

## Contents

<b>Improving health and making crime: An introduction</b>	1
Petrus C. van Duyne and Georgios A. Antonopoulos	
<b>Organising cigarette smuggling and policy making, ending up in smoke</b>	7
Petrus C. van Duyne	
previously published: in <i>Crime, Law and Social Change</i> , (2003) vol.39	
<b>The trafficking in untaxed cigarettes in Germany: a case study of the social embeddedness of illegal markets.</b>	37
Klaus von Lampe	
previously published in:	
van Duyne, P. C., von Lampe, K. and Passas, N. (eds) (2002) <i>Upperworld and Underworld in Cross-Border Crime</i> . Nijmegen: Wolf Legal Publishers	
<b>Organising the nicotine racket. Patterns of criminal cooperation in the cigarette black market in Germany</b>	55
Klaus von Lampe	
previously published in: van Duyne, P. C., von Lampe, K. and Newell, J. L. (eds) (2003) <i>Criminal Finances and Organising Crime in Europe</i> . Nijmegen: Wolf Legal Publishers	
<b>Crossing geographical, legal and moral boundaries: the Belgian cigarette black market</b>	77
Tom Vander Beken, Jelle Janssens, Karen Verpoest, Annelies Balcaen, and Freya Vander Laenen	
previously published in: <i>Tobacco Control</i> , (2008), vol. 17	
<b>Explaining the emergence of the cigarette black market in Germany</b>	91
Klaus von Lampe	
previously published in: van Duyne, P. C., von Lampe, K., van Dijck, M. and Newell, J. L. (eds) (2005) <i>The Organised Crime Economy: Managing Crime Markets in Europe</i> . Nijmegen: Wolf Legal Publishers	
<b>Cigarette shuffle: organising tobacco tax evasion in the Netherlands</b>	113
Maarten van Dijck	
previously published in: van Duyne, P.C., Maljevic, A., van Dijck, M. von Lampe, K. and Harvey, J. (eds) (2007) <i>Crime Business and Crime Money in Europe: The Dirty Linen of Illicit Enterprise</i> . Nijmegen: Wolf Legal Publishers	

- Cigarette black market in Estonia** 147  
 Anna Markina  
 previously published in: van Duyne, P.C., Maljevic, A., van Dijck, M. von Lampe, K. and Harvey, J. (eds) (2007) *Crime Business and Crime Money in Europe: The Dirty Linen of Illicit Enterprise*.  
 Nijmegen: Wolf Legal Publishers
- Criminals are not alone: Some observations on the social microcosm of illegal entrepreneurs** 161  
 Klaus von Lampe  
 previously published in: van Duyne, P.C., Maljevic, A., van Dijck, M. von Lampe, K. and Harvey, J. (eds) (2007) *Crime Business and Crime Money in Europe: The Dirty Linen of Illicit Enterprise*.  
 Nijmegen: Wolf Legal Publishers
- The cigarette smuggling business in Greece** 183  
 Georgios A. Antonopoulos  
 previously published in: In van Duyne, P., Harvey, J. Maljevic, A. von Lampe, K. and Scheinost, M. (eds) (2008) *European Crime at Crossroads: Extended and Extending Criminal Europe*.  
 Nijmegen: Wolf Legal Publishers
- A zone of ambiguity: the political economy of cigarette bootlegging** 207  
 Rob Hornsby and Dick Hobbs  
 previously published in: Assessing Organised Crime (AOC) report, 11-08-2006

# Improving health and making crime

*Petrus C. van Duyne & Georgios A. Antonopoulos*

## **The good, the bad and the market**

Some consider the state as the Guardian of the ‘general good’, others fear it as the Great Intruder of our daily life, meddling in all sorts of activities or habits many people enjoy. As many activities or habits can be hazardous, the state, in its role of Guardian, is called upon to intervene. It must serve and protect, if necessary against the will of its own citizens. This creates a tension between the state and reluctant subjects, who have other ideas of what they consider enjoyable. Should the state protect with force or with the softer means of persuasion and price manipulation? Of course, the soft and hard approaches can be mixed or alternated.

Looking back into the history of the interaction of the state and the citizens (a dichotomy of convenience), the choice for either a penal law or a softer approach looks like a somewhat arbitrary outcome of all sorts of social and political influences. This arbitrariness is deceptive. In the US and Europe, the authorities used to be more concerned about hazardous substances, which affect the mind than substances which are ‘just hazardous’. In brief: psychotropic substances, drugs, but with the exception of alcohol, have been the focus of penal law repression. Van Duyne and Levi (2005) related this to the Christian heritage, in which the ‘purity of the soul’ has always been a major (religious) concern. With the gradual secularisation of the Western world, this concern was taken over by the developing professional medical class, which pressed for legislation from the mid 19<sup>th</sup> century onwards. After 1900 this anti-drug policy was to be maintained by an increasingly forceful international, ‘global’ penal law regime. The decision to criminalise drugs, a decision accompanied by huge social costs, has not been transparent and backed up by valid information and balanced arguments; it is yet another example of “a tortuous decision making policy” (van Duyne, 2007: 46).

After having developed this global law enforcement regime, the foundation was laid for other protective interventions. Psychoactive drugs are not the only hazardous substances with a risk of creating a habit or addiction. Nicotine is harmful and addictive too, as we all know by now. Nevertheless, tobacco products have been an accepted commodity since it became commercialised from the 16<sup>th</sup> century onwards. This is a long process in which tobacco started being gradually transformed from an integral element of the Amerindian magico-religious rituals and experience, social functions and medicine, to a force of global capitalism. In its latter capacity it facilitated the establishment of large corporations with the ability to penetrate domestic markets and impose monopolies or oligopolies (see Goodman, 1993). At first many medical qualities were attributed to the tobacco leave, which was chewed, cut and smoked in pipes or grounded to powder and snuffed. In 1560 Jean Nicot even sent this “therapeutic wonder drug” to queen Catharina de Medici against her headache. Whether it cured the headache of this genius mother-politician, balancing between Huguenots and Catholics, is unknown. But Jean

Nicot lived through his advice: the plant was first called 'nicotiana' and later 'nicotine'.

Not everybody was convinced of the healing powers of 'nicotiana'. The Church called it a 'devil's weed' because it stemmed from the heathen Indians. Smoking became risky, particularly to one's spiritual well-being, as one could be excommunicated. However, this policy was not applied very consistently as some Popes liked to smoke a pipe too. Some high-placed persons also condemned tobacco. King James I qualified tobacco in 1603 as "an abhorrence to the eyes, a disgust to the nose and damaging to the mind and dangerous to the lungs". He proved to be right, which took about 350 years to become recognized. His palace may have become the first non-smoking working place with the smokers standing outside like the modern 'nicotine pariahs'. This was quite an achievement although he would spin in his grave if he knew that one of his country rulers and distant family member, King Edward VII, has been featuring on cigar packs.

Whether it was damaging or not, people at all levels of society liked the stuff and clay pipes became popular in Holland and England. It did not take long before the James' son, Charles I, discovered that tobacco consumption could be an excellent source to replenish the crown's treasury, which was constantly depleted by the king's extravagant spending. So he raised the price by imposing an excise. To his delight, the English consumers continued to smoke and pay excises by doing so. Of course, not all consumers complied so meekly, because imposing excises was followed by smuggling, which has remained popular till the present day. With a variation on an old adage: "Every state gets the crime-market it deserves".

## **Health, money and crime**

At present old James' I disgust at smokers and concern about health effects has become commonplace, with two relevant tendencies: concern about health and increasing the costs of consumption by imposing taxes. Imposing taxes on unhealthy commodities from ethical health motivations has an inherent moral ambiguity. It intends to deter consumers, while at the same time benefiting from their unhealthy habit, which is similar to the Renaissance popes, condemning sinful sex, while taxing it by selling licenses to brothels in Rome.

The authorities got the predictable outcome: a global recognition of health concern, along with money and crime. The health concern is undisputed and is not the theme of this volume, which is about the organisation of crime-for-profit, of course from dodging the excises. Though this criminal conduct has long roots, the contributions in this volume deal with its modern manifestations. Naturally it is about price differences, usually between countries, and their commercial opportunities. As described in the chapter written by Maarten van Dijck, the differences between the countries of the European Union are large and so are the criminal profit opportunities. Much tobacco contraband moves from the low-price Baltic countries to the UK, where the highly taxed smokers have no qualms in buying smuggled cigarettes instead of contributing to the treasury by paying 'extortive prices'. In between are the 'transit countries' (Germany, the Netherlands and Belgium), whose law enforcement agencies, customs in the first place, contribute

many efforts to maintain the internal price policy of another jurisdiction – free of charge!

This flow of contraband through the ‘Northern trade belt’ is described by Van Duyné in his chapter on cigarette smuggling in the Netherlands, and beyond. The situation in the other transit countries, Belgium and Germany, is described in the chapters of respectively Tom Vander Beken and his colleagues, and Klaus von Lampe, while Anna Markina gives an account of one of the source countries, Estonia. These northern countries are not the only ones in which the anti-tobacco policy ends up in criminal smoke, as the reader can learn from the chapter on the Greek situation, written by Georgios A. Antonopoulos. The chapter on Greece, a country of ‘irrational smokers’ (who may prefer not to buy the cheapest cigarettes in the black market but the ones that would be cheap but of a certain quality) also highlights the role of culture as an important dynamic of the illegal tobacco market. Differential prices among various jurisdictions and economic variables alone do not always tell the (whole) truth about the illegal markets of tobacco. The informal economy as a whole, and illegal markets in particular, have always been socio-culturally relevant.

Though a substantial part of the contraband cigarettes end up in the UK market, the transit countries have illegal cigarette markets of their own. This applies particularly to Germany, or rather the Eastern parts of the country forming the previous DDR. This is strange because there are no price differences between the Länder in Germany. Nevertheless, the eastern Germans are more likely to buy illegal cigarettes than their fellow countrymen in the old West Germany. The nature and organisation of this market has been described in detail by Klaus von Lampe, the main expert on the German clandestine cigarette market. Especially the Berlin cigarette market appears to thrive, due to various circumstances such as the proximity to Poland, the presence of the Vietnamese ethnic minority from the DDR epoch and the consumer interest in what is still distinguishable as East Berlin. His studies demonstrate the functioning of criminal networks and the connectedness of the criminal traders to the surrounding non-criminal world: criminals are not alone, indeed.

Criminals in the cigarette market are not only ‘not alone’, they are also often ‘very common’, as is described in detail in the chapters of Petrus C. van Duyné and Maarten van Dijck. A substantial part of the distribution market is covered by somewhat older lower middle-class figures, the next door ‘aunty Ann and uncle Bob’ types. Most of those are action-oriented individuals, who in most instances act for their personal interests and often on improvisation. The closer one gets to those ‘cigarette smugglers’, the more the stereotypical ‘organised criminal’ image dissolves. Illegal cigarette entrepreneurs can be the most ‘unusual suspects’, who are not involved in other criminal activities, have nothing to do with the funding of ‘terrorist organisations’, and who would definitely not fit the profile of the archetypal Hollywood crime blockbuster stars. The composition of the group of real smugglers, the transporters, looks more varied with many network relationships, amateurs keen on getting a piece of the pie and a few real ‘organisations’ characterised by a more sophisticated division of labour. Violence and threats were rare.

Violence is not good for business, as revealed by Rob Hornsby and Dick Hobbs in their story of a gifted English entrepreneur, who organised a profitable cigarette

shuttle between France and the UK. As happens so often, he started small and expanded soon, responding to the insatiable demand of uncountable dissatisfied ‘over-taxed’ users. By connecting Luxembourg, the low taxed friendly source country, facilities of befriended French for storage, and transport and the natural user-allies in the UK, a real firm developed. The entrepreneur proved to be a shrewd risk manager in relation to the authorities. But the latter did not prove to be the main risk: a greater danger came from UK ‘serious villains’, acting as predators to the more peaceful cigarette entrepreneurs. The same happened before in Berlin, when the peacefully operating Vietnamese cigarette trades became the targets of violent extortionists. Creating a crime-market may entail violence as a kind of derivative: the cigarettes became doubly hazardous.

### **The rhetoric of TOC and crime-markets**

Much of the criminal entrepreneurial conduct presented in this volume could have been cast in the rhetoric of the dreaded ‘Transnational Organised Crime’, a phrase with much mystique and threat imagery but with little content. In the professional journals it got its own acronym TOC and it even found its way into the 2000 UN Convention under the same name, which went into force in September 2003. For good reasons the researchers in this study kept well clear of all this. After all the illegal trading of several commodities – including tobacco products – has involved the crossing of borders for centuries thus making the additional value of the term ‘transnational’ at least questionable if not redundant. That does not imply that describing and analysing the cigarette contraband enterprises would exclude or reject the ‘transnational organised crime’ framework. However, such a contraposition would be pointless. From the researcher’s perspective this concept is simply redundant, as it lacks explanatory power compared to simpler concepts like ‘crime-enterprise’. As researchers have to comply with the methodological ‘rule of parsimony’, non-explanatory phrases have to be cut. Since the scholastic philosophy it is called ‘Occams razor’. And ‘organised crime’ is the first victim of this razor, certainly in its transnational variety.

Leaving this rhetoric aside, as the researchers in this volume have done, it would be more relevant to analyse the emergence and continuation of crime-markets from the angle of players’ interaction. The roles are cast and the main players are known. We have the state, the Good, the vile crime-trader, the Bad, and the customer, the Sinners (or the Deceived). This is a proper ground pattern of our drama of the crime-markets, which can be made more complicated with many nuances between snow-white and ink-black. The role of the authorities is invariable: they represent Good and have the right to intervene in the conduct of the Sinners. Many Sinners remain unconverted and are ready to incur extra costs for their bad habit, either by paying deterring taxes or the risks inherent to an underground market. This is provided for by the persistent Sinners, who turned into vile Crime-entrepreneurs, the real Baddies.

This simple criminal ground pattern has survived the ages, while its manifestation has been technologically updated: smuggling tobacco under Charles I required other technological and social skills than importing a freight of clandestine ciga-

rettes through the modern customs. But then as well as at present, many roles are still invariable over time: the customs may have to be bribed and one still has to guard against predatory fellow criminals even if one has no violent backgrounds.

In whatever modern way one will dress-up the scenery of the triangular relationship, the simple ground pattern is repeated: the script of an activist government meddling for good or bad reasons in the citizen's conduct. Depending on his reaction other players enter the scene. Whatever the simplicity of this script, it is genius and proved to be momentous in its effects, producing alongside august institutions such as Europol. Hilarious.

## References

- Duyné, P.C. van, The upperworld side of illicit trafficking. *Crime & Justice International*, November/December, 2007, 46–47
- Duyné, P.C. van and M. Levi, *Drugs and money: managing the drug trade and crime-money in Europe*. London: Routledge, 2005
- Goodman, J. *Tobacco in History: The Cultures of Dependence*. London: New York, 1993





# Organizing cigarette smuggling and policy making, ending up in smoke

*Petrus C. van Duyne*<sup>1</sup>

## Lessons from history

Historians always try to convey the usefulness of their profession by pointing at the lessons that policy makers and peoples should learn from history. That is true. But as a matter of fact, either they do not learn or just only very partly, or even the wrong lessons. This may be regretted, though at the same time it makes history so much more fascinating than it would be if we were saturated with the wise lessons from our past.

One of the lessons concerns the difficulty of blocking the flow of coveted commodities, either by military, penal law or fiscal measures. As soon as there is a sufficient demand for a commodity and a rewarding price difference, all such measures are like plugging a sieve. As far as the European history is concerned Britain should be the first country to recognize such a folly. It was the very first nation which defeated a well-organized attempt to harm her interests by blocking the free flow of goods: the Napoleonic Continental System of 1808. Napoleon's concept was rational, though its fundamental flaw was its neglect of what people do when they are denied coveted goods for political reasons they do not believe or dislike. They begin to smuggle and Napoleon's system was undermined as soon as it was implemented.

Today policy makers in various countries have other, more humane concerns, like protecting the health and well-being of their citizens against their own bad habits. However, to implement such a policy they have chosen a fiscal variety of the Continental System with virtually the same effects. One of those bad habits is smoking tobacco, which the British government (like the Canadian, Beare, 2002) tries to reduce by a draconian increase of the taxes on tobacco products. The predictable consequence did not take long to become manifest. The law proved to have less impact on the bad smoking habit than policy makers believed, while the huge price difference stimulated risk takers to take their chances to satisfy the continued high demand for cigarettes. Britain's fiscal reverse of the Continental System has brought forth a thriving smuggling economy, affecting numerous countries, which either export or transit the contraband to nicotine deprived Albion.

---

<sup>1</sup> Professor of empirical penal science, University of Tilburg. This research has been carried out with the help of the Central Excise Unit in Rotterdam. Published in *Crime, Law and Social change*, 2003, no. 3, 263-283

Whatever the rhetoric concerning organised or transnational crime (Naylor, 1996), the non-criminal 'fiscal' health policy in one country boosted the ever present crime-market for (un)taxed goods, evoking shifts and new developments in many countries of the world. One may wonder whether those countries have been victimised by an internal (health policy) –in which they have no part– of another country and whether that is the right policy. Apart from that question, all territories facing Britain share the problem of a huge cigarette contraband trade, which of course is not a new phenomenon. It just aggravated the already on-going underground traffic in the European Union, notably in Germany since the fall of the Wall and in Mediterranean territories (Von Lampe, 2002).

### **Quantifying the smoke**

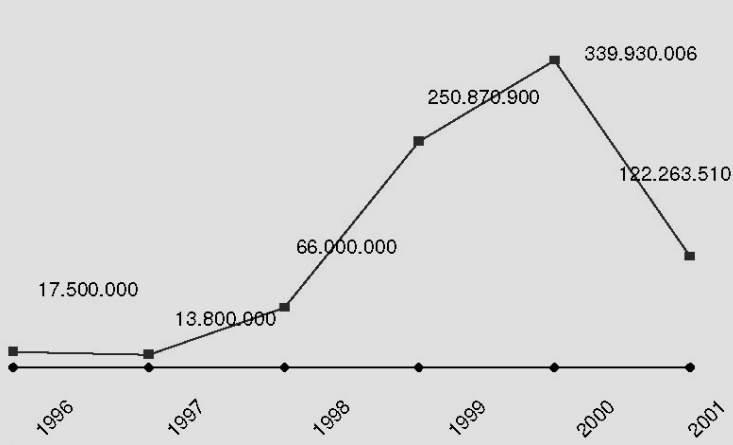
The Netherlands, facing Britain while being the main gate to a huge hinterland, is one of the transit countries for the wholesale illegal supplies of cigarettes destined for the British market. Of all the confiscated cigarettes in 2001 an estimated 86 % was destined for the British Isles.<sup>2</sup> It goes without saying that this is not a surprising new development. Like any country, the Netherlands have a smuggling tradition of its own. This also concerns the tobacco contraband trade. Nevertheless, wholesale cigarette smuggling in which the Netherlands were involved could be considered an irregularly occurring phenomenon, though some uncovered schemes were well organized. In some cases Dutch opportunities attracted foreign crime-entrepreneurs from southern and eastern Europe, who in the first half of the 1990s exploited mainly the markets in Italy, Spain and Germany (Van Duyne, 1996). The huge market expansion, which came about after the British policy makers increased the already existing price difference with the continent in 1998, caused a tremendous shift in the trading pattern, as demonstrated in figure 1.

---

<sup>2</sup> Annual report Central Excise Unit, Rotterdam, 2002

**Figure 1**

The development of the seizures of cigarette shipments in the Netherlands:  
1996 - 2001.



As figure 1 shows, from 1998 onwards the amount of confiscated cigarettes increased steeply, almost fourfold. However, from 2000 the confiscation sank again with almost two third from 340 million to 122 million cigarettes. The experts of the customs are still finding an explanation for this sudden market movement in the last year. Is the contraband trade decreasing, due to the success of tightened controls, using a tobacco-dog and a freight (X-ray) scanner? Or are the transport routes displaced to other territories?

Looking at the origin of the shipments, an equally dramatic shift is to be observed as far as the Netherlands are concerned. In the second half of the 1990's the Baltic region, particularly Lithuania, was mentioned as a problematic area. From the pattern and the information of the confiscation lists the picture arose of a kind of 'home industry' for re-packing cartons of cigarettes in all sort of cover goods. Somehow the Lithuanians knew their criminal customers in Britain and the transport modalities to deliver the merchandise. From that impression I deduced the metaphor of a 'trade belt' between the Baltic and the British Isles. In 2000 the share of the confiscated cigarettes from this region was 26%. However, in this volatile market the trade flows can change quickly: another flow of –counterfeited– cigarettes emerged from China surged, while real brands were exported from Malaysia and the United Arab Emirates: together 67% of the confiscated cigarettes. In 2001 Eastern European import shrank to a little stream of 12%, to be replaced by German import, jumping to 11%, while also Belgium started to play a minor role of 6%. Cigarettes of Polish origins were recorded only once. Information from the German and Belgian customs services provide a plausible explanation, which shows that making statistics based on the information of the bills of lading can be deceptive. It is said that to avoid the increased chances

of control of Lithuanian, Polish and Russian trucks, the contraband is re-packed in Germany and Belgium, provided with a new bill of lading (for the cover cargo) and shipped from there to Britain. The volume of individual cargos is also reduced, which implies a lessening of the losses in case of interception. Other indications are that a shift may take place to Hungary and surrounding countries. If the model of 'trade belt' still applies, it has to be interpreted in a dynamic way, allowing for territorial displacements in reaction to law enforcement control intensity.

### **Lifting the smoke by file analysis**

Given the obvious existence of a thriving crime-market, which is also observed in Germany (Von Lampe, 2002), the University of Tilburg and the Freie Universität Berlin, initiated two independent, but comparable research projects in the Netherlands and Germany to obtain a closer view on this market and its entrepreneurs. As little is known of the participants and the organisation of this traffic, the projects were intended as a reconnaissance from a few rather open questions:

- What are the most striking features of the underground cigarette market: the local markets, their supply side and the cross-border traffic?
- Is it possible to discern a typology of crime-enterprises or entrepreneurs?
- Are there connections with other crime-markets?
- What is the nature of the international dimension?

The two projects applied as much as possible a comparable methodology: their empirical basis consisted of the files of finalized criminal investigations, complemented by interviews with field experts and the available statistics.

On behalf of the Dutch research project the ministry of Finance provided access to the national collection of criminal investigations, which was accumulated by the national Central Excise Unit (CEU) since 1999. This case collection consists of copies of

- the excise fraud investigations carried out by the local fiscal police squads;
- requests for international legal and administrative assistance; and
- reported seizures in the Netherlands.

This case collection does not only consist of cigarette smuggling cases, but encompasses also the violations of other excise regulations, like mineral oil and alcohol. Only the tobacco excise was of relevance in this project.

Though it was the intention to analyse the requests for international legal and administrative assistance too, these requests contained usually too little information. As a rule a foreign or a Dutch customs unit asked for the whereabouts of a container, a bill of lading or whether a certain firm was known to the fiscal authorities. Whether the responses to such requests for information led to further investigations or prosecutions remained usually unknown: (international) feedback of results to the information providing agency is a rare phenomenon within the law enforcement community.