

**Analysis of the regulatory
framework aimed at eliminating illicit
trade in tobacco and tobacco-related
products, including smuggling, illicit
manufacturing and counterfeiting.
Republic of Moldova**

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Analysis of the regulatory framework aimed at eliminating illicit trade in tobacco and tobacco-related products, including smuggling, illicit manufacturing and counterfeiting. Republic of Moldova



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Background

Why does smuggling persist? Tobacco companies argue that the primary driver of cigarette smuggling is exorbitant taxes, contending that mitigating this issue necessitates a reduction in tax rates. However, smuggling is a global phenomenon, prevalent even in areas with comparatively low tax burdens. In truth, pricing stands as just one among numerous factors shaping the extent of illicit trade. **Additional influential factors encompass:**

Involvement of tobacco companies: Legal actions and unearthed industry documents have unveiled the active engagement of tobacco companies in smuggling activities. Notably, instances include legal proceedings against tobacco industry leaders for smuggling offenses in Hong Kong and Canada. R.J. Reynolds' subsidiary faced conviction for smuggling cigarettes into both the United States and Canada. A significant legal development occurred in 2003 when the Canadian Federal Service initiated a \$1.5 billion lawsuit against R.J. Reynolds and Japan Tobacco. The charges accused them of orchestrating extensive illegal sales of contraband cigarettes within Canada.¹ Simultaneously, legal actions were undertaken by authorities in Colombian provinces against Philip Morris. The company faced allegations of siphoning off billions of dollars from local budgets through intricate smuggling and money laundering schemes.² In January 2005, British American Tobacco found itself charged with smuggling tobacco products into Canada, involving millions of dollars.

Shortcomings in traceability systems: the absence of a robust traceability system allows cigarette smugglers to conduct substantial transactions of tobacco products in the underground market, eluding taxes and duties.

Price variation across countries: While price variation remains a crucial factor influencing illicit trafficking, it plays a minor role in large-scale tobacco product smuggling and 'transit' smuggling. For instance, in Scandinavian countries with elevated cigarette taxes and prices, tobacco smuggling is infrequent.³

Tax-free sales: The presence of significant volumes of untaxed tobacco in the international market amplifies opportunities for smuggling activities.

Insufficient resources: Many countries fail to allocate adequate resources to bolster fiscal control over tobacco, especially when smuggling isn't perceived as a pressing concern. Disrupting smuggling networks proves challenging, but preemptive measures to prevent their formation are more feasible.

Inadequate control and lenient penalties: Smuggling tends to thrive in countries exhibiting a permissive stance towards illicit trafficking. Furthermore, in numerous countries, the unlawful trade in tobacco products is not treated as a grave offense, resulting in considerably milder penalties compared to the smuggling of drugs or firearms. The allure of tobacco smuggling lies in its substantial profit potential coupled with a lower likelihood of apprehension, fines, and incarceration.

Lack of effective international cooperation: Despite the establishment of international agreements and mechanisms to combat the smuggling of pharmaceuticals, drugs, and firearms, robust actions against cigarette smuggling have been notably absent. The World Health Organization's Framework Convention on Tobacco Control offers valuable measures to counteract smuggling.⁴

¹ Department of Justice, Canada, "Government of Canada announces legal action against tobacco companies," Press Release, August 13, 2003. http://canada.justice.gc.ca/en/news/nr/2003/doc_30962.html

² For details see www.public-international.org/story_01_05_2300.htm and Meg Richards "Tobacco process in Ecuador". Associated Press, 6 June 2000.

³ Jamie Dovard, "Smuggling and trade in tobacco products in the European Union": report, London, December, 1999.

⁴ <https://fctc.who.int/who-fctc/overview> (accessed 15.12.2023)

Organisation's Framework Convention on Tobacco Control, concluded in Geneva on 21 May 2003, have adopted legislation aimed at eliminating the illicit trade in tobacco and tobacco-related products, given the serious consequences of such illicit activities on public health and the economy. The Republic of Moldova ratified the World Health Organization Framework Convention on Tobacco Control on 11 May 2007.⁵

As a result, in order to fulfil the commitments undertaken, including the elimination of illicit trade in tobacco and tobacco-related products, the Parliament of the Republic of Moldova adopted Law No.278/2007 on tobacco and tobacco products on 14 December 2007 (entered into force on 7 March 2008).⁶ Previously, some aspects of this issue were covered by Law No 386/2001 on tobacco and tobacco-related products.

On 27 June 2014, the Association Agreement between the Republic of Moldova, on the one part, and the European Union and the European Atomic Energy Community and their Member States, on the other side, was signed in Brussels.

In line with the stipulations outlined in Article 197(e) of the Association Agreement, the Parties commit to enhancing collaboration in the field of customs to effectively achieve the agreement's objectives, promoting trade facilitation with concurrent emphasis on ensuring robust control, security, and the prevention of fraud. To achieve these goals, the Parties may employ the European Commission Customs Blueprints of 2007 as a benchmarking tool where applicable. To uphold adherence to these provisions, the Parties will collaborate to prevent and combat illicit cross-border traffic in goods, including tobacco products.

According to the 2019 "Intellectual Property Crime Threat Assessment" study conducted by the European Union Intellectual Property Office in partnership with EUROPOL, the number of counterfeit tobacco products detected, especially cigarettes, has been decreasing for 4 years in a row. However, in 2017 cigarettes were still the third most frequently seized counterfeit goods. Although the number of detected cases of imported counterfeit cigarettes has decreased, the production of counterfeit cigarettes has increased considerably in the EU in recent years. These illicit factories are more and more sophisticated and modern, capable of producing up to 2 million cigarettes per day. It appears that the vigorous law enforcement activity in Eastern European countries has led to a diversification of illicit tobacco production sites across the EU. Whilst the majority of counterfeit cigarettes are still sold on the streets, there has been an upsurge in online trade and small pack shipments.⁷

Cigarette smuggling, including counterfeit products, is currently assessed as one of the most major risks to cross-border security, resulting in losses of millions of euros to EU Member States' budgets. According to Europe's Anti-Fraud Office estimates, the illicit tobacco trade " is costing" the European Union more than €10 billion annually.⁸

These reviews will examine Moldova's regulatory framework for eliminating illicit trade in tobacco and tobacco-related products, including smuggling, illicit manufacturing and counterfeiting, in particular through the removal of factors contributing to smuggling, namely: Poor supervision and soft penalties; Tax-free trade; and Shortcomings in traceability systems.

⁵ A se vedea Legea nr.124/2007 pentru ratificarea Convenției-cadru a Organizației Mondiale a Sănătății privind controlul tutunului

⁶ A se vedea Legea nr.278/2007 cu privire la tutun și la articolele din tutun

⁷https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2019_IP_Crime_Threat_Assessment_Report/2019_IP_Crime_Threat_Assessment_Report_Exec_Sum_EN_RO.pdf

⁸ <https://www.bursa.ro/supliment-tabac-comertul-ilic-it-cu-tutun-costa-ue-pestre-10-miliarde-euro-anual-20451156>

1. Analysis of legislation on the elimination of illicit trade in tobacco and related products

In accordance with Article VII para. (3) of Law no. 124/2015, which pertains to the modification and supplementation of certain legislative acts, Law no. 278/2007 on tobacco control underwent republication in the Official Monitor of the Republic of Moldova in 2015, issue no. 185-189, art. 449. This republication involved renumbering the structural elements and altering the name of the normative act.

From March 7, 2008, to the present, Law no. 278/2007 on tobacco control has undergone amendments and supplements through 24 normative acts of the Parliament, concurrently with additional secondary normative acts in this domain. Subsequently, we will provide an overview of the principal amendments and supplements made to Law No. 278/2007 on tobacco control and other normative acts dedicated to eradicating illicit trade in tobacco and related products within the Republic of Moldova.

By Law no.124/2015 on amending and supplementing some legislative acts, in order to regulate certain aspects related to the *traceability of tobacco products*, Law no.278/2007 on tobacco and tobacco products was supplemented by Article 17², according to which all unit packets of tobacco products shall be marked, by the method and in the place determined by the manufacturer, with the serial number of the batch or its equivalent, thus ensuring that the place and date of manufacture can be identified; they shall be marked, by the method and in the place established by the manufacturer, with the words "*Intended to be marketed in the territory of ...*", specifying the name of the country where the tobacco product is to be marketed. For tobacco products marketed on the territory of the Republic of Moldova, the indication "*Intended to be marketed on the territory of the Republic of Moldova*" shall appear on the unit packet. This information must be made available to consumers and control authorities for identification of tobacco products and for monitoring their movement.

After being republished, the provisions of Article 172 of Law No. 278/2007 on tobacco and tobacco-related products were included in Article 20 of Law No. 278/2007 on tobacco control without any changes.

Therefore, the aforementioned rules on traceability entered into force on 1 January 2018.⁹

Additionally, as per Article I, item 6) of Law no. 142/2021, which amends certain normative acts, Article 20, paragraph (1) of Law no. 278/2007 on tobacco control has been enhanced with new provisions. According to these additions, if individual packets of tobacco products are designated for placement and sale in duty-free shops, bars, and restaurants, they must be labeled, as determined by the manufacturer, with the phrase "For sale in duty-free shops only", using the prescribed method and location.

On September 23, 2022, a group of MPs in the Secretariat of the Parliament of the Republic of Moldova filed a draft law on the amendment of some normative acts (*legislative initiative no.361*

⁹ See Article VII para. (1) of Law no.124/2015 on the amendment and supplementation of certain legislative acts

of September 23, 2022)¹⁰ proposing several amendments to the Fiscal Code no.1163/1997, the Customs Code of the Republic of Moldova no.1149/2000, the Customs Code no.95/2021, the Law no.278/2007 on tobacco control and other normative acts.

As per the information note accompanying the draft of the mentioned normative act, as provided by the Customs Service, the tax exemptions granted to *duty-free shops* within the Republic of Moldova are substantial. In the first half of 2022 alone, these exemptions surpassed the sum of 1 billion lei. Consequently, the projected total for tax exemptions (including VAT, customs, and excise duties) in 2022 is anticipated to reach at least 2 billion lei, a significant decrease from the pre-pandemic annual figure, which was close to 4 billion lei. This practice raises concerns about fairness, particularly concerning other commercial establishments operating under the general tax regime in Moldova that dutifully fulfill their tax and duty obligations. Furthermore, expert studies indicate that *duty-free shops in Moldova are evolving into a noteworthy source of smuggling activities*.¹¹

As a result, the legislative initiative No 361 of 23 September 2022 was voted in first reading on 30 September 2022 and in second reading on 3 November 2022.

Subsequently, on 09 November 2022, the above amendments were promulgated by the President of the Republic of Moldova, and on 11 November 2022, Law No.302/2022 on the amendment of some normative acts was published in the Official Monitor of the Republic of Moldova No.349-361, art.669.

The main amendments to the Tax Code No 1163/1997 concern the abolition of the possibility to sell goods, including tobacco and related products, *in duty-free shops* without paying excise duty and VAT.

It is important to underline that the goods subject to excise duty are exhaustively described in Annex 1, Chapter 5, Title IV of the Fiscal Code No 1163/1997.

According to the regulations referred to in the Fiscal Code No 1163/1997, the following goods are subject to excise duty:

- cigarettes containing filtered tobacco;
- cigarettes containing unfiltered tobacco, oval up to 70 mm in length;
- cigarettes containing unfiltered tobacco with mouthpiece and similar;
- other cigars, cigarillos and cigarettes containing tobacco substitutes;
- smoking tobacco, other manufactured tobacco and tobacco substitutes;
- "homogenised" or "reconstituted" tobacco; tobacco extracts and essences;
- fine-cut tobacco intended for rolling into cigarettes;
- tobacco refills for tobacco heating devices.

Thus, from **September 4, 2023** (*date of entry into force of the amendments to the Fiscal Code No. 1163/1997*)¹²:

- the exemptions from VAT on the placement and sale of tobacco and tobacco-related products in duty-free shops (listed in Annex No.1, Chapter 5, Title IV of the Tax Code No.1163/1997) are no longer applicable;
- tobacco products and tobacco-related products delivered to duty-free shops are no longer taxed at zero VAT;

¹⁰ <https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/6193/language/ro-RO/Default.aspx>

¹¹ **Mold-street:** Duty-free shops in Moldova have become one of the main sources of cigarettes for the Romanian black market. One third of duty free cigarettes reaching the Romanian market originate from Moldova. <https://www.mold-street.com/?go=news&n=14572>

¹² See Article I and XIII paragraph (1) of Law no.302/2022 on the amendment of some normative acts.

- tobacco products and tobacco-related products intended for sale in duty-free shops are compulsorily marked with an "Excise stamp";
- all excise duties required by tax law are paid when tobacco and tobacco-related products are placed and sold in any duty-free outlets.

At the same time, starting from **January 1, 2024** (*the date of entry into force of the new Customs Code of the Republic of Moldova No.95/2021*):

- tobacco and tobacco-related products will not be allowed to be placed under the special storage arrangements which include duty-free shops;
- licences will no longer be issued for *duty-free shops*;

Furthermore, as of 11 November 2020, upon *expiry of the validity period of the licence* for the duty-free shop activity, including for the service of the diplomatic corps, *the duty-free shop shall cease operations* and be subject to a ban:

- placing goods, including tobacco and tobacco-related products in the customs *duty-free shops*;
- the marketing of goods, including tobacco and tobacco-related products, in the customs *duty-free shops*.

Furthermore, through Law No. 61/2022 concerning the accession of the Republic of Moldova to the Protocol to Eliminate Illicit Trade in Tobacco Products under the World Health Organization Framework Convention on Tobacco Control, the Republic of Moldova officially joined the Protocol for the Elimination of Illicit Trade in Tobacco Products adopted in Seoul on November 12, 2012.

In accordance with Articles 2 and 3 of Law no. 61/2022, the Government is tasked with taking the necessary measures to implement the provisions outlined in the Protocol. The Republic of Moldova explicitly states that the stipulations of the Protocol are applicable across the entirety of its territory within internationally recognized borders. During the period of restoring its full territorial integrity, the Republic of Moldova pledges to collaborate with neighboring states and external partners to ensure the effective implementation of the Protocol.

In alignment with the commitments made by the Republic of Moldova upon joining the Protocol for the elimination of illicit trade in tobacco products under the World Health Organization Framework Convention on Tobacco Control, relevant normative acts have been amended accordingly.

By Law no.25/2023 on the amendment of some normative acts, art.2 Law no.278/2007 on tobacco control was completed with the following notions: "**illicit trade in tobacco products** - practice or conduct prohibited by law which relates to the production, dispatch, receipt, possession, distribution, sale or purchase of tobacco products, including practice or conduct intended to facilitate such activity; "**manufacturing equipment and any part thereof**" (*hereinafter - manufacturing equipment*) - *installations designed or adapted for use exclusively in the manufacture of tobacco products and which form an integral part of the processing/manufacturing process*; "**supply chain**" - *a system of activities which includes the manufacture of tobacco products and*

manufacturing equipment and the import or export of tobacco products and manufacturing equipment and which may be extended, where appropriate, to include one or more of the following activities: a) the growing of tobacco, with the exception of growers, farmers and traditional small-scale producers; b) the transport of commercial quantities of tobacco products or manufacturing equipment; c) the wholesale, warehousing or distribution of tobacco and tobacco products or manufacturing equipment and any part thereof; "**controlled delivery**" - the technique of allowing illicit or suspect consignments to leave the territory, transit through the territory or enter the territory of one or more States, with the knowledge and under the supervision of the competent authorities of those States, for the purpose of investigating an offence and identifying the persons involved in the commission of the offence.

In this respect, it is acknowledged that the Law no.25/2023 also amended Article 32 of the Law no.278/2007 on tobacco control, which stipulates the rules for licensing activities in the tobacco industry.

Thus, as from **1 July 2023**¹³:

the following tobacco industry activities are subject to licensing:

- import/export of tobacco products;
- import/export of related products;
- import and/or industrial processing of unfermented tobacco;
- import and/or industrial processing of fermented tobacco;
- manufacture of tobacco products and/or tobacco-related products;
- wholesale of tobacco products and/or tobacco-related products and of unfermented and/or fermented tobacco.

the export licence, similarly as for the import licence, must indicate the specific type of the related products for which the export is authorized (brand):

the manufacture of related products shall be carried out in strict compliance with the provisions of Article 8 paragraph (2) of Law no.278/2007, according to which, tobacco products are manufactured by economic agents who have a technical-material infrastructure with the full range of technological processes, machinery and means of quality control of the end products, as well as personnel and specialists with appropriate qualifications in the field;

for obtaining/extending the licence, the applicant, when submitting the application, must attach *a list of related products to be marketed*, which was previously only mandatory for tobacco products. In addition, as of 1 January **2024**¹⁴, all economic operators involved in the supply chain of tobacco, tobacco products and manufacturing equipment are obliged:

conduct due diligence (the process of documenting or investigating a company prior to a transaction, purchase of tobacco products, tobacco-related products, manufacturing equipment and any part thereof) prior to and during the initiation of a business relationship;

monitor sales to their customers to ensure that the quantities are commensurate with the demand for these products on the market where they intend to sell or use them;

notify the competent authorities of breaches of the obligations under Law No 278/2007.

¹³ A se vedea art. I pct. 10 și art. VI alin. (1) lit. b) din Legea nr.25/2023 pentru modificarea unor acte normative

¹⁴ See Art. I, point 7 (part supplementing the law with Art. 201) and Art. VI, para. (1) lit. (c) of Law No 25/2023 on the amendment of some normative acts

Supplementary, from **1 January 2025**¹⁵:

- on unit packets and outer packaging of tobacco products to be manufactured or imported into the Republic of Moldova market, markings shall be printed, by the method and in the place determined by the manufacturer, according to the type of packaging, *in accordance with the provisions of the normative-technical documents approved by the Government*;
- the address of the manufacturer and importer shall be indicated on all unit packets and outer packaging of tobacco and tobacco-related products;
- *telephone numbers, websites and e-mail addresses of the manufacturer and importer must not be placed on the outside of unit packets and outer packaging.*

As of **21 March 2026**¹⁶:

economic operators who own equipment for the manufacture of tobacco products, upon the receipt of the license enabling them to carry out activities in the tobacco industry, are subject to mandatory registration in the State Register of equipment for the manufacture of tobacco products;

the control of tobacco product manufacturing equipment shall be performed through the computerized record system, with the data recorded in the State Register of Tobacco Product Manufacturing Equipment;

The State Register of Tobacco Products Manufacturing Equipment shall be maintained by the national authority for the management of the traceability system, designated by the Government.

In addition, in order to eliminate the illicit trade in tobacco and/or tobacco-related products, the Criminal Code of the Republic of Moldova No.985/2002 has been supplemented with a new offence "*Manufacture, putting into circulation and use of false excise stamps*".

Thus, as of **21 March 2026**¹⁷, in accordance with the provisions of Article 250² of the Criminal Code of the Republic of Moldova No.985 /2002, for the manufacture for the purpose of circulation or use of false excise stamps, the natural person will be liable to criminal liability *with a fine from 550 to 1050 conventional units or with unpaid community work from 180 to 240 hours, or with imprisonment of up to 3 years*, and for the legal person will be liable to criminal penalties - *fine from 2000 to 4000 conventional units with deprivation of the right to carry out a certain activity*.

If the above actions are committed by a *civil servant or other employee in the performance of his/her duties; by an organized criminal group or criminal organization; or on especially large scale*, the individual shall be subject to criminal liability with *imprisonment from 3 to 6 years*, and for the legal entity - *a fine from 2,500 to 5,000 conventional units with deprivation of the right to carry out a certain activity*.

According to the alignment clause of the above-mentioned normative act, Law 25/2023 transposes Articles 2(2), (14), (19), (20), (27) and (41), Article 9(1), Article 10(1)(1)(a) and (b),

¹⁵ See Art. I, point 6 and Art. VI, para. (1) letter d) of Law no. 25/2023 on the amendment of some normative acts

¹⁶ See Art. I, point 2 and Art. VI, para. (1) of Law No 25/2023 on the amendment of some normative acts and Official Gazette of the Republic of Moldova, 2023, No 92, Art.136

¹⁷ A se vedea art. IV și art. VI alin. (1) din Legea nr.25/2023 pentru modificarea unor acte normative și Monitorul Oficial al Republicii Moldova, 2023, nr.92, art.136

Article 10(1)(b) and (c), Article 10(1)(b) and (c) and Article 10(1)(c) of the Law. (c), Article 19 and Article 20(2) and (3) of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 regarding the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products and related products, and repealing Directive 2001/37/EC (Text with EEA relevance), as last amended by Commission Delegated Directive 2014/109/EU of 10 October 2014.

Additionally, in order to strengthen institutional efforts aimed at eliminating illicit trade in tobacco and related products in accordance with paragraphs 37 and 39 to 43, Chapter 28. Consumer and Health Protection of the Action Plan for the Accession of the Republic of Moldova to the European Union for the years 2024-2027, approved by Government Decision No.829/2023, the following priority actions are to be implemented:

Nr.	Action	Performance indicator	Implementation deadline	Responsible institution
1.	Draft Government Decision to amend Government Decision No. 1065/2016 approving health regulations on tobacco products and tobacco-related products, devices and accessories for their use, refilling or heating	Approved Government Decision	January 2024	Ministry of Health
2.	Draft Government Decision approving the technical standards for the refilling mechanism of electronic cigarettes	Approved Government Decision	September 2024	Ministry of Health Ministry of Economic Development and Digitisation
3.	Draft Government Decision approving the Technical Regulation for the establishment and operation of a traceability system for tobacco products	Approved Government Decision	December 2024	Ministry of Finance Ministry of Health
4.	Draft Government Decision approving the Regulation on the main elements of data storage contracts to be concluded as part of a traceability system for tobacco products	Approved Government Decision	June 2025	Ministry of Finance Ministry of Health
5.	Draft Government Decision approving the Regulation on technical standards for safety related components of tobacco products	Approved Government Decision	June 2025	Ministry of Finance Ministry of Health
6.	Establishment of the Information System for Reporting and Analysis of Tobacco Products Data	Functional information system	November 2027	Ministry of Health

It is obvious that the efforts of the Moldovan authorities in recent period are directly focused on eliminating illicit trade in tobacco and tobacco-related products, as evidenced by the latest amendments to the Law No. 278/2007 on tobacco control and other normative acts.

However, in order to achieve the proposed objectives, it is very important that the state ensures the implementation of additional measures to control the implementation of tobacco control legislation and actions foreseen in public policy documents.

2. Evolution of criminal liability for smuggling of tobacco and tobacco-related products

On 18 April 2002, the Parliament of the Republic of Moldova adopted the Criminal Code of the Republic of Moldova No.985/2002 (in force since 12 June 2003) and the Law No.1160/2002 on the implementation of the Criminal Code of the Republic of Moldova repealed the Criminal Code approved by the Law of the SSR of Moldova of 24 March 1961.¹⁸

As a result, since 12 June 2003, in accordance with the provisions of Article 248(1) of the Criminal Code of the Republic of Moldova No. 985 /2002, for bringing tobacco products and/or related products across the customs border of the Republic of Moldova in large quantities, circumventing customs control or concealing the goods from customs control, by hiding them in compartments specially prepared or adjusted for this purpose, or fraudulently using documents or other means of customs identification or involving non-declarations or inauthentic declarations in customs documents or in other border-crossing documents, the *natural person* shall be punished by a fine in the amount of *150 to 300 conventional units (3,000 to 6,000 lei)* or by imprisonment for *up to 2 years*, and for the *legal person* - a fine in the amount of *1,000 to 3,000 conventional units (20. 000 to 60,000 lei)* with the deprivation of the right to practice certain activities.

If the offence referred to above was committed repeatedly; by two or more persons; by a person in a position of responsibility, exploiting his or her official position; or to a particularly large extent, as referred to in Article 248 paragraph (5) of the Criminal Code, *a criminal sanction in the form of imprisonment from 3 to 10 years could be imposed on an individual, and a criminal sanction in the form of a fine from 5,000 to 10,000 conventional units (100,000 to 200,000 lei) with the deprivation of the right to carry out a certain activity or the liquidation of the undertaking could be imposed on a legal person.*

At the same time, by Law no.184/2006 for the amendment and supplementing of some legislative acts, Article 248 paragraph (1) of the Criminal Code of the Republic of Moldova no.985/2002 was supplemented with a new sanction "*unpaid community service from 180 to 240 hours*" ¹⁹ which could be applied to the natural person since 11 August 2006.

It is important to mention that according to the provisions of Article 64 paragraph (2) of the Criminal Code of the Republic of Moldova no.985/2002 (in force until 24.05.2009), the conventional penalty unit was equal to 20 lei.

¹⁸ A se vedea art. 2 lit. a) din Legea nr.1160/2002 privind punerea în aplicare a Codului penal al Republicii Moldova

¹⁹ A se vedea art. I, pct. 45 din Legea nr.184/2006 pentru modificarea și completarea unor acte legislative

According to the provisions of Article 126 (1) of the Criminal Code of the Republic of Moldova No.985/2002 (*in force until 7 February 2008*), especially large scale meant - *the value of goods crossing the customs border* which, at the time of the offence, exceeded 500 conventional fine units, and especially large scale meant - *the value of goods crossing the customs border* which, at the time of the offence, exceeded 1500 conventional fine units.

Therefore, it is found that in the period from 12 June 2003 to 7 February 2008, in order to qualify the transportation across the customs border of the Republic of Moldova *of tobacco products and/or related products on large scale* in accordance with the provisions of Article 248(1) of the Criminal Code of the Republic of Moldova No. 985/2002, it was necessary for the value of the goods to be **higher than 10,000 lei**, and for the qualification of the actions according to Article 248 (5) (d) of the same Code (*transporting tobacco products and/or tobacco-related products across the customs border of the Republic of Moldova on especially large scale*), it was necessary for the value of the tobacco products and/or tobacco-related products to be **higher than 30,000 lei**.

Subsequently, by Law No.292/2007 on amending and supplementing certain legislative acts, Article 126(1) of the Criminal Code of the Republic of Moldova No.985/2002 was amended.

According to the new amendments which entered into force on 8 February 2008, especially large scale was defined as the *value of the goods transported across the customs border* which, at the time of the offence, exceeded 2500 conventional fine units, and an especially large scale was defined as *the value of the goods transported across the customs border* which, at the time of the offence, exceeded 5000 conventional fine units.

As a result, in the period from February 8, 2008 to May 24, 2009, for the qualification of *the transport of tobacco products and/or related products across the customs border of the Republic of Moldova on a large scale*, in accordance with Article 248(1) of the Criminal Code of the Republic of Moldova No.985 /2002, the value of the goods had to be **more than 50,000 lei**, and for the qualification of the actions according to Article 248 (5) (d) of the same Code (*transporting tobacco products and/or related products across the customs border of the Republic of Moldova on an especially large scale*), the value of the tobacco products and/or related products had to be **more than 100,000 lei**.

In addition, it should be noted that the Law no.277/2007 amending and supplementing the Criminal Code of the Republic of Moldova excluded criminal liability for the **repeated transportation** of tobacco and/or tobacco-related products across the customs border of the Republic of Moldova **on a large scale** (*in force since 24 May 2009*).²⁰

On 14 April 2009, the Criminal Code of the Republic of Moldova No.985/2002 was republished in the Official Monitor of the Republic of Moldova, No.72-74, Art.195 (*in in force since 24 May 2009*).

Thus, since May 24, 2009, in adherence to the provisions outlined in Article 248(1) of the Criminal Code of the Republic of Moldova No. 985/2002, individuals engaging in the transportation of tobacco products and/or tobacco-related products in substantial quantities across the customs border of the Republic of Moldova – evading customs control, concealing goods through specialized compartments, or employing fraudulent means such as falsified documents or other customs identification methods, as well as engaging in non-declarations or providing false information in

²⁰ A se vedea art. I, pct. 121 din Legea nr.277/2008 pentru modificarea și completarea Codului penal al Republicii Moldova

customs documents or other border-crossing paperwork – incurred legal consequences. For natural persons, this entailed *a fine ranging from 150 to 300 conventional units (equivalent to 3,000 to 6,000 lei) or unpaid community service spanning 180 to 240 hours, or alternatively, imprisonment for a maximum period of 2 years. On the other hand, legal entities faced penalties encompassing fines ranging from 1,000 to 3,000 conventional units (equivalent to 20,000 to 60,000 lei) along with the possibility of imprisonment for a duration not exceeding 2 years. Moreover, legal entities could also be subject to the deprivation of the right to engage in specific activities.*

If the offence described above was committed by two or more persons; by a person in a position of responsibility, with the use of his or her official position; or on especially large scale, as provided for in Article 248 paragraph (5) of the Criminal Code, a criminal sanction in the form of *imprisonment from 3 to 10 years could be imposed on an individual, and a criminal sanction in the form of a fine from 5,000 to 10,000 conventional units (100,000 to 200,000 lei) with deprivation of the right to carry out a certain activity or liquidation of the enterprise could be imposed on a legal entity.*

Subsequently, by Law no.207/2016 on amending and supplementing certain legislative acts, it was established that *the conventional unit of fine is equal to 50 lei*, and the penalties for offences under Article 248 (*smuggling*) of the Criminal Code of the Republic of Moldova no.985/2002 were increased.

Thus, as of 7 November 2016, for committing the offence of smuggling tobacco and/or tobacco-related products on a large scale, a natural person was liable to a *criminal fine ranging from 500 to 650 conventional units (from 25,000 to 32. 500 lei) or to unpaid community work from 180 to 240 hours or imprisonment of up to 2 years, and a legal person - a fine from 2000 to 4000 conventional units (from 100,000 to 200,000 lei) with deprivation of the right to exercise a certain activity.*

The same act also regulated the new rules for establishing "*on a large scale*" and "*on especially large scale*", which also apply to offences of smuggling tobacco and/or related products.

According to the provisions of Article 126 (1) and (1¹) of the Criminal Code of the Republic of Moldova no.985/2002 (*in force since November 7, 2016*), *large scale* was considered the value of goods crossing the customs border *in excess of 20 average monthly wages per month*, as determined by the Government decision in force at the time of the offence, and the value of goods crossing the customs border *in excess of 40 average monthly wages per month*, as determined by the Government decision in force at the time of the offence.

By Government Decision no.879/2015 on the approval of the amount of the average monthly salary, forecasted for 2016, the Government approved the **average monthly salary** forecasted for **2016**, in the amount of **5050 lei**, for use as provided by law.

As a result, it is noted that in 2016 (*as of 7 November*), in order to be qualified as smuggling of tobacco products and/or related products in accordance with the provisions of Article 248(1) of the Criminal Code of the Republic of Moldova No. 985/2002, the value of the goods/products mentioned had to cumulatively exceed the amount of 101,000 lei, and in the case of the offence under Article 248 paragraph (5) letter d) of the same Code (*smuggling of tobacco and/or tobacco-related products on especially large scale*) *it was necessary that the value of the mentioned goods/products cumulatively exceeded the amount of 202.000 lei.*

Amendments to Article 126 (1) and (11) of the Criminal Code of the Republic of Moldova No.985/2002 by Law No.207/2016 were applied from 7 November 2016 to 16 August 2018.²¹

Considering that the Government approves the annual figure for the average monthly salary, it is observed that:

- in **2017**, to incur criminal liability for engaging in the offense of smuggling tobacco and/or tobacco-related products on a large scale, the combined value of the mentioned goods/products had to surpass 112,000 lei, while in the case of smuggling on an especially large scale, the threshold was set at over 224,000 lei.²²
- in **2018**, (*from January 1 to August 16*)²³, to face criminal liability for the act of smuggling tobacco and/or tobacco-related products on a large scale, the aggregated value of the relevant goods/products needed to surpass RON 123,000 lei, and for cases of smuggling on an especially large scale, the threshold was set at more than 246.000 lei.²⁴

Following this, on July 24, 2018, a group of Members of Parliament (MPs) submitted to the Secretariat of the Parliament of the Republic of Moldova a draft law proposing amendments and supplements to certain legislative acts (legislative initiative No. 283 of July 24, 2018).²⁵

Therefore, as delineated in the proposed legislation, the authors have put forth a amendment suggesting that the act of smuggling tobacco products and/or tobacco-related products would incur penalties under Article 248(1) of the Criminal Code of the Republic of Moldova No. 985/2002 only when the value of the goods, tobacco products, and/or tobacco-related products exceeds 100 times the average monthly wage per economy, as determined by the Government decision in force at the time of the offense.

As part of the same legislative initiative, the authors proposed amending Article 248(1) of the Criminal Code of the Republic of Moldova No. 985/2002 to change the fine for an individual from the existing range of *500 to 650 conventional units (25,000 to 32,500 lei)* to a new range of *1,500 to 2,000 conventional units (75,000 to 100,000 lei)*.

According to the information note accompanying the draft of the aforementioned normative act, the decision to raise the threshold for the value of goods/products associated with offenses outlined in Article 248(1) and (5) of the Criminal Code of the Republic of Moldova No. 985/2002, **from 20 average salaries per economy to 100 average salaries per economy** as determined by the Government decision in effect at the time of the offense, was deemed necessary to facilitate the enhancement of import rights.²⁶

Additionally, as part of the same legislative proposal, the drafters suggested a modification to paragraph (5) of the same article, proposing that point d) should be revised to state: "d) in the amount of *import duties exceeding 200 average monthly wages*, as established by the Government decision in force at the time of the offense."

During the Government meeting on July 25, 2018²⁷, the opinion for the draft law amending certain legislative acts (*legislative initiative No. 283 of July 24, 2018*)²⁸, was approved by the

²¹ See Article IV. item 14 of Law no. 179/2018 amending certain legislative acts

²² See Government Decision no.1233/2016 on the approval of the amount of the average monthly salary per economy, forecast for 2017

²³ See Article IV. item 14 of Law No 179/2018 amending certain legislative acts

²⁴ See Government Decision no.54/2018 on the approval of the amount of the average monthly salary per economy, forecast for 2018

²⁵ <https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/4328/language/ro-RO/Default.aspx>

²⁶ See the information note to the draft law amending and supplementing certain legislative acts (*legislative initiative No 283 of 24 July 2018*).

²⁷ <https://gov.md/ro/content/sedinta-guvernului-din-25-iulie-2018-ora-1100>

²⁸ https://gov.md/sites/default/files/document/attachments/intr31_1_1.pdf

Government, and no objections or recommendations regarding the amendment of Article 248 of the Criminal Code of the Republic of Moldova No. 985/2002 were put forth.

The legislative initiative No 283 of 24 July 2018 was also examined and supported by the following parliamentary committees: The Committee on Economy, Budget and Finance; the Committee on Legal Affairs, Appointments and Immunities; the Committee on National Security, Defense and Public Order; the Committee on Culture, Education, Research, Youth, Sport and the Media; the Committee on Social Protection, Health and Family.

Additionally, **in the Opinion provided by the General Legal Directorate of the Parliament**, DJ-8 No. 330 dated July 24, 2018, regarding the draft law amending and supplementing certain legislative acts (*legislative initiative No. 283 of July 24, 2018*), **objections were raised against the perceived unfairness in the substantial increase of the value of goods, making the illegal crossing of these goods across the customs border of the Republic of Moldova a criminal offense, with the threshold raised from 20 average monthly wages per economy to 100 average monthly wages per economy. This objection was based on the argument that an individual's act of circumventing customs control for goods valued at 600,000 lei would result in a fine of up to 4,500 lei.**

Simultaneously, in the aforementioned opinion, the General Legal Directorate of the Parliament emphasized the imperative to adhere to the stipulations outlined in Article 35, paragraphs (1) and (6) of Law no. 100/2017 concerning normative acts. According to these provisions, anti-corruption expertise is obligatory for all draft normative acts, including those formulated by Members of Parliament. Following the receipt of the anti-corruption expert report, the drafter of the proposal is required to augment the informational note accompanying the draft with details regarding the experts' findings. Additionally, if applicable, the summary should encompass the objections and recommendations provided by the National Anti-Corruption Centre.

Additionally, it came to light that there was an obligation to conduct an anti-corruption assessment on legislative initiative no. 283 dated 24 July 2018 before presenting the bill to Parliament. Yet, upon reviewing the official Parliament website (www.parlament.md), it was observed that legislative **initiative No. 283 from 24 July 2018 did not undergo an anti-corruption assessment.**

It is noteworthy to emphasize **that legislative initiative No. 283, dated 24 July 2018, underwent examination and voting in a remarkably swift timeframe of three calendar days. This period was calculated from the moment the draft legislative act was registered in the Secretariat of the Parliament of the Republic of Moldova, with the first reading taking place on 24 July 2018 and the second reading on 26 July 2018.**

Following this expedited process, **the amendments were officially promulgated by the President of the Republic of Moldova on 13 August 2018.**

Furthermore, on 17 August 2018, Law No. 179/2018 was officially published in the Official Gazette of the Republic of Moldova, leading to the immediate enforcement of the new amendments upon publication.²⁹

²⁹ See Article XII. para. (1) of Law no. 179/2018 amending certain legislative acts

In alignment with Government Decision No. 54/2018, which sanctioned the average monthly salary per economy forecasted for **2018**, the government endorsed the **specified amount at 6150 lei**. This figure was approved for utilization in accordance with the established legislative procedures.

Based on the aforementioned legal provisions, it is observed that, for the period spanning from 17 August to 31 December 2018, the offense of smuggling tobacco products and/or related items falls under the classification of Article 248(1) of the Criminal Code of the Republic of Moldova No. 985/2002 only when the cumulative value of the goods or products in question exceeds 615,000 lei; in the case of an offense falling under Article 248, paragraph (5), letter d) of the same Code, which pertains to *the smuggling of tobacco and/or tobacco-related products on an especially large scale, the combined value of the mentioned goods or products had to surpass 123,000 MDL*.

By way of comparison, before the implementation of these amendments, spanning from *January 1 to August 16, 2018*, for the criminal liability of a natural person and/or legal entity under Article 248(1) of the Criminal Code of the Republic of Moldova No. 985/2002, it was adequate for the tobacco products and/or tobacco-related products involved in the offense to surpass 20 times the average monthly salaries forecasted for the economy. This benchmark was established by the Government's decision effective at the time of the crime, equating to more than 123,000 lei.

On December 1, 2020, the Government submitted a draft law proposing amendments to certain normative acts, labeled as legislative initiative *No. 476 of 1 December 2020 (hereafter - initiative No. 476 of 1 December 2020)*³⁰. This proposal was officially registered in the Secretariat of the Parliament.

In accordance with the draft of the aforementioned regulatory provision, the author has suggested certain amendments to Article 248 of the Criminal Code of the Republic of Moldova No. 985/2002, which involve its augmentation with a new provision labeled as "248¹. *Smuggling of excise goods.*"

As per the *information note accompanying legislative initiative no. 476 dated December 1, 2020*, aimed at fortifying the anti-smuggling capabilities and endorsing strategies to deter illicit activities, there is a proposal to lower the legal thresholds for categorizing smuggling as a criminal offense. Additionally, the intention is to raise the administrative fines applicable to such violations. The most recent modifications to the stipulations of Articles 248 and 249 of the Criminal Code were introduced through Law No. 179/2018, focused on enhancing the investment climate, which has been in effect since August 17, 2018.

The previously sanctioned amendments raised the minimum thresholds for the offense of smuggling from 20 average forecast wages per economy to 100 average forecast wages per economy. Consequently, **these changes have diminished the efficacy in deterring smuggling offenses by making them less susceptible to prosecution**. It is noteworthy that, **as the forecast average wage in the economy experiences an annual increase, the financial**

³⁰ <https://www.parlament.md/ProcesulLegislativ/Proiectedeactenormative/tabid/61/LegislativId/5334/language/ro-RO/Default.aspx>

requirement for committing the offense also undergoes a substantial escalation. In alignment with the Government's Action Plan for 2020-2023, the objective is to achieve an average wage in the economy of 11,200 lei. This projection implies that the monetary threshold for initiating criminal proceedings in a case based on Article 248(1) would amount to 1,120,000 lei. In these circumstances, there is **a notable risk that the prevalence of smuggling might rise due to the leniency of penalties associated with such offenses under the contravention procedure.**

Consequently, *legislative initiative no. 476, introduced on December 1, 2020*, underwent scrutiny and received approval from the Parliament in the first reading on December 3, 2020, followed by endorsement in the second reading on December 16, 2020. The revised amendments to the Criminal Code of the Republic of Moldova No. 985/2002 came into effect on January 1, 2021.³¹

Thus, starting January 1, 2021, individuals engaging in *the introduction or removal of goods subject to excise duty into or from the territory of the Republic of Moldova*, by circumventing customs control, utilizing concealment in specifically prepared locations, employing fraudulent customs documents or means of identification, or through non-declaration or submission of false information in customs documents or other border crossing documents, will be subject to criminal liability. This applies when the value of the goods exceeds 4000 conventional units (*equivalent to more than 200,000 lei*), and in the case of filtered or unfiltered cigarettes, *if the quantity exceeds 60,000 pieces*. For natural persons, criminal sanctions involve a fine ranging from 2500 to 3000 conventional units (*equivalent to 125,000 to 150,000 lei*) or imprisonment for up to 3 years. Legal entities, on the other hand, may face a fine between 5000 and 6000 conventional units (*equivalent to 250,000 to 300,000 lei*), accompanied by the deprivation of the right to engage in specific activities as part of the criminal penalties imposed.

In instances involving the introduction or removal of goods subject to excise duty into or from the territory of the Republic of Moldova through *locations not designated for customs control*, and where the value of these goods exceeds 2000 conventional units (*equivalent to more than 100,000 lei*), or in the case of filtered or unfiltered cigarettes, *if the quantity surpasses 30,000 pieces*, the stipulations of Article 248(1) paragraph (2) of the Criminal Code of the Republic of Moldova No. 985/2002 come into play. For natural persons found in violation, criminal liability entails a fine ranging from 3500 to 4500 conventional units (*equivalent to 175,000 to 225,000 lei*) or imprisonment for up to 3 years. On the other hand, for legal entities, potential criminal sanctions include a fine spanning from 5500 to 6500 conventional units (*equivalent to 275,000 to 325,000 lei*), coupled with the deprivation of the right to engage in specific activities.

As outlined in Article 248(1) paragraph (3) of the Criminal Code of the Republic of Moldova No. 985/2002, *the act of alienating or releasing for free circulation, without payment of import duties of excise goods under customs supervision* carries legal consequences. This is applicable when the value of the goods exceeds 4000 conventional units (*equivalent to more than 200,000 lei*), or in the case of filtered or unfiltered cigarettes, *if the quantity surpasses 60,000 pieces*. Individuals found in violation of this provision may face a fine ranging from 4000 to 5000 conventional units (*equivalent to 200,000 to 250,000 lei*) or imprisonment for up to 3 years. Legal entities, on the other hand, could

³¹ See Article LV paragraph (1) of the Law no.257/2020 on the amendment of some normative acts.

be subject to a fine between 6000 and 7000 conventional units (*equivalent to 300,000 to 350,000 lei*), along with the potential deprivation of the right to engage in certain activities as part of the imposed criminal penalties.

Actions outlined in Article 248¹ (1)-(3) of the Criminal Code of the Republic of Moldova No. 985/2002, when committed by two or more persons, carried out utilizing official positions, or involving excise goods with a value exceeding 8000 conventional units (*equivalent to more than 400,000 lei*), or in the case of filtered or unfiltered cigarettes, if the quantity exceeds 120,000 pieces, will be met with legal consequences, individuals found guilty may face imprisonment ranging from 4 to 10 years. Legal entities, on the other hand, may be subject to a fine ranging from 8000 to 12000 conventional units (*equivalent to 400,000 to 600,000 lei*), accompanied by the potential deprivation of the right to engage in specific activities as part of the criminal penalties imposed.

3. The correlation between measures taken by public authorities and criminal sanctions imposed on natural and legal persons involved in the illicit smuggling of cigarettes and other tobacco or related products

The illicit trade in tobacco products is a global issue with direct links to organised crime and terrorist networks. Cigarette smuggling, including counterfeit products, is currently assessed as one of the most serious security risks on the Moldovan-Romanian and Moldovan-Ukrainian cross-border area, with a considerable impact on the budgets of Moldova, Ukraine and EU Member States.³²

In numerous cases, funds derived from the illicit trade of cigarettes and other tobacco or related products become resources for criminal organizations, supporting a range of criminal activities and potentially jeopardizing national security.

To address this pressing concern, on April 1, 2022, in accordance with the provisions laid out in Law no. 308/2017 concerning the prevention and combatting of money laundering and terrorist financing, along with Parliament Decision no. 239/2020 endorsing the National Strategy for the years 2020-2025 in this domain, the Service for the Prevention and Combating of Money Laundering sanctioned the National Report evaluating the risks linked to money laundering and terrorist financing.³³

According to the report, **during the period of 2017-2020, the incidence of criminal cases associated with cigarette smuggling exhibited a consistent decline, encompassing a reduction in the number of cases.** In 2017, there were 15 criminal cases (involving 13.128 million cigarettes and 13.4 tons of tobacco). This figure decreased to 4 criminal cases in 2018, (with 13.17 million cigarettes and 400 kg of tobacco). The downward trend continued with only 1 criminal case

³² https://customs.gov.md/api/media/15/06/2023/RILO_articol_romana.pdf

³³ <https://spsb.gov.md/ro/news/raportul-privind-evaluarea-na-ional-a-riscurilor-in-domeniul-sp-l-rii-banilor-i-finan-rii-terorismului>

in 2019, (involving 1.5 million cigarettes), and 2 criminal cases in 2020, (featuring 2730 kg of hookah tobacco and 1,216,380 cigarettes). The noteworthy aspect is **that in 2018, although the number of criminal cases decreased by 73%, the quantity of seized cigarettes was higher than in 2017**. Analyzing statistical data from criminal cases and customs offenses, there was an 81% reduction in illicit cigarette trafficking (both cases and quantity) in 2019 compared to 2017 (in 2020, there were 219 cases involving 3.2 million cigarettes, while in 2019, there were 59 cases involving 3.37 million cigarettes. In contrast, 2017 recorded 319 cases with 17.82 million cigarettes).³⁴

Analyzing the Activity Report for the year **2019**, as presented by the Customs Service, reveals that despite efforts to combat illicit drug and tobacco trafficking throughout the year, certain instances of smuggling involving cigarettes and/or related products went undocumented.

As indicated in the Activity Report for the year **2020**, as submitted by the Customs Service, customs officials dedicated their efforts to counteracting the illicit introduction of products into the country, specifically through smuggling, and combating illicit trade. An important highlight of the year 2020 was the active involvement of customs officials in two international operations focused on addressing these challenges:

- „ECLIPSE VI (20.01.2020-24.01.2020): Organized by the South East European Law Enforcement Centre (SELEC), this operation had the specific goal of preventing and combating the illicit trafficking of tobacco products by customs authorities.
- STOP CONTRABANDA II (14.09 to 25.09.2020): This operation, conducted jointly with ANAF in Romania, focused on combating illicit trafficking in excise goods, cigarettes, and other tobacco products.

Throughout the 12 months of 2020, there were 212 recorded seizures of tobacco products, revealing the detection of 3,129,381 cigarettes and 864 kg of hookah tobacco. Subsequently, fines totaling 438,700 lei were imposed based on these seizures, with 243,125 lei collected.³⁵

In **2021**, the Criminal Prosecution Department of the Customs Service, in accordance with the provisions of Article 2481 of the Criminal Code of the Republic of Moldova No. 985/2002, initiated a total of **21 criminal cases related to the smuggling of excise goods**:

- 37 searches conducted in a criminal case aimed at documenting an organized criminal group engaged in the smuggling of tobacco products;
- 11 searches in a criminal case initiated under Article 249(2) of the Criminal Code, addressing the evasion of import duties, resulting in the seizure of approximately *400 kg of finely processed tobacco* intended for rolling into cigarettes.
- 40 searches carried out in two criminal cases under Art. 26, 2481 para. (4) lit. c) of the Criminal Code, leading to the confiscation of *600,000 cigarettes*.

³⁴ https://spscb.gov.md/storage/posts/RAPORT_NRA.pdf

³⁵ https://customs.gov.md/api/media/15/02/2021/Raport_SV_anual_final_2020_publicare_compressed.pdf

- Other legal proceedings within two separate criminal cases resulted in the retention and seizure of an additional *379,600 cigarettes*.³⁶

In the year **2022**, the Criminal Prosecution Department of the Customs Service, in accordance with the provisions of Article 2481 of the Criminal Code of the Republic of Moldova No.985/2002, initiated a total of **12 criminal cases pertaining to cigarette smuggling**. Throughout this period, various actions were undertaken within the context of these criminal cases:

- 1 search was conducted within a criminal case initiated under Art. 27, 248¹ para. (4) letter a) of the Criminal Code, resulting in the seizure of 4,554 packs of "Cult Slims" cigarettes (equivalent to 91,080 pieces) bearing the excise stamp of the Republic of Moldova.
- 7 searches were carried out within the framework of a criminal case initiated under Art. 2481 para. (4) letters a) and c) of the Criminal Code. These searches led to the confiscation of 4,872 boxes (equivalent to 2,436,000 packs or 48,720,000 pieces) of "Business Club" brand cigarettes, which lacked the required excise stamps.
- In the context of a criminal case initiated under Article 26, 248¹ para. (4) lit. c) of the Criminal Code, three searches were conducted, resulting in the seizure of various items, including: loose cigarettes of the brands "Dorn", "Classic", "Regal" - 492 boxes of 3600 cigarettes (1.771.200 pcs.); branded "Burn Slims" cigarettes with excise mark - 151 boxes of 500 packs (1.510.000 pcs.); cigarettes "Армейские" with excise mark - 700 packs (14.000 pcs); "Прима" brand cigarettes with "FOR DUTY FREE ONLY" mark - 400 packs (8,000 pcs); "Classic" brand cigarettes with "FOR DUTY FREE ONLY" mark - 10 packs (200 pcs); "Classic" brand cigarettes without excise stamp - 600 packs (12.000 pcs); semi-finished (packaging) for packs of cigarettes brand "Прима" with the inscription "FOR DUTY FREE ONLY" - 6 pallets, about 564.000 packs; 159.000 stamps with the inscription "FOR DUTY FREE ONLY"; semi-finished (packaging) for packs of cigarettes brand "Regina" - 9 half pallets, about 380.000 packages; 236 rolls of 3000 m each for "Jim Ling" brand cigarette filters; 50 rolls of 3000 m each for "Marble" brand cigarette filters; two cigarette production lines;
- 21 searches were conducted within a criminal case initiated under Art. 248¹ para. (4) letters a) and c) of the Criminal Code, resulting in the seizure of 232,920 cigarettes of various brands, packaging for the production of "Astra" and "Leana" cigarettes, and a technological line for cigarette production.
- 7 searches were carried out in the framework of a criminal case initiated under Articles 46, 248¹ para. (4) (a), (b), and (c) of the Criminal Code, leading to the seizure of 690,000 "Ritm" brand cigarettes with the Republic of Moldova excise stamp.
- In a criminal case initiated under Art. 27, 248¹ para. (4) (a) and (c) of the Criminal Code, 3 searches resulted in the confiscation of 6,500 kg of hookahs.
- Customs control of two coaches traveling to the European Union revealed 140,000 cigarettes of the brands "Marlboro," "Kent," and "Winston," leading to the initiation of a criminal case under Art. 27, 248¹ para. (4) letter a) of the Criminal Code.

³⁶ See the Activity Report for 2021 presented by the Customs Service, https://customs.gov.md/api/media/16/03/2022/Raport_PASV_trim_IV_2021.pdf

- Control of another coach heading to the European Union unveiled 84,440 cigarettes of the brands "Marlboro," "Camel," "Kent," and "Winston," prompting the initiation of criminal proceedings under Articles 27, 248¹ (4) (a) and (b) of the Criminal Code.
- Customs control of a vehicle in transit to the European Union revealed and seized 299,996 packets of "RITM," "KULT," and "FOCUS" cigarettes. Criminal proceedings were initiated under Articles 27, 248¹ (4) (a) and (b), as well as (4) letter c) of the Criminal Code.³⁷

Upon consulting the official website of the Supreme Court of Justice - <https://www.csj.md>, specifically in the chapter "*Database of the decisions of the Plenum of the Criminal College of the Supreme Court of Justice*," it is evident that from **2014 to the present, the Supreme Court of Justice**, serving as the superior court, **deliberated on a total of 2 criminal cases involving defendants accused of committing crimes related to the smuggling of cigarettes, tobacco products, or tobacco-related products**. In each instance, the sentences of conviction issued by the Criminal College of the Chisinau Court of Appeal were affirmed.

In the initial criminal case, as per the Decision of the Criminal College of the Supreme Court of Justice dated November 26, 2015, in case no. 4-1re-213/2015, it was established that on May 8, 2008, A.I., in collusion with unidentified individuals according to the prosecution, illicitly transported tobacco products across the customs border of the Republic of Moldova, amounting to a total value of 3,113,696.55 lei. However, by the verdict of the Court of Centru, mun.Chisinau, on June 14, 2013, A.I. was acquitted of the charges stipulated in Article 248 para. (5) lit. b), d) of the Criminal Code, as the court concluded that the accused did not commit the alleged crime. Subsequently, the prosecutor lodged an appeal, seeking the annulment of the sentence, a retrial of the case, and a new judgment imposing a 5-year prison term with execution on the defendant under Article 248(2) of the Criminal Code, specifically under sections (5) (b) and (d). In a decision rendered by the Criminal College of the Chisinau Court of Appeal on March 10, 2014, the prosecutor's appeal was dismissed as lacking merit, and the initial judgment of the trial court was upheld. However, on July 1, 2014, following a decision by the Enlarged Criminal Collegium of the Supreme Court of Justice, the appeal was granted. Consequently, the contested decision was annulled, leading to a retrial of the case by the same court of appeal, albeit in a different panel. In accordance with the decision of the Criminal College of the Chisinau Court of Appeal on December 4, 2014, the prosecutor's appeal was accepted, leading to the annulment of the previous sentence. Subsequently, a retrial was conducted, resulting in a new judgment. A.I. was then convicted under Article 248 para. (5) lit. b), d) of the Criminal Code and sentenced to 6 years of imprisonment, to be served in a semi-closed prison. Finally, the decision of the Criminal College of the Supreme Court of Justice on November 26, 2015, affirmed the ruling of the Criminal College of the Chisinau Court of Appeal on December 4, 2014, maintaining A.I.'s **sentence** under Article 248 para. (5) lit. b), d) of the Criminal Code **at 6 years imprisonment**, to be served in a semi-closed prison.³⁸

In the second criminal case, as per the Decision of the Criminal College of the Supreme Court of Justice dated February 6, 2019, pronounced in case no. 1ra-222/2019, the incident occurred on

³⁷ A se vedea Raportul de activitate pentru anul 2022, prezentat de Serviciul Vamal, https://customs.gov.md/api/media/28/03/2023/Raport_SV_anul_2022_Publicare_Final.pdf

³⁸ https://jurisprudenta.csj.md/search_plen_penal.php?id=896

November 18, 2008, around 08:00 at the Sculeni customs post. The driver, O.S., operating a truck of the "Iveco Stralis" model, presented himself at the entry track to Romania. Upon crossing the customs border, O.S. submitted the customs export declaration. According to the customs declaration and the accompanying documents, "Torgor" Ltd. purportedly exported 1680 lightweight concrete building blocks to "Vlad Sebi" Ltd., Romania, with a declared customs value of 1680 euros. Following customs control conducted by the inspectors of the Sculeni border customs post in Romania, a discovery was made inside the concrete blocks: 100,200 packets of "Regal" brand cigarettes lacking excise stamps. The expert report no.29, dated January 14, 2010, valued the seized cigarettes at 130,260 euros. Based on the official exchange rate of the National Bank on November 18, 2008, this amounted to 1,706,549.29 lei, indicating particularly large proportions. In the verdict issued by the Ungheni District Court on March 20, 2018, M.U. was found guilty of committing the offense specified in Article 42 para. (3), 248 para. (5) lit. b), d) of the Criminal Code. Consequently, M.U. was sentenced to 4 years of imprisonment, with the execution of the sentence to take place in a semi-closed penitentiary. Under Article 90 of the Criminal Code, the sentence imposed on the defendant M.U. was conditionally suspended for a probationary period of 3 years, contingent upon the absence of any new criminal offenses committed during this period. Additionally, in the ruling issued by the Ungheni District Court on March 20, 2018, criminal proceedings against R.V., accused of committing the offense under Article 361 of the Criminal Code, were terminated due to the expiration of the statute of limitations for criminal liability. However, by the decision of the Criminal College of the Chisinau Court of Appeal on September 18, 2018, the previous sentence from the Ungheni Court dated March 20, 2018, was fully annulled. A new judgment was ordered according to the procedures established for the first instance, wherein M.I. was found guilty under Art. 42 para. (3), 248 para. (5) lit. b), d) of the Criminal Code. Consequently, a new criminal penalty was imposed: imprisonment for a term of 3 (three) years, with the execution of the sentence in a semi-custodial penitentiary.

In accordance with Article 90 of the Criminal Code, M.I.'s prison sentence was conditionally suspended for a probationary period of three (3) years. As for R.V., found guilty under Art. 42 para. (5), 248 para. (5) lit. b), d) of the Criminal Code, a three (3) year imprisonment sentence was imposed, with the execution of the sentence in a semi-closed prison. R.V.'s prison sentence, too, was conditionally suspended for a probationary period of 3 (three) years, in line with Article 90 of the Criminal Code. In the Decision of the Criminal College of the Supreme Court of Justice dated February 6, 2019, the ordinary appeal filed by the defendant R.V. against the Decision of the Criminal College of the Chisinau Court of Appeal dated September 18, 2018, was deemed inadmissible.³⁹

Moreover, upon scrutinizing the judicial practices of the Criminal College of the Chisinau Court of Appeal ⁴⁰, based on the information (decisions) available on the official website of the Chisinau Court of Appeal, the following findings emerge:

³⁹ https://jurisprudenta.csj.md/search_col_penal.php?id=12875

⁴⁰ <https://cac.instante.justice.md/ro/court-sentences-page>

1. from **2014 to the present**, the Criminal College of the Chisinau Court of Appeal has deliberated upon a cumulative total of **18 criminal cases**, wherein the defendants faced allegations related to the illicit trade of cigarettes and/or other tobacco or tobacco-related products.

2. in **2014**, the Criminal College of the Chisinau Court of Appeal issued *rulings on 4 cases* involving *10 individuals* accused of smuggling cigarettes and/or other tobacco or tobacco-related products (*acts committed in 2007, 2012 and 2013*) with the following outcomes:

- sentenced to imprisonment, with the execution of the term in prison – *1 person*;⁴¹
- sentenced of imprisonment with a suspended execution of the sentence – *7 persons*;⁴²
- subject to a criminal penalty in the form of a fine – *2 persons*.⁴³

3. in **2015**, the Criminal College of the Chisinau Court of Appeal delivered verdicts in *2 cases involving 4 individuals* accused of engaging in the criminal acts of smuggling cigarettes and/or other tobacco or tobacco-related products (*acts committed between 2008 and 2011*) with the following outcomes:

- sentenced to imprisonment, with the execution of the term in prison – *3 persons*;⁴⁴
- sentenced of imprisonment with a suspended execution of the sentence – *1 person*;⁴⁵

4. In **2017**, the Criminal College of the Chisinau Court of Appeal *rendered a sole decision*, upholding the judgment of the lower court. This ruling, in alignment with the provisions outlined in Law No. 210/2016 concerning amnesty in commemoration of the 25th anniversary of the Republic of Moldova's declaration of independence, led to the cessation of criminal proceedings against P.C. P.C. was accused of committing the offense of smuggling tobacco cigarettes (*with the alleged actions taking place in 2015*).⁴⁶

5. In **2018**, the Criminal College of the Chisinau Court of Appeal issued rulings in *5 cases involving 12 individuals* accused of committing crimes related to the smuggling of cigarettes and/or other tobacco products (*actions carried out in 2011, 2016, and 2017*). The outcomes of these cases were as follows:

- sentenced to imprisonment, with the execution of the term in prison - *1 person*;⁴⁷
- sentenced to imprisonment with a suspended execution of the sentence - *4 persons*;⁴⁸
- *1 (one)* received a monetary fine;⁴⁹
- liberate de răspundere penală cu tragerea la răspundere contravențională, după care discharged from criminal liability through a misdemeanor, subsequently released from the misdemeanor charge due to the expiration of the statute of limitations - *2 persons*;⁵⁰
- released from criminal liability - *4 persons*.⁵¹

⁴¹ https://cac.instante.justice.md/ro/pigd_integration/pdf/0c5728d7-559e-e411-8112-005056a5d154

⁴² https://cac.instante.justice.md/ro/pigd_integration/pdf/640dfc0d-ebd5-e311-9df1-005056a5d154

⁴³ https://cac.instante.justice.md/ro/pigd_integration/pdf/640dfc0d-ebd5-e311-9df1-005056a5d154

⁴⁴ https://cac.instante.justice.md/ro/pigd_integration/pdf/6aa7e9d6-b32b-e511-b888-005056a5d154

⁴⁵ https://cac.instante.justice.md/ro/pigd_integration/pdf/a50228d6-c02b-e511-b888-005056a5d154

⁴⁶ https://cac.instante.justice.md/ro/pigd_integration/pdf/1b071797-041a-e711-80d3-0050568b4ab5

⁴⁷ https://cac.instante.justice.md/ro/pigd_integration/pdf/a8ad5b9d-9515-e811-80d5-0050568b7027

⁴⁸ A se vedea https://cac.instante.justice.md/ro/pigd_integration/pdf/284ea8f8-45d1-e811-80d6-0050568b7027 și

https://cac.instante.justice.md/ro/pigd_integration/pdf/2afb9d4f-585f-e811-80d5-0050568b7027

⁴⁹ https://cac.instante.justice.md/ro/pigd_integration/pdf/08bdbb9f-2246-e911-80d8-0050568b7027

⁵⁰ https://cac.instante.justice.md/ro/pigd_integration/pdf/92a572ea-9232-e811-80d5-0050568b7027

⁵¹ https://cac.instante.justice.md/ro/pigd_integration/pdf/a8ad5b9d-9515-e811-80d5-0050568b7027

6. In **2019**, the Criminal College of the Chisinau Court of Appeal issued a *single decision* concerning *2 individuals* accused of engaging in cigarette smuggling (*acts committed in 2015*). The verdict upheld the judgment of the Ungheni Court dated 10 July 2019. According to this decision, criminal proceedings against V.T. and P.C., charged with offenses outlined in Art. 27, 248 para. (5) lit. b), d) of the Criminal Code, were concluded. The grounds for termination were established on the basis that the committed act did not qualify as a crime but rather as a contravention, as defined in Art. 287 para. (10) of the Contravention Code. Both V.T. and P.C. were deemed guilty of committing the contravention outlined in Article 287 para. (10) of the Contravention Code. Their release from liability for the committed offense was justified due to the expiration of the limitation period for holding them liable.⁵²

7. In **2020**, the Criminal College of the Chisinau Court of Appeals did not examine any criminal cases related to the smuggling of cigarettes and/or other tobacco or tobacco-related products.

8. In **2021**, the Criminal College of the Chisinau Court of Appeals examined only one criminal case involving *2 individuals* accused of smuggling cigarettes (*acts committed in 2010*). The conclusive decision was rendered on November 5, 2021, in case no. 1a-2031/19⁵³, whereby the following verdicts were pronounced:

- T.V. was sentenced to imprisonment with execution;
- The *initial verdict of the lower court, which acquitted B.N. and absolved him of criminal responsibility*, was upheld.

9. In the years **2022 and 2023**, the Criminal College of the Chisinau Court of Appeal did not review any criminal cases related to the smuggling of cigarettes and/or other tobacco or tobacco related products.

Given these circumstances, the analysis of the aforementioned court decisions reveals that, within the period spanning from 2014 to 2023, both the Chisinau Court of Appeal and the Supreme Court of Justice examined a total of **19 court decisions** involving **31 individuals** accused of smuggling cigarettes and/or other tobacco or tobacco related products with the following outcomes:

- 6 individuals were sentenced to imprisonment with the execution of the sentence in prison;
- 12 individuals received sentences of imprisonment with a suspended sentence;
- 3 individuals incurred criminal penalties in the form of fine;
- 9 individuals were absolved of criminal liability, and among them, 5 were additionally relieved from misdemeanor liability;
- legal proceedings against one individual were concluded in compliance with the stipulations of Law No. 210/2016, pertaining to amnesty in commemoration of the 25th anniversary of the Republic of Moldova's declaration of independence;
- in respect of legal entities, no criminal sanctions have been imposed for the act of smuggling cigarettes or other tobacco-related products.

Apparently, the public authorities of the Republic of Moldova, responsible for addressing the issue of cigarette and tobacco product smuggling, are actively endeavoring to employ comprehensive measures to combat this menace. However, it is of **paramount importance that**

⁵² https://cac.instante.justice.md/ro/pigd_integration/pdf/27d6567a-cad0-4347-ab7d-2d7938a76775

⁵³ https://cac.instante.justice.md/ro/pigd_integration/pdf/12dedee8-789e-4d6e-8d93-0263c52d1a5b

these concerted efforts are accompanied by the imposition of suitable penalties upon individuals and legal entities found in breach of the law, seeking to gain profits from such criminal activities.

3. Legal mechanisms implemented by authorities to combat the illicit production and counterfeiting of cigarettes and related products

As stated earlier, the Republic of Moldova became a party to the Protocol for the Elimination of Illicit Trade in Tobacco Products to the World Health Organization Framework Convention on Tobacco Control, adopted in Seoul on 12 November 2012 (*hereinafter referred to as the Protocol for the Elimination of Illicit Trade in Tobacco Products*), through the enactment of Law No. 61/2022.

In accordance with Article 6, paragraph (1), sub-paragraphs (a) and (b) of the Protocol for the Elimination of Illicit Trade in Tobacco Products, with the objective of fulfilling the goals outlined in the World Health Organization Framework Convention on Tobacco Control and aiming to eradicate illicit trade in tobacco products and manufacturing equipment, each Party is required to prohibit the undertaking of the following activities by any natural or legal person, unless an authorization or equivalent approval (*hereinafter referred to as "authorization"*) has been granted for the activity or a control system has been implemented by a competent authority in accordance with national law: *the manufacture of tobacco products and manufacturing equipment; and the import or export of tobacco products and manufacturing equipment.*

In accordance with the stipulations of Article 32, paragraph (1) of Law No. 278/2008 on tobacco control, the import/export of tobacco products and/or related products; the import and/or industrial processing of unfermented tobacco and/or fermented tobacco; the manufacture of tobacco products and/or related products and/or the wholesale of tobacco products and/or related products, as well as unfermented and/or fermented tobacco must be conducted under the authority of a license issued in compliance with the provisions outlined in Law No. 160/2011 concerning the regulation of entrepreneurial activities through authorization.

Upon scrutiny of the aforementioned regulations, it becomes evident **that in the Republic of Moldova, the activities related to the manufacturing of equipment and the import or export of manufacturing equipment are not explicitly included in the list of licensed activities within the tobacco industry, which contrasts with the requirements set forth in the Protocol for the Elimination of Illicit Trade in Tobacco Products, to which the Republic of Moldova acceded.**

In addition, having examined the provisions of Article 14 of the Protocol for the elimination of illicit trade in tobacco products, it is found that each Party must take the necessary legislative and other measures to establish the illicit nature under its national law of the following actions:

- *manufacture, wholesale, brokering, sale, transport, distribution, storage, shipment, import, or export of tobacco, tobacco products, or manufacturing equipment* in violation of the provisions outlined in the Protocol;
- *manufacture, wholesale, brokering, sale, transport, distribution, storage, shipment, import, or export of tobacco, tobacco products, or manufacturing equipment* without fulfilling the obligation of paying applicable duties, taxes, and other charges, or neglecting the application of tax stamps, unique identification marks, or any other requisite markings or labels;

- *any other instances of smuggling or attempted smuggling* involving tobacco, tobacco products, or *manufacturing equipment*;
- *any alternative forms of illicit manufacturing of tobacco*, tobacco products, or tobacco manufacturing equipment, including the production of tobacco packaging featuring forged tax stamps, unique identification markings, or any other necessary falsified labels;
- wholesale, brokering, selling, *transporting, distributing, storing, shipping*, importing, or exporting of illicitly manufactured tobacco, illicit tobacco products, items bearing forged tax stamps, and/or other necessary markings or labels, or *illicit manufacturing equipment*;
- *any provision of inaccurate, deceptive, or incomplete* material statements or failure to furnish information as requested by a public or authorized official in the execution of their duties concerning the prevention, deterrence, detection, investigation, or eradication of illicit trade in tobacco, tobacco products, or manufacturing equipment;
- *providing false information on official forms related to the description, quantity, or value of tobacco, tobacco products, or manufacturing equipment*, or any other requisite information according to the Protocol, with the intention of evading the payment of taxes, duties, or other applicable fees, or subverting any control measures aimed at preventing, deterring, detecting, investigating, or eliminating illicit trade in tobacco, tobacco products, or manufacturing equipment;
- *refusing to keep or maintain required records covered by the Protocol for the elimination of illicit trade in tobacco products or keeping false records*.

According to Law No. 25/2023, amending certain normative acts, changes have been introduced to the Criminal Code of the Republic of Moldova No. 985/2002 establishing criminal liability for the following offenses:

- **manufacture** of false excise stamps with the intention of putting them into circulation;
- **putting into circulation** of false excise stamps;
- **the use** of false excise stamps.

These amendments to the Criminal Code, outlined in Law No. 25/2023, are scheduled to take effect on **21 March 2026**.⁵⁴

Furthermore, to address instances of illicit production and counterfeiting of cigarettes and related products, as stipulated in Article VI, paragraph (2) of Law No. 25/2023, amending certain normative acts, businesses possessing tobacco manufacturing equipment are required to submit the list of such equipment to the National Agency for Public Health within six months from the law's effective date (*by September 21, 2026*)⁵⁵, for the purpose of registering the equipment in the State Register of Tobacco Product Manufacturing Equipment.

While, on one hand, the measures outlined above may not be entirely adequate for eradicating the issue of illicit production and counterfeiting of cigarettes and related products, it is crucial to note that, on the other hand, Moldovan public authorities have recently demonstrated a heightened awareness of the risks associated with these phenomena. Importantly, they have wholeheartedly committed to adopting the requisite legislation and implementing all necessary actions to rectify the situation.

⁵⁴ See Art. IV and Art. VI para. (1) of Law No 25/2023 on the amendment of some normative acts and Official Monitor of RM, 2023, No 92, Art.136

⁵⁵ See Article VI paragraph (1) of Law No.25/2023 on the amendment of some normative acts and Official Monitor of the Republic of Moldova, 2023, No.92, Art.136.

Nonetheless, it is worth highlighting the initial delays observed within the central public administration authorities concerning the implementation of the provisions outlined in Law No. 212/2023, focusing on amendments to certain normative acts related to budgetary-fiscal policy, and Law No. 25/2023, aimed at implementing the Protocol for the elimination of illicit trade in tobacco products under the World Health Organization Framework Convention on Tobacco Control. The Government recently adopted a decision approving the draft law on the amendment of certain normative acts (concerning customs policy for 2024).⁵⁶ Henceforth, the Government has put forth a proposal to amend Article XVI, paragraph 2, of Law No. 212/2023. This amendment seeks to provide exemptions from the stipulations of Article 123, paragraph (5¹), of Tax Code No. 1163/1997 and Article 24, paragraph (1¹), of the Tobacco Control Law No. 278/2007, until 1 July 2024 to permit the import or dispatch from the tax warehouse of cartridges for electronic cigarettes containing nicotine liquid, encompassing disposable electronic cigarettes, refill bottles containing nicotine intended for cartridges, and electronic cigarettes falling under tariff heading 2404, tobacco products and herbal smoking products categorized under tariff headings 240399900 and 2404, all manufactured in the year 2024 but marked with an excise stamp/consumption stamp issued before 1 January 2024. Moreover, it is specified that cartridges for e-cigarettes containing nicotine liquid, disposable e-cigarettes, refill bottles with nicotine intended for cartridges, and e-cigarettes under tariff heading 2404, along with tobacco products and herbal smoking products under tariff headings 240399900 and 2404, imported and/or produced before the effective date of Law No. 212/2023, may be legally marketed until 31 December 2025.

The Information Note accompanying the aforementioned Government Decision lacks clarity from the Ministry of Finance regarding the rationale behind these changes, thus falling short of providing transparency for the proposed amendments. While not explicitly stated, it can be inferred that these alterations may be contingent upon the belated approval by the Ministry of Finance, on 27.11.2023, of the new design for the "Excise stamp/Consumer stamp" mark, set to take effect on 1 January 2024.⁵⁷ Furthermore, it is noteworthy that the Ministry of Finance did not timely issue regulations on the old model excise stamps acquired by the tobacco industry, a situation that persisted until the enforcement of Law No. 212/2023, which pertains to amendments in certain normative acts (related to budgetary-fiscal policy).

Hence, the delays and lack of action by the central public administration authorities in executing the legislation associated with the implementation of the Protocol for the elimination of illicit trade in tobacco products under the World Health Organization Framework Convention on Tobacco Control, as established by Law No. 25/2023 and Law No. 212/2023 concerning amendments to certain normative acts related to budgetary-fiscal policy, pose significant risks to the successful implementation of the Protocol. Consequently, there is a heightened risk of sustaining the prevalent high levels of tobacco and related products smuggling.

⁵⁶ Government meeting of 13 December 20213<https://gov.md/sites/default/files/document/attachments/subiect-34-nu-1064-mf-2023.pdf> (accessed on 15.12.2023)

⁵⁷ https://www.legis.md/cautare/getResults?doc_id=140330&lang=ro (accessed on 15.12.2023)

Conclusions

The **primary cause** directly or indirectly influencing the growth of illicit trade in tobacco and tobacco-related products, including smuggling, illicit manufacture and counterfeiting, **is the manner in which the provisions of the relevant legislation have been or are regulated**, including the following:

- pursuant to the provisions set forth in Article IV, item 14 of Law No. 179/2018, amending certain legislative acts, the legislation mandated an increase in the value of goods introduced into or taken out of the Republic of Moldova's territory by *elevated the threshold from 20 average wages per economy to 100 average wages per economy forecast, in line with the Government decision prevailing at the time of the offense*. This modification serves as the basis for categorizing the criminal offense related to the smuggling of tobacco and/or related products under the applicable legal framework.

Consequently, owing to the implementation of these provisions (***spanning from 17 August 2018 to 31 December 2020***), **there has been a significant reduction in the number of criminal cases related to the smuggling of tobacco and/or related products**. These developments are duly documented in the Activity Reports for both 2019 and 2020, as submitted by the Customs Service. This noteworthy decline in cases is also acknowledged in the National Report on the Assessment of Money Laundering and Terrorist Financing Risks, presented on 01 April 2022 by the Money Laundering Prevention and Combating Service.;

- **the preceding stipulations of Article 103, paragraph (6), 104 (h), 123, paragraph (6) letter c), 124, paragraph (5), and 125 (3) of the Fiscal Code No. 1163/1997 granted specific economic agents the privilege to market goods, including tobacco and related products, in *duty-free shops* until 3 September 2023⁵⁸, without incurring excise duty and enjoying an exemption from Value Added Tax (VAT).**

As outlined in Court of Accounts Decision No. 50/2022 regarding the Compliance Audit Report on the Administration of the System of Tax and Customs Facilities during 2020-2021, the value of *goods deposited in duty-free shops for the mentioned period* reached 998.1 million lei. This marked a significant surge from 326.0 million lei in 2020 to 672.1 million lei in 2021, representing a notable increase of 206%. Additionally, the assessed value of the facilities granted to these goods totaled 1,985.1 million lei.

- **under the former provisions of the Customs Code of the Republic of Moldova No. 1149/2000 and other relevant normative acts, economic agents in the Eastern districts not supervised by the constitutional bodies of the Republic of Moldova were exempted from paying corresponding duties when importing tobacco products and/or tobacco-related products.**

The Compliance Audit Report on the administration of the system of tax and customs incentives during 2020-2021, as sanctioned by Court of Accounts Decision No. 50/2022, reveals that the exemptions granted to economic agents and individuals in the Eastern districts not under the control of the constitutional bodies of the Republic of Moldova reached a total of 13.4 billion lei in the last three years. In 2020, an economic agent⁵⁹ from Transnistria imported 1,922.2 thousand kg of tobacco products (equivalent to 1.7 billion cigarettes), with a declared value of 292.7 million lei, benefiting from exemptions totaling 1,602.3 million lei.

⁵⁸ See Article I and Article XIII of Law no.302/2022 on the amendment of some normative acts

⁵⁹ S.R.L. „Sheriff”

The **criminal legislation** addressing liability for smuggling tobacco and/or tobacco-related products **is perceived as excessively lenient, indirectly fostering the perpetuation of this phenomenon.** Given these circumstances, **there is a potential risk of increased smuggling activities due to the overly lenient penalties associated with such offenses under the infringement procedure.**

Between 2014 and 2023, both the Chisinau Court of Appeal and the Supreme Court of Justice collectively reviewed and issued a total of **19 judgments involving 31 individuals** accused of smuggling cigarettes and/or other tobacco or related products. Among these cases:

- only 6 people were sentenced to imprisonment, with the sentence served in prison;
- 12 people were sentenced to prison with suspended sentence;
- 3 persons were fined;
- 9 persons were released from criminal liability, 5 of whom were also released from misdemeanor liability;
- criminal proceedings against one person were terminated in accordance with the provisions of Law No 210/2016 on amnesty in connection with the 25th anniversary of the proclamation of the independence of the Republic of Moldova;
- in respect of legal persons, no criminal sanctions for smuggling cigarettes and/or other tobacco or related products have been applied.

Hence, **the legal regulations in the Republic of Moldova concerning liability for illicit trade in tobacco and tobacco-related products, including smuggling, illicit manufacturing, and counterfeiting of cigarettes, are deemed ineffective. The absence of regulation for specific acts contributes to an environment that indirectly fosters smuggling, posing a threat to both public health and state security.**

Despite numerous amendments to the provisions of the Criminal Code No. 985/2002, which criminalize liability for smuggling tobacco and/or tobacco-related products, **the penalties for these offenses have remained essentially unchanged.**

From 2002 until the present, smuggling has consistently been regulated as *a minor or less serious offense*⁶⁰, except in situations where the offense is committed in an aggravated form.⁶¹

In these circumstances, individuals engaging in such acts continue to receive sentences of imprisonment with suspended sentences, are released from criminal liability, or even escape misdemeanor liability, leaving the state to suffer the consequences of these illicit actions.

The national mechanism of special confiscation of goods employed in the commission of a crime, which is applicable to smuggling offenses, serves as *a safety measure* but is not obligatory for the courts.

⁶⁰ In accordance with Article 16, paragraphs (1) and (2) of Criminal Code No. 985/2002, misdemeanors are categorized as offenses for which the criminal law prescribes a maximum penalty of imprisonment for a term of up to and including 2 years. On the other hand, less serious offenses are regarded as offenses for which the criminal law stipulates a maximum term of imprisonment of up to and including 5 years..

⁶¹ Smuggling committed by two or more persons, using their official status or if the quantity of filtered or unfiltered cigarettes exceeds 120,000 pieces, etc.

Due to these reasons, from 2018 to 2022, national courts at all levels, following the examination of offenses related to the smuggling of tobacco and/or tobacco-related products, mandated the application of the safety measure - special confiscation - only in relation to *4 means of transport* and the assessed value of two transport units.⁶²

To improve the current situation, it is imperative to bolster the liability for all the aforementioned offenses by **instituting the compulsory criminal sanction of confiscating the means of transport used in the commission of offenses related to the smuggling of excise goods**, such as cigarettes, other tobacco and tobacco-related products.

The absence of a modern road infrastructure and a robust control network at customs posts in the Republic of Moldova, including the Transnistrian region, renders the authorities **incapable of promptly and effectively identifying instances of tobacco and/or related products smuggling**.

The analysis conducted reveals that all instances of attempted smuggling or actual smuggling of tobacco and/or related products across the customs border of the Republic of Moldova were detected through operational information and/or as a result of physical inspections conducted by responsible individuals in this domain. Furthermore, certain customs authorities at the external borders of the European Union, including Romania, also face similar challenges. Consequently, on 24 June 2021, the Council and the European Parliament signed the Regulation (EU) 2021/1077, establishing a financial support instrument for customs control equipment.⁶³ The Customs Control Equipment Instrument is designed to support the procurement, upkeep, and enhancement of equipment essential for conducting customs controls with efficiency and effectiveness. This funding can be utilized for acquiring equipment like X-ray scanners, radiation detectors, automatic number plate recognition systems, and mobile laboratories for analyzing samples of goods.⁶⁴

Given these circumstances, it is **imperative to swiftly implement public policies directed towards ensuring that all customs posts in the Republic of Moldova are equipped with scanners, facilitating the scanning of all means of transport crossing the border**.

A similar approach has been successfully employed in the United Kingdom of Great Britain and Northern Ireland, where smuggling strategies were issued in 2000, 2006, and 2008 and included an increase in the number of customs staff and the introduction of scanners.⁶⁵

Illicit trade in tobacco and tobacco-related products, such as smuggling, illicit manufacturing, and counterfeiting of cigarettes, **thrives in an environment marked by ineffective state control over the import of tobacco and tobacco-related products, the quantities needed for domestic consumption, the movement of tobacco and tobacco-related products after import, and other tobacco industry activities**. To address this issue, there is a **pressing need to formulate, endorse, and execute public policies aimed at monitoring the production, import, and marketing of tobacco and related products, along with related activities**.

⁶² See Statistical Reports on the application of special confiscation by the courts for the years 2018 - 2022, <https://www.aaij.justice.md/ro/report-type/rapoarte-statistice>

⁶³ <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A32021R1077>

⁶⁴ <https://www.consilium.europa.eu/ro/press/press-releases/2021/06/24/new-instrument-for-modern-and-reliable-customs-control-equipment/>

⁶⁵ https://www.smokefreepartnership.eu/images/TobTaxy/SFP-KIT_RO_V1-romanian.pdf

The implementation of the provisions outlined in the Protocol for the elimination of illicit trade in tobacco products, as endorsed by the World Health Organization Framework Convention on Tobacco Control through Law No.25/2023 amending certain normative acts, is hindered by an **excessively lengthy deadline**, which is particularly evident in the case of the new amendments to the Criminal Code of the Republic of Moldova (No.985/2002), scheduled to take effect only on March 21, 2026. Consequently, **the persistently high levels of smuggling of tobacco and related products are expected to endure** until the specified deadline is reached.

The legislation of the Republic of Moldova currently lacks the inclusion of manufacturing equipment activities in the licensed operations within the tobacco industry, and there is no specific provision for the import or export of manufacturing equipment, although this requirement is to be achieved with the accession to the Protocol for the elimination of illicit trade in tobacco products.

Only towards the conclusion of 2022 did **the Republic of Moldova successfully enact legislation that abolished tax exemptions on the sale of tobacco products in *duty-free shops*** within its territory. However, this accomplishment came after the country's budget had already incurred losses amounting to billions of lei.

The acknowledged **delays and initial inaction of the central public administration authorities in executing the Protocol for the elimination of illicit trade in tobacco products**, as stipulated by Law No. 25/2023 amending certain normative acts, and Law No. 212/2023 amending specific normative acts (related to budgetary-fiscal policy), highlight a recognized issue in the implementation process.

Recommendations

The following activities are subject to licensing in accordance with the stipulations of Law no. 160/2011 on the regulation through authorization of entrepreneurial activity:

- Production of equipment for the manufacturing of tobacco products and/or related items.
- Import/export of equipment designed for the production of tobacco products and/or related products.

Criminal liability is regulated for the following actions:

- the manufacture, sale, transport, distribution, storage, and dispatch of *equipment for the production of tobacco and/or tobacco-related products* without a license and/or other validating documents granting these rights to the possessor.
- the manufacture, sale, transport, distribution, storage, and dispatch of *tobacco products and/or related products* without a license and/or other validating documents conferring these rights on the possessor.
- the transport, distribution, storage, and dispatch of *tobacco products and/or related products* without payment of duties, taxes, and other applicable charges or without

affixing tax stamps, unique identification marks, or any other necessary markings or labels.

- providing inaccurate information *on official forms concerning the description, quantity, or value of tobacco, tobacco products, and/or related products or manufacturing equipment* and submitting such information to the Customs Service.
- *neglecting due diligence*, which involves the process of documenting or investigating a company before a transaction, specifically in the context of the purchase of tobacco products, related products, manufacturing equipment, or any of their components, by economic operators.
- refusing, as *a legal entity* involved in the supply chain of tobacco, tobacco products, and/or related products and manufacturing equipment, *to maintain comprehensive and accurate records of all pertinent transactions or maintaining false records*.

Reassessing the minimal thresholds required for an offense to be classified as smuggling is imperative to **enhance our ability to counteract smuggling through legal prosecution**. Furthermore, it is essential to institute a **compulsory criminal penalty involving the confiscation of the means of transport used in perpetrating the offense of smuggling excise goods**.

It is crucial to implement public policies aimed at ensuring the comprehensive **deployment of scanning technology at every customs post within the Republic of Moldova** to facilitate the thorough scanning of all means of transportation during border crossings.

Establish a **national import, export and transit control system**:

- tobacco and/or tobacco-related products.
- manufacturing equipment for the production of tobacco and/or tobacco-related products.

It is essential to closely **monitor the enforcement of the legislation** aligning with the Protocol for the Elimination of Illicit Trade in Tobacco Products under the World Health Organization Framework Convention on Tobacco Control. This scrutiny is **critical to minimize the risks linked to potential delays and inaction by central government authorities responsible for drafting and approving the necessary secondary legislation essential for the efficient implementation of the Protocol, including government endorsement**.