

Chapter 1

Introduction



Over three and a half years after the popular vote, Brexit remains a moving target, particularly with regard to the future relationship between the EU and the UK. The content of this subproject, whilst it was up to date at the time of writing, may have been superseded by recent events.

Estimating the impact of Brexit on *licit* trade is a challenging task. Over three and a half years after the referendum, many aspects of the separation between the European Union (EU) and the United Kingdom (UK) remain undefined. Assessing the impact of Brexit on *illicit* trade, by definition a covert and constantly evolving activity, is even more difficult. Although not a priority in the Brexit discussions, the issue of illicit trade in tobacco products has nevertheless attracted some attention, mainly in relation to the border between Ireland and Northern Ireland, recalling past instances of smuggling activities alongside the UK-Irish border. Limited references to illicit tobacco trade are contained in the *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 19 October 2019* (2019 Withdrawal Agreement) with regard to Gibraltar and Spain.

The UK Government's commitment to fight illicit tobacco trade has remained strong since the publication of its first comprehensive strategy in 2000,¹ irrespective of the political leadership. Over the years, the estimated market share of illicit tobacco products has diminished, most notably for cigarettes. While approximately 1 in 5 cigarettes smoked in the UK in the year 2000 were smuggled, recent estimates suggest that the current ratio is down to 1 in 10. It is assumed that Brexit will not affect Government resolve to continue the fight against illicit tobacco trade in the UK and more widely in the EU.

Brexit will most definitely modify the relationship between the UK and the EU. The EU is both a single market and a customs union. As an EU member, the UK had the highest possible level of integration with other EU countries. Several post-Brexit scenarios have been envisaged following the immediate aftermath of the 2016 referendum. The four more recurrent scenarios are (i) '*Soft Brexit*'—UK remains in

¹HM Customs and Excise and HM Treasury (2000)—Tackling tobacco smuggling.

the EU's single market, but not in its customs union; (ii) *Theresa May's 2018 Deal*—UK leaves the single market, but maintains a customs union with the EU; (iii) *Boris Johnson's 2019 Deal*—UK leaves the single market and the customs union, and concludes a free trade agreement with the EU similar to the EU-Canada agreement; or (iv) *'Hard Brexit'*—future UK-EU relations are simply based on World Trade Organization (WTO) terms.

The terminology such as 'soft-' and 'hard-Brexit' has not always been used consistently. The four mentioned scenarios are used however to weigh the economic pros and cons of Brexit, e.g. on British exports (goods and services) to the EU, and on the UK's attractiveness as a destination for foreign direct investment.² These four scenarios have been retained for the purpose of this book as well. Their pertinence may somewhat be limited by the fact that illicit trade is, by definition, an unregulated activity. The different scenarios will however help capture the varying degrees of flexibility for post-Brexit UK that may have an impact on illicit tobacco trade as well as on other matters.

For instance, one could argue that the scenario that offers the lowest possible level of integration, i.e., 'hard Brexit', has the highest potential to disrupt illicit trade, including in tobacco products, due to the introduction of tighter border controls compared to the EU frictionless borders. But, the UK is a target country for illicit tobacco with no significant domestic manufacturing. Thus, increased checks at the border may help keep illicit products out of the national market, leading to more seizures and generally deterring illicit imports. Whether the UK will manage to efficiently control tobacco illicit trade into its territory will also depend on the UK's readiness to cope with post-Brexit realities. Sufficient resources need to be allocated to border control both for merchandise traffic and immigration. In addition, the disruption of existing cooperation between the EU and the UK in terms of information exchange, investigations, and enforcement operations outside of the national territory, could seriously undermine the UK's capability to fight illicit trade. This will have to be duly factored in by the post-Brexit UK governments.

Against this background, this book assesses the consequences of Brexit for illicit trade in tobacco products in the UK. Based on the currently applicable legal framework, it looks at the significance of a possible non-application of the *acquis communautaire* in the UK in matters relating to tobacco anti-illicit trade legislation, and analyses several avenues for possible future cooperation between the UK and the EU in this area, as well as possible regulatory scenarios and their consequences.

The book comprises six main sections. After the introduction (in this chapter), Chap. 2 discusses the state of play of Brexit and possible outcomes for the invocation of the Article 50 of the Treaty of European Union procedure. Chapter 3 illustrates the data and trends of illicit tobacco trade in the UK. Chapter 4 describes the relevant legal (e.g. trade and fiscal measures) and enforcement frameworks in the UK on this matter and suggests possible post-Brexit scenarios for sustainably tackling the control of tobacco illicit trade. Chapter 5 focuses on the relevance of pre-existing

²London School of Economics Blog (2019)—Brexit will leave the UK worse off economically in all scenarios.

arrangements between the EU and/or its Member States and the tobacco industry in the control of illicit trade in Europe more widely and the options the UK has with respect to these agreements. Chapter 6 then analyses the relevance of key EU and global anti-illicit trade initiatives which can be inspirational for the UK in building its post-Brexit policy on this matter. Finally, and drawing from the analyses in the book, Chap. 7 offers some recommendations and conclusions on what measures are of interest to the UK in controlling illicit trade in tobacco as an EU outsider.

References

- HM Customs and Excise and HM Treasury (2000) Tackling tobacco smuggling. The Stationery Office, London
- London School of Economics Blog (2019) Brexit will leave the UK worse off economically in all scenarios, 30 Nov 2019. <https://blogs.lse.ac.uk/businessreview/2019/11/30/brexit-will-leave-the-uk-worse-off-economically-in-all-scenarios>. Accessed 24 Feb 2020

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