling into Eastern Europe can often involve the counterfeit production of established brands by using alcohol which is diverted from industrial usage and cleaned by removing the denaturants that make it undrinkable. The denaturing standards that are necessary to qualify a product for exemption from excise duty are currently not harmonized at EU level and the fraudsters target some of the weaker formulations that are presently available. The Commission has, therefore, organised a **Fiscalis project** in collaboration with the Joint Research Centre and Member States with the aim of identifying common 'euro-denaturants' that could be introduced. The objectives are both to make fraud more difficult by encouraging the replacement of weaker formulations and, at the same time to simplify administration.

4.2.2.3. Awareness raising (short and medium term)

It is very important to accompany all the proposed measures with adequate awareness raising actions and also to provide for additional actions in this respect. The Commission, the Member States and the Partner Countries need to raise public awareness of the huge losses smuggling is causing to the EU and the national budgets, and the effect this ultimately has on taxpayers and consumers. In addition to regular press releases and press conferences to mark

²⁷ See especially under "Strengthening confidence in the European judicial area/ Developing a core of minimum rules/Criminal Law" in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an area of freedom, security and justice for Europe's citizens, Action Plan implementing the Stockholm Programme, p. 22, (COM(2010)171, p. 7, Commission Work Programme 2011 COM(2010) 623) Volume I.

²⁸ COM(2011)xxx final (point 2.4)

²⁹ Official Journal S 207-315295, TAXUD/2010/DE/109 Study, data collection and comparative analysis concerning certain customs matters

the launching of concrete actions, specific programmes and reports in newspapers and TV programmes as well as interviews with senior officials will be envisaged.

4.2.3. Strengthening operational cooperation

4.2.3.1. Administrative Cooperation Arrangements (short, medium and long medium term)

OLAF has started to establish closer links with its operational partners in third countries and at international organisations through **bilateral or multilateral administrative cooperation arrangements (ACAs)**. Specific actions covered include administrative support, exchange of operational information, data protection, mutual training and designation of contact points for close cooperation. The ACAs are a good way of strengthening the relationship and practical cooperation with the partner country's authorities. A cooperation arrangement with Ukraine customs service is currently being negotiated and would be the first with an Eastern Partnership country. As a medium term objective, OLAF intends to gradually build on the experiences of the ACA with Ukraine in reinforcing and deepening cooperation with the other Eastern Partner's authorities.

4.2.3.2. Joint Customs Operations (short term)

Joint customs operations (JCO) are a very effective tool in targeting smuggling and fraud in certain risky areas and/or on identified trade routes. They help to improve the practical cooperation between the customs authorities and also help to develop a greater insight into where the risks lie on specific trade routes. JCOs not only safeguard the EU's financial interests, but also protect the citizens and legitimate businesses by intercepting illegal products trying to enter the EU. Building on the experience of the past JCOs, targeted JCOs are foreseen within the context of the Eastern Border area in the short and medium term.

4.2.3.3. Liaison officer (short term)

OLAF plans to post a Liaison Officer in Kiev by end 2011. The **liaison officer's** primary role will be to improve and develop relationships and information flows between OLAF and the Ukrainian authorities especially in relation to combating the trade in illegal cigarettes. His/her role will also be to help achieve the objectives of the tobacco agreements concluded with the industry.

4.2.3.4. Agreements with tobacco manufacturers (short and medium term)

The Commission also intends to try to secure **more agreements with other Tobacco manufacturers**. It is in the manufacturers' and the EU's mutual interest to use the opportunity to work closely together by means of signing legally binding agreements based on the positive example of existing agreements in order to ensure that the legitimate manufacturers secure their supply chain so that their products do not enter the illicit market in the EU.

4.2.3.5. Eliminate illegal importation of Cheap Whites (short term)

One of the problems faced by the law enforcement authorities in the Member States is the increase in the number of cheap whites smuggled into the EU. For example since 2005 there has been a sustained growth in the **smuggling of Jin Ling cigarettes** from Russia into the EU. The cigarettes are manufactured in Kaliningrad and are estimated to generate revenue losses of 700 million € per annum for the EU. OLAF has been in regular contact with the Federal Customs Service of the Russian Federation (FCS) concerning Jin Ling cigarettes.

OLAF will continue to pay particular attention to preventing illegal importation of Jin Ling cigarettes. In parallel, it is necessary to continue **to engage with the Russian Ministry of Interior and other relevant Russian Services** (especially the Customs and the Economic Security department of the Ministry of Interior) on the problem of cigarette smuggling and seek their cooperation. Such cooperation has already produced tangible results and we need to build on these in the future.

4.2.3.6. Improve exchange of information (long term)

In the context of the fight against fraud, the Member States are equipped with reporting systems dedicated to specific means of transport or types of fraud (Marinfo, Yachtinfo, Ciginfo) and databases dedicated to the storage of alert messages or investigation files (Customs Information System (CIS), Customs Investigation File (FIDE)). Since mid-June 2010, the Mutual Assistance Broker (MAB) which is a business user interface established for the Member States and the Commission to input automatically a single case in several back-end systems (e.g. Customs Information Systems (EU), (MS), Marinfo, Yachtinfo, Ciginfo) is fully operational. The Member States should go one step further by establishing one single back-end system (instead of having several components) in order to make the entire case updatable and searchable for appropriate user groups. Marinfo/Yachtinfo groups will be consulted beforehand.

It could be also envisaged to **make available the IT tools** MAB mail (a secure message system) and the MAB database **to Eastern Partnership countries and Russia** based on a mechanism which allows the owner of the data to restrict access to the information on a case-by-case basis. Such approach would require not only the amendment of Council Regulation (EC) 515/97 which is foreseen³⁰ but also the development of a specific convention or decision related to the extension of the AFIS (Anti Fraud Information System) / MAB applications to the acceding countries, (potential) candidates countries, the neighbourhood countries and Russia. Such an instrument should take into consideration an adequate level of protection of personal data in these countries.

A pilot project on exchanges of advance customs (transit) information between the EU and Russia has been operational since January 2009. Exchanges of advance customs information, insofar as they may contribute to improve risk management and the working of customs, will also be considered in the context of the Strategic Frameworks on customs cooperation (see point 4.2.4.2. below).

4.2.3.7. Other supporting actions under the Customs and Fiscalis Programme (short term)

The 6th Conference on Customs co-operation at the Eastern border of the EU, 19-20 October 2011 in Krakow will serve to improve the dialogue between EU Member States and Eastern Neighbours in the areas of security and safety, trade facilitation, the fight against fraud and customs modernisation.

In addition, Eastern Partnership countries and Russia can participate on an ad-hoc basis in specific Customs 2013 Joint Actions. An action on anti-smuggling could be organised.

³⁰ Commission Work Programme 2011 COM(2010) 623, p. 7. Volume II

4.2.4. Enhanced international cooperation

4.2.4.1. Negotiations of new Agreements (medium term)

The European Union is currently negotiating new Association Agreements with the Eastern Partnership countries, except Belarus, and a new agreement with Russia. Taxation provisions in the new agreements concern cooperation and harmonisation of policies in counteracting and fighting fraud and smuggling of excisable products, including the gradual approximation of excise rates on tobacco products. Customs provisions concern preventing and combating the illicit cross-border traffic in goods, including in tobacco products (Russia and Moldova).

4.2.4.2. Strategic frameworks on customs cooperation (short, medium and long term)

Following the endorsement of such a framework with Russia in December 2010, the Commission has been working on a draft outline for a **Strategic Framework for customs cooperation with the Eastern neighbours** based on the parties' mutual interest in economic integration, customs modernisation and convergence. Such a framework could be built on the basis of three broad priorities: a) safe and fluid trade lanes, b) risk management and the fight against fraud, and c) customs modernisation. Concrete actions could be envisaged under the second of these priorities, which would be of relevance to the fight against smuggling, e.g:

- Development of risk management: risk management based on electronic data and processing is indispensable in achieving higher levels of protection against fraud. Exchanges of good practices are particularly important. The pilot project on exchanges of advance customs information currently ongoing with Russia could be expanded to other neighbours, in particular Belarus and Ukraine.
- Fight against fraud: the dialogue with each of the relevant partners on the fight against fraud could be strengthened with the objective of achieving a better understanding of the challenges and devise appropriate responses.

4.2.4.3. Conference on tobacco smuggling (short term)

There are a number of countries and law enforcement services who do not or do not sufficiently communicate with each other at national and international level in the region. In order to address this specific problem, OLAF has decided to organise a targeted regional "operational" conference in June 2011 with the participation of the national operational staff responsible for the fight against illicit trade in tobacco products. The Conference is financed under the Hercule II Programme. The purpose of the conference is to bring the operational experts from the various enforcement services together to facilitate cooperation and the exchange of intelligence and information. It is foreseen that OLAF will be at the heart of these new exchanges of intelligence and will assist with the international coordination of the criminal cases as they arise, where appropriate together with Eurojust. Representatives from the Customs Services, Police, Border Guards and Security Services from each of the following countries are invited: Ukraine, Moldova, Romania, Bulgaria and Hungary.

4.2.4.4. Protocol to the FCTC to eliminate the illicit trade in tobacco products (short term)

Two working groups will be organised by the WHO in 2011, to which the Commission will contribute significant amounts of funding from the Hercule Programme, in order to prepare for the fifth and final INB meeting planned for early 2012 in Geneva. It is crucial that the Protocol remains a strong text which will deliver the results required to effectively tackle the

illicit trade, and that the negotiating partners work together to reach a workable and meaningful compromise.

Action Plan to fight against cigarette and alcohol smuggling along the EU Eastern Border – Annex

Action	Description	Timeline	Responsible	
1	Capacity Building, technical assistance and training			
1.1.	Control actions on technical capacity at land borders	Use the C2013 Land Frontier contact group for control actions tailored for this specific objective, taking into account the new pre-arrival system of customs data being supplied to the customs offices of first entry into the EU	Next meeting in June 2011, where the action plan will be presented and further discussed in view of organising an operational action	Commission and Member States
		Annual report on customs control capabilities and movement of trade at the EU external land border	Annual reports	Commission
		Use Customs and Fiscalis 2013 joint actions to design guidelines and benchmarks to render border controls more efficient on the smuggling of excisable goods and to build better administrative capacities to tackle illicit trade in the internal market and help strengthening cooperation among Member States Provide technical assistance to Member States on the basis of these guidelines and benchmarks	In principle, preparation and planning can start immediately responding to the needs to be identified by the Commission and the Member States	Commission and Member States

1.2.	Promotion of integrity and reinforcement of anti-corruption measures	<p>Use the "Prevention of and Fight against Crime" – ISEC programme at EU level, to provide assistance to identify best practices and encourage the implementation of more effective measures for prevention and repression of corruption among border police and customs officers. Such assistance could focus on the capacity of police and customs at local level to more vigorously address corruption</p> <p>Urge the Member States to further develop and implement at national level sound strategic documents to tackle this issue</p>	From 2012	Commission and Member States
1.3.	Co-financing of technical equipment	<p>Rethink the principle of co-funding under the new Hercule III programme</p> <p>The legal basis of Hercule II (new Hercule III programme from 2014) could be modified in order to facilitate acquisition of relevant equipment for a project which has wider European interest.</p>	<p>Proposal for a new Hercule III to be prepared in 2011/2012</p> <p>Adoption by the end of 2013 latest</p>	Commission, European Parliament, Council
		<p>In the context of the negotiations on the new Multi-annual Financial Framework (MAFF), take into consideration the possibility to co-finance technical equipment in the successor programme to Customs 2013</p>	<p>1. As a first step, an Impact Assessment for the successor programme to be finalised by September 2011.</p> <p>2. Preparing for a new programme to succeed the current one by 2014</p>	Commission, European Parliament, Council

1.4.	Financing under the EU Strategy for the Baltic Sea Region (EUSBSR) Implementation Facility	Cross-border projects against smuggling are covered by priority 15 of the EUSBSR	Funding available 01.07.2011 – 31.12.2013	Commission
1.5.	Automated Licence Plate and Container Code Recognition	Explore the possibility of reinforcing and upgrading Automated Licence Plate and Container Code Recognition infrastructure at the Eastern Border using other funds than Hercule II	From 2012	Commission
1.6.	Training and Workshops	Fiscalis workshop for Member States on best practice in tackling the distribution channels for illicit trade and movements of illicit trade within the Internal market, from the tax perspective	Romania volunteered to host this workshop in the middle or second half of 2011	Commission
		Specific, regional and national seminars on fraud, smuggling and anti-corruption are envisaged in the context of the Eastern Partnership IBM Flagship Initiative to improve skills and knowledge necessary to carry-out effective control and examination.	2011, 2012	Commission, EEAS and Member States

2	Disincentives and awareness raising			
2.1.	Studies on penalties and enforcement	<p>1. TAXUD has launched a study on customs offences and penalties that would be the base for our IA of a possible alignment of MS policies in this area.</p> <p>2. Finance a complementary study focusing on penalties for international tobacco smuggling in the framework of the Hercule II Programme</p>	<p>1. Study of Deloitte and IA in 2011 (sanctions)</p> <p>2. Start: second half of 2011, study could be delivered in 2012</p>	Commission
2.2.	Identification of common Euro-denaturants in alcohol	<p>Identify common 'euro-denaturants' that could be introduced with a view to make fraud more difficult by encouraging the replacement of weaker formulations and to simplify administration</p> <p>Identify where there is scope for further exploratory work and discuss feasibility of movement towards common denaturants & establishing legal base for a harmonized system</p>	<p>1. Work of Fiscalis Project group ended with seminar 23-25 February 2011.</p> <p>2. Final report anticipated for June. It should include options for 'best practice' in key sectors and identify where there is scope for further exploratory work.</p> <p>3. Discussion in the Excise Committee/WG2 in mid or second half 2011 on feasibility of voluntary movement towards common denaturants & establishing legal base for a harmonized system</p>	Commission and Member States

2.3.	Awareness raising	<ol style="list-style-type: none"> 1. Press releases/conferences on the occasion of the launching of concrete actions 2. Programmes/reports in newspapers and TV programmes; 3. Interviews with senior officials on smuggling and counterfeit goods 4. Information posted on DG TAXUD's website and the European Customs Information Portal (ECIP), as well as OLAF's website 5. DG TAXUD's newsflash "EU Tax and Customs News" 6. Disseminate information via contact points in Member States' customs administrations and via OLAF contact points (OAFCN) 	Continuous	Commission and Member States
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3 Strengthening operational cooperation				
3.1.	Administrative Cooperation Arrangements	OLAF intends to sign and Administrative Cooperation Arrangement with Ukraine first. As a medium term objective OLAF would gradually build on the experiences of the ACA with Ukraine in reinforcing cooperation with other Eastern Border Countries.	The signature of the ACA with the Ukraine is foreseen for the second half of 2011.	Commission (OLAF)
3.2.	Joint Customs Operations	Targeted joint customs operations are foreseen within the context of the Eastern Border area	Annual planning	Commission and Member States
3.3.	Liaison officer	Post an OLAF liaison officer in the EU Delegation in Kiev	By end of 2011	Commission and EEAS
3.4.	Agreements with tobacco manufacturers	Try to secure more agreements with other tobacco manufacturers, both inside and outside the EU.	Medium and long term	Commission and Member States
3.5.	Eliminate illegal importation of Cheap Whites	Continue to pay particular attention to preventing illegal importation of Jin Ling cigarettes produced in Kaliningrad	Immediately	Commission and Member States

3.6.	Improve the exchange of information	<p>Without prejudice to any exchange of information with Eastern EU neighbours under the SPEED platform with a view to increase the efficiency of the customs control at the border, the exchange of information between customs antifraud services could be improved by making available the following IT tools for candidate/potential candidate countries and European Neighbourhood countries and Russia:</p> <ul style="list-style-type: none"> - a secure message system (MAB mail) could be extended for exchange of information in the context of fight against customs fraud; - a MAB database (CIS, Marinfo, Yachtinfo, Ciginfo) could be made available based on the implementation of a mechanism giving the possibility for the owner of the data to restrict or not the view of the information on each individual case 	<p>1. The modification of Council Regulation (EC) 515/97 is foreseen. (Commission proposal due by December 2011)</p> <p>2. Adopting a convention or a decision concerning the extension of AFIS/MAB applications to non EU Member States may take years</p>	Commission, Council, European Parliament and Member States
3.7.	Other supporting actions under Customs and Fiscalis Programme	<p>The 6th Conference on Customs co-operation at the Eastern border of the EU will take place on 19-20 October 2011 in Krakow</p> <p>Provide for provision on the participation of third countries in specific Joint Actions under the successor programme of the Customs 2013 Programm.</p> <p>Organise an action on anti-smuggling</p>	Action Plans are proposed by every individual activity and subsequently implemented.	PL Presidency and Commission (European Parliament, Council for the successor programme)

4	Enhanced international cooperation			
4.1.	Negotiation of new agreements	<p>Provisions in the new agreements being negotiated with Russia, Ukraine, Moldova, Armenia, Azerbaijan and Georgia:</p> <p>Taxation: cooperation and harmonisation of policies in counteracting and fighting fraud and smuggling of excisable products, including the gradual approximation of excise rates on tobacco products.</p> <p>Customs cooperation: preventing and combating illicit cross-border traffic in goods, including in tobacco products (Russia and Moldova)</p>	<p>Russia: customs cooperation and taxation negotiations may begin in 2011, conclusion of the entire agreement expected to take years.</p> <p>Ukraine: negotiations on customs and taxation practically concluded, agreement may be signed by end of 2011.</p> <p>Moldova: taxation and customs cooperation texts provisionally agreed agreement not in force before 2012-2013.</p> <p>Armenia, Azerbaijan, Georgia: negotiations on customs and taxation may begin in the second part of 2011, agreements not in force before 2013-2014.</p>	Commission

4.2.	Strategic Frameworks for Customs Cooperation	<p>The EU and Russia agreed on a Strategic Framework for Customs Cooperation in December 2010. Similar Frameworks are foreseen for Ukraine, Belarus and Moldova</p> <p>The Framework is based on three priorities for action: 1) fluid and safe trade lanes; 2) risk management and the fight against fraud; and 3) customs modernisation.</p> <p>Under the second priority, the dialogue on the fight against fraud, including smuggling, will be strengthened. Discussions on possible actions to be held in joint Working Groups (already existing with Russia, to be created with Ukraine, Belarus and Moldova)</p>	<p>Russia: Working Group meetings 2-3 times a year</p> <p>Ukraine, Belarus, Moldova: frameworks to be proposed in June 2011 for adoption in the 2nd half of 2011, Working Group meetings in the 2nd half of 2011</p>	Commission
4.3.	Conference on tobacco smuggling	Targeted regional operational conference on tobacco smuggling	22-23 June 2011, in Romania.	Commission (OLAF)
4.4.	Protocol to the FCTC	The EU's objective is to have the Protocol to the Framework Convention on Tobacco Control to eliminate the illicit trade in tobacco products adopted at the Conference of the Parties in late 2012	End of 2012	Commission and Member States