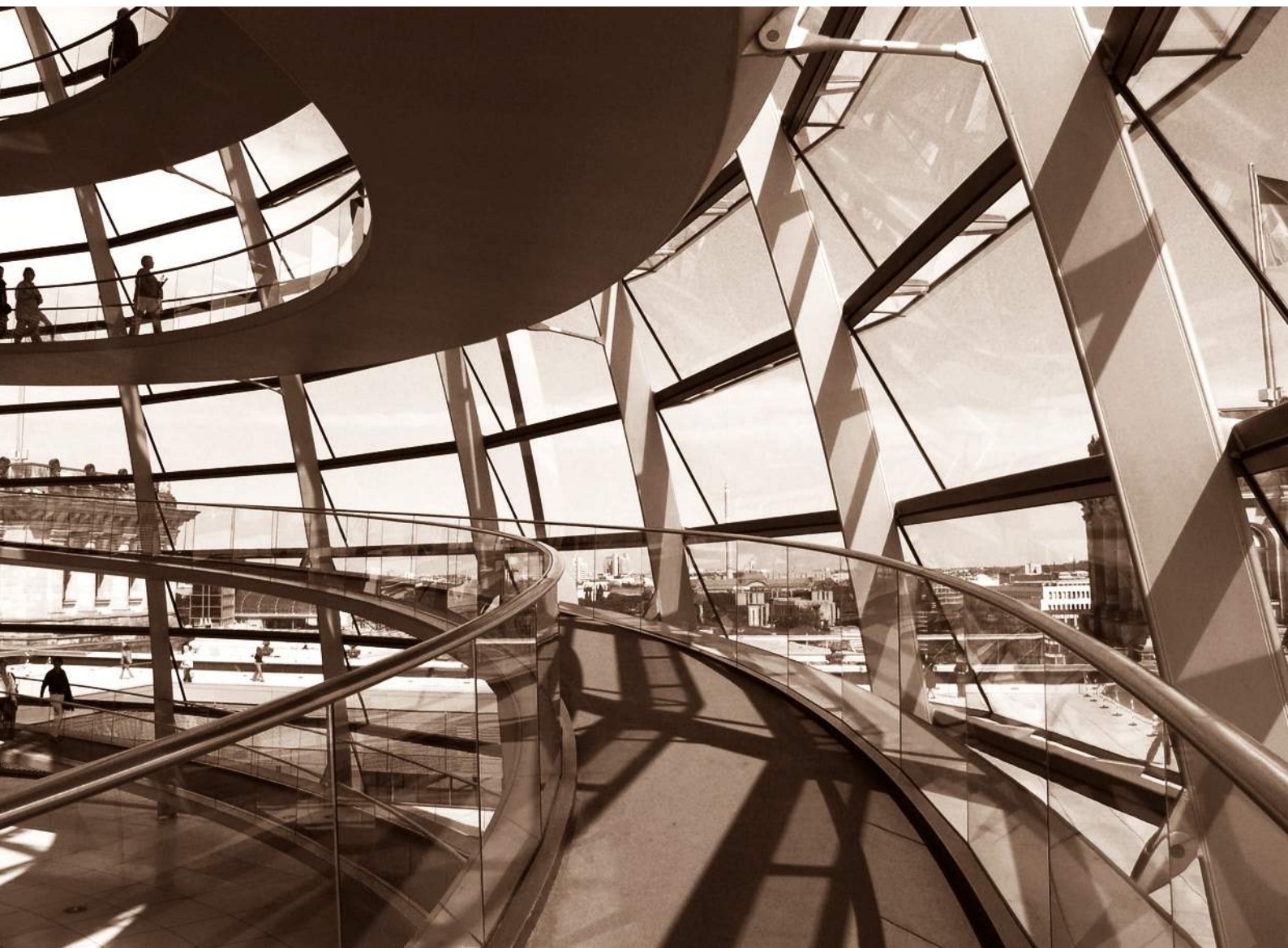


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# ISSUE 5 GERMANY





*Germany*

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# TABLE OF CONTENTS

Transcrime	1
The factbook on the illicit trade in tobacco products	3
Acknowledgments	5
Executive summary	7
Introduction	13
Why focus on the ITTP in Germany?	13
What can be found in this report?	14
Chapter 1: The five drivers	16
Society and economy	17
Legal market	23
Regulation	31
Crime environment	39
Enforcement	45
Chapter 2: The four components	52
The demand	53
The supply	56
The products	60
<i>Modus operandi</i> and geographical distribution	66
Chapter 3: Framing the components in the drivers	72
Introduction: The four key factors	73
Economic accessibility	74
Availability	75
Profitability	76
Risk	77
Conclusions	79
References	83



# TRANSCRIME

Transcrime is the Joint Research Centre on Transnational Crime of Università Cattolica del Sacro Cuore of Milan and the University of Trento. The Centre, directed by Ernesto U. Savona, Professor of Criminology at Università Cattolica, represents the multiannual union between experience and innovation in the field of criminological research.

There are offices in Milan and in Trento. In each office there is a team of researchers and secretariat/management personnel. Transcrime aims at being a national and international point of reference in the criminological research panorama.

The vision of the Centre is to increase knowledge in the criminological field and in the prevention of crimes, developing innovative ideas and cutting-edge techniques.

Transcrime combines its experience in applied research with the consolidated scientific tradition of Università Cattolica del Sacro Cuore in Milan and University of Trento, mixing a practice-oriented approach with a profound understanding of criminal phenomena. Through this experience, it developed a solid network of relationships in the academic field, institutions, international organisations and businesses.

The Centre also plays an important role in the support and development of educational activities at Università Cattolica del Sacro Cuore of Milan. Its principal aim is to achieve close integration between scientific innovation and academic education. In particular, since the academic year 2005/06, Transcrime has managed a MA programme dedicated to crime and security (until academic year 2012/13 the curriculum *Crime&Tech: Crime Sciences and Technologies for Security* within the MA in Applied Social Sciences; since the 2013/14 academic year Curriculum *POLISI: Policies for security* within the MA in Public Policy). In addition, the Centre has contributed to the development of the International Ph.D. programme in Criminology, coordinated by Professor Savona, which is currently the only doctoral course dedicated to Criminology in Italy.

Transcrime is an independent academic centre. It pursues an autonomous research agenda, which may be developed also through contracts and funding by private and public local, national and international institutions. The source of funding is always made public through Transcrime's website.





# THE FACTBOOK ON THE ILLICIT TRADE IN TOBACCO PRODUCTS

**This report is part of the project *the Factbook on the Illicit Trade in Tobacco Products* (henceforth ITTP).**

The project has been developed by Transcrime after the *Round Table on Proofing EU Regulation against the Illicit Trade in Tobacco Products* hosted by Università Cattolica of Milan, on 5 May 2011. During the Round Table, participants (researchers and policymakers with experience in the field of the illicit trade in tobacco products) agreed on a research agenda concerning the ITTP (Transcrime 2011b). Items 3 and 6 of the research agenda focused on the need for better analysis of the tobacco market taking account of its dual nature (i.e. legal and illicit) and on how licit and illicit markets vary across different countries and regions. Given these considerations, Transcrime has developed the Factbook on the ITTP, a multi-annual research plan providing detailed analyses of the ITTP and of its relations with the legal market and other socio-economic and political factors in a number of countries around the world.

**The aim of the Factbook is to provide an innovative instrument able to shed light on the complex mechanisms behind the ITTP in different countries. This report focuses on Germany.**

Tobacco consumption is undoubtedly a danger for human health, and governments should carefully regulate the tobacco market. Illicit tobacco avoids state regulation and taxation and may jeopardise tobacco control policies.

**The Factbook will contribute to raising awareness about the global importance of the ITTP and about the strategies available to prevent it.** The Factbook

has been developed for a wide readership ranging from policymakers, through academics, to interested stakeholders, **the intention being to provide a support to develop knowledge-based debates and policies on the ITTP.**

The information gathered for this report originates from academic literature, grey literature, open sources, questionnaires and interviews with experts and stakeholders. There are few studies on the ITTP in Germany. Furthermore, information of law enforcement action comes mainly from the German Customs, while other law enforcement agencies, although involved in the fight against the ITTP, provide more limited data. In addition to these issues, the data-gathering phase of the project encountered major difficulties due to the number of sources, institutions and stakeholders involved.

The results of the report do not claim to be exhaustive, nor an accurate reflection of criminal practices. They provide an initial assessment of the ITTP in Germany and a starting point for future research.

*As a concerned stakeholder in the fight against the illicit trade in tobacco products, Philip Morris International (PMI) welcomed Transcrime's initiative to develop the Factbook on the ITTP with financial support and the provision of data. However, Transcrime retained full control and stands guarantor for the independence of the research and its results. Information and data for the study have been collected by Transcrime and have not been shared with PMI.*





## ACKNOWLEDGEMENTS

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Special thanks go to **Klaus Von Lampe**, John Jay College of Criminal Justice, **Klaus Ehrenfried Schmidt**, ACMI and CEO ProtoSecure GmbH, **Wolfgang Schmitz**, Zollkriminalamt, **Jürgen Storbeck**, former Director of Europol and former General Director of the police of the State of Brandenburg (Germany).



# EXECUTIVE SUMMARY

This report provides the country profile of the project *The Factbook on the Illicit Trade in Tobacco Products*. It focuses on Germany, where illicit trade in tobacco products is not a political priority and there are no official estimates. Nevertheless, German Authorities, and especially German Customs are aware of the problem of cigarette smuggling.

## WHAT CAN BE FOUND IN THIS REPORT?

This report is organised into three chapters:

- Chapter one deals with the **five drivers of the ITTP**: society and economy, the legal market, regulation, the crime environment and enforcement. ***The drivers are important areas whose structures may positively or negatively impact on the ITTP. To enable comparison with other country profiles, five indicators have been selected for each driver.*** The data for the driver indicators come from comparable sources (latest available years). When possible, the report provides the most up-to-date data from national sources.
- Chapter two focuses on the **four components of the ITTP**: demand, supply, products, *modus operandi* and geographical distribution.
- Chapter three identifies the **key factors of the ITTP in Germany and frames the drivers in the components**, analysing how different elements of the drivers influence the components of the ITTP.

## THE FIVE DRIVERS

- **Society and economy:** Germany is a federal republic composed of 16 states (*Länder*) and one of the biggest world economies. The main effect of the 2009 recession was the rise of debt, whilst unemployment fell even during the crisis. GDP growth rebounded soon in 2010, and household expenditure on non-durable goods, including tobacco, has been constant in recent years. However, regional differences between Eastern and Western *Länder* are still marked.
- **Legal market:** the tobacco market is an important sector of the German economy. Germany is the first exporter of cigarettes in the world, and exports have grown in the past decade. The tobacco industry employed 10,057 people in 2011. However, national sales have fallen and consumers have shifted to cheaper products.
- **Regulation:** regulation of the tobacco market is medium in Germany. Tax incidence, as a share of the final retail price, is high in Germany, if compared with the global average. However, compared with high-income OECD members it is medium. Tax level, expressed in monetary terms (international dollar per 1,000 sticks) is high. Supply chain control is medium. The regulation on tobacco consumption and sales and on marketing and promotion is medium. Furthermore, many European requirements were applied with delay or at minimum levels. The country has invested a low per capita amount of resources in tobacco control policies.

- **Crime environment:** crime rates have slightly increased, while fear of crime has decreased. Consumption of cannabis, cocaine and heroin is constant and average compared with levels in other developed countries, whilst other drugs, such as amphetamines, are increasingly popular. Organised crime, corruption and informal economies are low.
- **Enforcement:** Germany has high levels of law enforcement, but action against the ITTP is medium–low. Cooperation between institutions and tobacco manufacturers is usually set at European level, as well as the legal duty for producers not to facilitate smuggling. There are different law enforcement agencies involved in the fight against the ITTP. In particular, the *Zollkriminalamt* (Customs Criminal Office) considers illicit tobacco as a priority and has undertaken several joint actions with authorities in neighbouring countries and the tobacco industry.

## THE FOUR COMPONENTS OF THE ITTP

- **The demand:** the main causes of the demand for illicit tobacco are low prices and availability. In Germany, illicit cigarettes cost half the legal price. Furthermore, proximity to low price markets makes illicit products easily available.
- **The supply:** the supply of illicit tobacco is mainly driven by the opportunity to make very high profits with relatively low risks. There is a variety of actors involved in the ITTP.
- **The products:** there are no official estimates of the illicit tobacco market, which makes it difficult to assess the extent of the ITTP. However, there are some unofficial estimates. The main illicit products are contraband cigarettes. The market share of illicit whites is smaller but nevertheless significant.
- **Modus operandi and geographical distribution:** inland roads are the main smuggling routes, and some ports play an important role, also as European hubs. Germany is often a transit country from Eastern to Western Europe. Proximity to the Polish and Czech borders correlates with a larger share of non–domestic tobacco products.

## FRAMING THE COMPONENTS IN THE DRIVERS

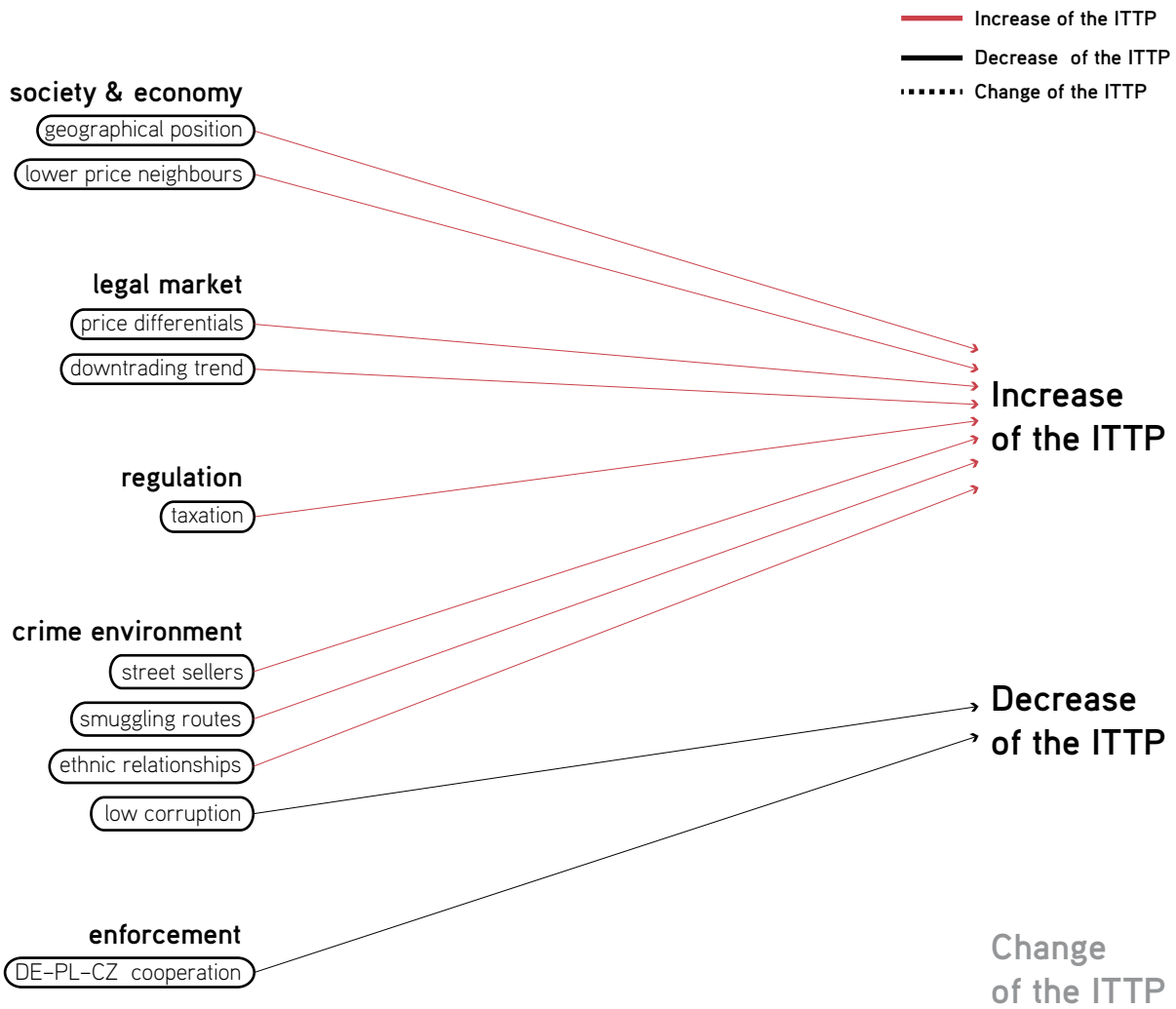
### The four key factors of the ITTP

The report identifies four key factors of the ITTP in Germany. The key factors are the crucial elements through which the five drivers determine the features of the four components. This chapter analyses how the interaction between the drivers and the components impact or may impact on the ITTP through these four key factors (Figure 1, p.9).

- **Economic accessibility: the price of illicit tobacco, and particularly its relative price compared to the price of legal products.**
  - German consumers have not significantly cut their expenditure in tobacco, showing a downtrading trend towards cheaper products as a reaction to increasing price (see Legal Market, p.23). Therefore, the demand for ITTP products may increase through their economic accessibility.
  - The government has announced a five–year plan of tax increases in tobacco products (Euromonitor International 2012). Since tax increase result in higher retail price, illicit products become more economic accessible, boosting their demand.
- **Availability: easiness for both smugglers and consumers to obtain illicit tobacco products.**
  - Germany has more than 1,300 km of common borders with Poland and the Czech Republic. These countries have lower retail prices for tobacco products. Indeed, EPS show a higher prevalence of non–domestic packs along these borders.
  - Poland and the Czech Republic joined the Schengen area in December 2007 and their entry seems to have favoured smuggling activities towards Germany (Locke 2010). Indeed, in 2006, nearly a quarter of all counterfeit and contraband cigarettes stemmed from Poland and the Czech Republic. In 2012, the proportion more than doubled, reaching 80% (KPMG 2012; KPMG 2013).

Figure 1. Main interactions between the drivers and the components

Source: Transcrime elaboration



- The geographical position between East and West Europe makes Germany both a destination and a transit country for ITTP. Indeed, according to Customs press releases, a considerable number of intercepted illicit cigarettes is intended for more profitable Western markets, such as France or the UK.
- Contexts of the informal economy, like street markets, facilitate the selling of illicit tobacco products (Joossens et al. 2000; Antonopoulos 2009). In Germany, informal street markets are located especially in Berlin, where people may easily find illicit cigarettes (Von Lampe 2005).

•• **Profitability:** the ability of the ITTP to generate profits that exceed its operational costs.

- The tax level expressed in monetary terms (total taxes per 1,000 cigarettes) may encourage suppliers of illicit tobacco through the higher profitability of this activity. Indeed, the higher the taxes, the greater the potential profit for smugglers. In Germany, the monetary amount of taxes per 1,000 sticks is high (see The supply, p.56).
- The lower retail prices of tobacco products in Eastern neighbouring countries stimulates ITTP making bootlegging and smuggling profitable activities. Nevertheless, the increasing price of tobacco products in Poland may change the picture in the near future.

•• **Risk:** the threat of detection/accusation/conviction and the sanctions impossible to the actors involved in the ITTP.

- Cooperation among German and foreign enforcement authorities may significantly diminishes the effectiveness of anti-ITTP actions increasing the risk of detection for smugglers. Notably, Germany has recently increased its collaboration with Polish and Czech agencies (Hauptzollamt Dresden 2013; Zollfahndungsamt Dresden 2013; Koschyk 2013).
- The German motorway system may favour the transit and arrival of illegal ITTP products. Indeed, there are several consolidate smuggling routes, Indeed Autobahn A2 and A12 are known under the name "Warschauer Allee" (Warsaw Avenue) since they are the most important smuggling routes from Eastern Europe into Germany (DKFZ 2010; Teevs 2010).
- Ethnic and kinship relationships among ITTP players facilitate tobacco smuggling activities. Indeed, in Germany, the distribution of illicit tobacco relies on personal contacts. These networks affect the prevalence of ITTP by diminishing the risk for the actors involved (Von Lampe 2003).
- The retail distribution of contraband cigarettes in Germany is commonly associated with street selling by Vietnamese vendors in the eastern parts of the country (Von Lampe 2006), while the main suppliers are Polish (see The supply, p.56).

The ITTP is a complex problem not limited to an issue of law enforcement and criminal justice policy alone. Notwithstanding German Customs efforts, the ITTP seems to have increased over recent years. Additional preventive measures, such a national public awareness campaign, are necessary. Effective action against the ITTP requires comprehensive strategies including criminal law, administrative sanctions, and other indirect measures aimed at reducing crime opportunities.

*The evolution of the project showed that countries have very different situations in relation to the available data on the ITTP. In some cases, the quality of the available data is low and there are no official, regularly updated, data. Inevitably, this may affect the quality and reliability of the results. In these cases, institutions, businesses and other stakeholders concerned by the ITTP should consider how to improve the data collection on illicit tobacco. This will result in an improvement in the knowledge of the ITTP and, in turn, in better tobacco control policies, since quite often the impact of specific policy measures upon crime may be overlooked due to the lack of reliable data.*

*Following the completion of the first phase of the project focused on collecting facts and data through the country profiles, Transcrime will perform a comparative analysis of the selected countries. This will provide additional insights in the complexity of the ITTP and allow for the elaboration of policy recommendations.*

## CONCLUSIONS

There are no official estimates of ITTP in Germany, although some unofficial estimates are available. Despite the lack of official data, contraband cigarettes seem to be widely available in Germany, especially in the Eastern part. In bordering states, it is difficult to disentangle smuggling, bootlegging and legal cross-border purchases. Historical and geographical conditions are the main causes of the diffusion of these products.

The results of this study demonstrate the need for more data and research. The main questions to address concern the demand for illicit tobacco and the types of products. First, the drivers of the demand are relatively unknown in Germany, since no consumer survey has been conducted on illicit consumption. Second, distinguishing between non-domestic legal and illegal cigarettes is an important challenge.







**Location:**  
 Germany, officially the Federal Republic of Germany, is in Western and Central Europe. It borders with North Sea, Denmark and Baltic Sea to the North, Poland and the Czech Republic to the East, Austria and Switzerland to the South, France, Luxembourg, Belgium and the Netherlands to the West. The country consists of 16 states, and its capital and largest city is Berlin. Germany covers an area of 357,021 square kilometres.

**Population:** 81,726,000 (2011)  
**Male:** 40,078,925 (49.0%)  
**Female:** 41,647,075 (51.0%)  
**Growth Annual Rate:** -0.1% (2011)  
**Age Structure:** (0–14) 13.4%; (15–64) 66.0%; (65+) 20.6%  
**Fertility Rate:** 1.39 children born/woman (2010)  
**Life expectancy at birth (years):** 80.0 (2010)  
**GDP:** US\$3,570,555,555,556 (2011)  
**GDP growth:** 3.0% (2011)  
**Inflation consumer price:** 2.3% (2011)  
**Income level:** High

Source: The World Bank

# INTRODUCTION

## WHY FOCUS ON THE ITTP IN GERMANY?

Germany is a key country for the European and world economy. Also for the tobacco sector, Germany is the world leading exporter of cigarettes. Despite the strong manufacturing capacity, different sources suggest that German illicit market has increased over the last decade. The current situation is due to a number of factors.

First, Germany is a very important hub for the cigarette trade in general and this may reflect also on the ITTP. The country is at the heart of Europe and it borders with nine countries (Denmark, Netherlands, Luxembourg, France, Switzerland, Belgium, Austria, Czech Republic and Poland). The geographical position, the transport infrastructures (ports and highways) and the role in the tobacco manufacturing industry make Germany an important joint for the world tobacco trade.

Second, Germany is a bridge between Eastern and Western Europe and this applies also to the ITTP. The removal of border controls along Germany's nearly 1,300 kilometres of borders with Poland and the Czech Republic in 2007 went along with a rise in criminality in the bordering regions mainly due to the prosperity differential. Eastern Germany is close to low-price countries for tobacco products, notably Poland. Furthermore, there are consolidated smuggling routes between these two countries.

Third, there are regional disparities across German states which may stimulate the ITTP. Years after the unification, the Eastern *Länder* still have lower socio-economic conditions. In these states, the general attitude towards smuggling of goods, including illicit tobacco, is more lenient, due to economic difficulties and socio-cultural patterns. The proximity of the less wealthy states to countries with lower prices of tobacco products further increases the opportunities for the development of the ITTP.

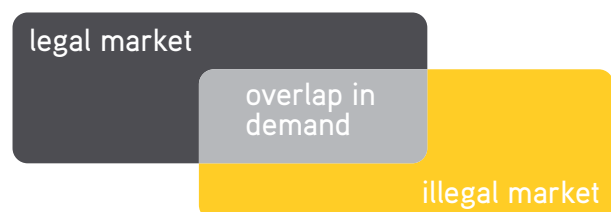
Finally, there are no official estimates on the illicit tobacco in Germany and there is an overall lack of information. Besides the law enforcement agencies directly involved in the fight against the ITTP, there are a few studies on this topic in Germany.

Given the lack of information, this report relies on unofficial sources, grey literature, interviews with experts, law enforcement authorities reports and press releases. Notably, this report analyses Customs press releases since they are the most specific publicly available source on illicit tobacco. Nevertheless, the contribution of the other German law enforcement authorities is relevant and further studies may assess in a greater detail their action against the ITTP.

Unofficial sources and Customs press releases show a major prevalence of contraband cigarettes. Also illicit whites account for a large proportion of the trade. Generally, Eastern Germany reports a higher incidence of non-domestic tobacco products.

Tobacco is a dual market consisting of a legal and an illegal part (Figure 2). The two sides of the market are connected with each other: actions affecting one side of the market influence the other side as well.

Figure 2. The dual tobacco market



The ITTP comprises different activities and products:

**Smuggling (or contraband):** the unlawful movement or transportation of tobacco products (genuine or counterfeit) from one tax jurisdiction to another without the payment of applicable taxes or in breach of laws prohibiting their import or export (Joossens and Raw 2008).

**Counterfeiting:** the illegal manufacturing of a product bearing or imitating a trademark without the owner's consent. Illegally manufactured products can be sold in the source country or smuggled into another country (Joossens and Raw 2008).

**Bootlegging:** the legal purchase of tobacco products in a low-tax country and the illegal resale of these products in a high-tax country. Bootlegging concerns individuals or small groups who smuggle smaller quantities of cigarettes, taking advantage of tax differentials, with the aim of making extra income (Hornsby and Hobbs 2007).

**Unbranded tobacco:** manufactured, semi-manufactured and even loose leaves of tobacco (also known as "chop-chop" (Geis 2005)), illegally sold by weight (e.g. in large plastic bags, also known as "baggies"), with no labelling or health warnings and consumed in roll-your-own cigarettes or in empty cigarette tubes (Walsh, Paul, and Stojanovski 2006).

**Cheap Whites or Illicit Whites:** cigarettes produced legally in one country, but normally intended for smuggling into countries where there is no prior legal market for them. Taxes in production countries are normally paid, while they are avoided/evaded in destination countries (Allen 2011).

**Illegal manufacturing:** cigarettes manufactured for consumption, which are not declared to the tax authorities. These cigarettes are sold without tax and may be manufactured in approved factories or illegal covert operations (Joossens et al. 2010).

Studies on the ITTP in Germany are limited in number. Moreover, there are no official data on prevalence, demand for, and consumption of illicit products. This entails that the actual dynamics of the illicit market and its structure have to date been largely under-researched. The main sources used by this study are Customs press releases, Federal police reports and data on illicit tobacco products seizures, KMPG and Euromonitor International data, empty pack surveys commissioned by the tobacco industry, interviews with experts, and media news. All non-official sources are treated with caution in order to minimise the impact of their possible bias.

## WHAT CAN BE FOUND IN THIS REPORT?

This report is organised into three chapters.

Chapter 1 is composed of five subsections analysing the **five drivers of the ITTP:**

- 1) society and economy
- 2) legal market
- 3) regulation
- 4) crime environment
- 5) enforcement

The drivers are important areas whose structures may influence the ITTP positively or negatively. Transcrime selected the drivers based on a review of the literature on the ITTP and discussions with stakeholders and experts. Each subsection provides information on the key aspects of each driver.

**To enable comparison with other country profiles, each driver has four key indicators.** The data for the drivers' indicators come from different sources to ensure the comparability among different countries to the latest available years (e.g. World Bank, WHO, UN). When possible, the report provides the most up-to-date data from national sources. For four indicators, Transcrime has elaborated composite indicators (see Regulation and Enforcement, p.31 and p.45). Composite indicators assess the presence of specific policy measures in the country and range from 0 (no measure is present) to 5 (all measures are present). A higher value on the composite indicators does not always imply a better situation. Their purpose is rather to assess the intensity of policy measures in a specific field. The information used for the assessment is drawn from the literature, official sources (reports, websites, legislation) and experts.

Chapter 2 analyses the illicit trade in Germany, dividing it into its **four components of the ITTP**:

- 1) the demand
- 2) the supply
- 3) the products
- 4) the *modus operandi* and geographical distribution.

Chapter 3 combines the results of the two previous chapters to identify the **four key factors of the ITTP** and show how the various elements of the drivers influence the illicit trade.





## SOCIETY & ECONOMY

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**G**ermany is a federal republic and one of the biggest world economies. Although public debt rose as a consequence of the 2009 recession, unemployment fell and GDP growth rebounded in 2010. Households did not cut their expenditure on non-durable goods, including tobacco. However, regional differences among Eastern and Western Länder are still marked. Low-income and low-social groups have higher smoking prevalence rates.

## Adult Population

Population aged 15+  
Source: The World Bank



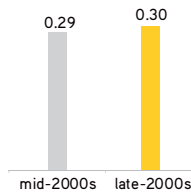
**86.6%**

4 out of 193 countries  
(2011)



## Income Inequality

GINI coefficient after taxes  
Source: OECD



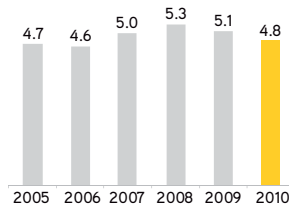
**0.30**

20 out of 34 countries  
(late 2000s)



## Education System

Education expenditure  
as % of GDP  
Source: The World Bank



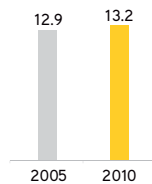
**4.8%**

21 out of 157 countries  
(2010)



## Migration

International migrant stock  
as % of population  
Source: The World Bank



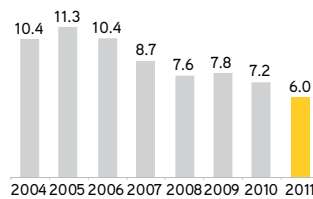
**13.2%**

53 out of 213 countries  
(2010)



## Unemployment

Total unemployment  
rate (% of labour force)  
Source: OECD



**6.0%**

25 out of 34 countries  
(2011)



Last national available data (2012): **5.5%** (Destatis 2013)



- Germany is one of the biggest world economies and has one of the highest Human Development Indexes.**

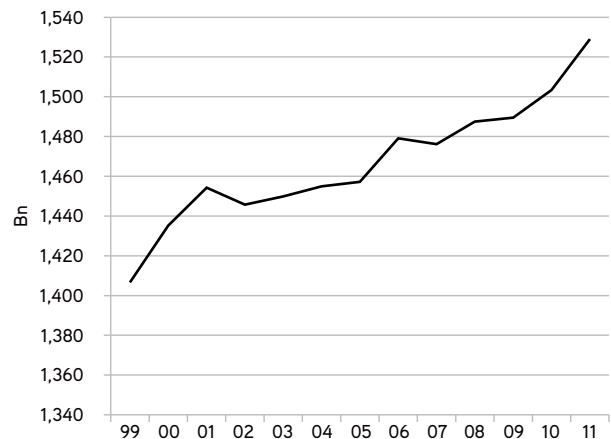
  - Germany has 82,726,000 inhabitants and one of the largest adult populations in the world. The country ranks 4th out of 193 countries for the proportion of the population aged over 15 (World Bank 2012).
  - Germany is a UN, EU, G8 and NATO member, and it is the fourth world economy after USA, China and Japan (World Bank 2012). The standards of living are high, and Germany has a prominent role in the European Union and in the global arena.
  - In Germany, the average person earns US\$27,692 per year, while the OECD average is US\$22,387 per year (OECD 2012d).
  - According to the Human Development Report (UNDP 2011), Germany has the 9th highest Human Development Index (HDI) with a score of 0.905.
  - Germany ranks 124th out of 136 countries in income inequality (CIA 2012a). Moreover, it ranks 20th out of 34 OECD countries for the GINI index after taxes (OECD 2012a).
  - The top 20% of the population earns more than four times as much as the bottom 20% (OECD 2012e).
- Germany has been less affected by the global financial crisis than other European countries.**

  - In the last decade, GDP growth was slightly negative in 2003 (-0.4%) and heavily negative in 2009 (-5.1%). In the other years, the German economy grew well above EU average. Pre-crisis real GDP levels were again reached in the second quarter of 2011 (OECD 2012c).
  - Unemployment is low and decreasing. Indeed, total unemployment as percentage of labour force was 6.0% in 2011 (down from 10.4% in 2004) and the country ranked 25th out of 34 (World Bank 2012). In 2012 unemployment was 5.5% (Destatis–Statistisches Bundesamt 2013).

- Germany is one of only three OECD countries, together with Israel and Poland, to have recorded a reduction in unemployment rates during the 2007–2009 economic crisis. Indeed, unemployment fell by nearly 1% (OECD 2011a).
- The German economy has been more resilient to the global financial crisis than other developed economies. In fact, the UK, the USA and Germany are the only OECD economies where wealth has recovered its 2007 level in constant exchange rate terms (Shorrocks, Davies, and Lluberias 2011).
- The public debt has increased by almost 20% of GDP since 2007, reaching 83% of GDP in 2010 (OECD 2012c).
- Household expenditure has increased in the past decade in Germany (Figure 3).**

Figure 3. Household final consumption expenditure, PPP (constant 2005 International \$)

Source: Transcrime elaboration on World Bank data



- Housing, energy, and maintenance of the dwelling historically constitute the highest spending category of German households. In 2010 housing costs represented 34.1% of private consumption expenditure. Food, beverages and tobacco represented 14.1% of expenditure in 2010, the same share as transport-related costs (Destatis–Statistisches Bundesamt 2010).
- After the French, the Germans are the top shopper in the OECD in terms of time. The French spend 32 minutes per day shopping, while Germans spend 31 minutes (OECD 2011a).

Table 1. Household expenditure on tobacco

Source: Transcrime elaboration on Destatis-Statistisches Bundesamt data

Average household expenditure on tobacco per month	€	%
1998	14	5.5
2003	18	6.5
2008	18	6.2

- Average monthly household expenditure increased in both absolute and percentage terms from 1998 to 2003; it was nearly constant from 2003 to 2008 (Table 1).
- Low-income is correlated with higher tobacco consumption in Germany. Indeed, in low-income households (i.e. with a monthly income of up to €1,300), the share of smokers is 33%; in medium-income households (monthly income from €2,600 to €4,500) it is 24%, and 19% in households with an income of over €4,500 (Laue 2010).

•• **High levels of social security characterise the German welfare state.**

- More than half of public expenditure is devoted to social security, which is financed by generous social security contributions that in 2009 represented a proportion of 39% of total tax revenues in 2009 (OECD 2012c).

•• **Social security accounts for more than half of public expenditure (Figure 4).**

•• **Public spending on education in Germany is medium-high, but low in comparison with similar countries.**

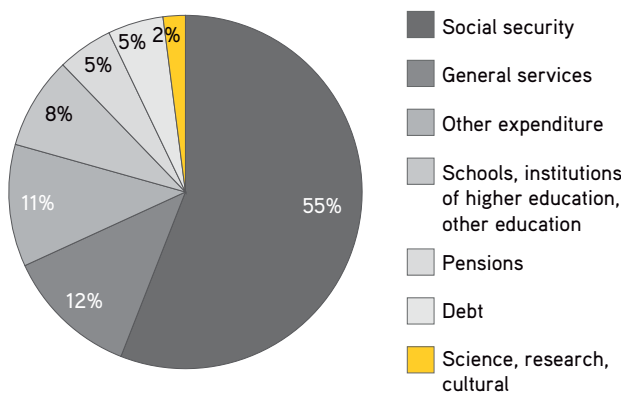
- Education expenditure over GDP was 4.8% in 2010. Germany ranked 21st out of 157 countries (World Bank 2012). Considering only OECD countries, Germany spent only 4.8% of GDP on education in 2008, significantly below the OECD average of 5.9%. As a result, Germany ranked 30th among 36 countries (OECD 2011b).

- Nevertheless, the average student in Germany scored 510 for reading literacy, mathematics and sciences, higher than the OECD average of 497 in 2009 (OECD 2012e). However, the average difference in results, between the top 20% and bottom 20%, is 125 points, which is much higher than the OECD average of 99 points and one of the largest gaps among the OECD countries (OECD 2012e).

20

Figure 4. 2010 public expenditure by functional areas

Source: Transcrime elaboration on 2013 Destatis-Statistisches Bundesamt data



•• **Public spending on health in Germany is relatively high.**

- Health spending accounted for 11.6% of GDP in 2010, higher than the OECD average of 9.5%. Germany ranked 9th among OECD countries in health spending per capita, with US\$4,338 per person in 2010 (adjusted for purchasing power parity, OECD average was US\$3,268 per capita) (OECD 2012b).

- On average, life expectancy at birth reached 80.19 years in 2012. Women live almost five years longer than men (82.58 years in 2012). The country ranks 28th out of 220 countries (CIA 2012b).

- **Germany is a multicultural society.**

- Migration stock as percentage of the total population was 13.2% in 2010 (in 2005 it was 12.9%). The country ranked 53rd out of 213 countries (World Bank 2012).
- The most important immigration countries are Poland, Turkey, Russia, Romania, Serbia, Montenegro and Italy. Emigration occurs towards Poland, Turkey, Italy, Serbia and Montenegro, Romania and Greece (Destatis–Statistisches Bundesamt 2006).
- Families with migrant backgrounds are common in Germany. In 2010, 2.3 mn families with at least one parent with foreign roots and with children under 18 years old were resident in Germany. They represented 29% of the 8.1 mn families with minor children. This share has increased by 2% since 2005 (Galster and Haustein 2012).
- Nearly a fifth of families with minor children and a migrant background are of Turkish origin. Families who came to Germany from the former Soviet Union, among them mainly ethnic German repatriates, rank second with 16%, followed by families with roots in former Yugoslavia (9%). Southern European countries, where guest workers were recruited in the past (Portugal, Spain, Italy and Greece) account for 8% of migrant families (Galster and Haustein 2012).

- **Germany has marked regional inequalities.**

- The poverty risk differs between the East and the West of Germany. In 2007, whilst in the new *Länder* (i.e. former East Germany, including Berlin) 19.5% of the population was at risk of poverty, the rate was markedly lower in West Germany (excluding Berlin) with 12.9%. Notably, in the Eastern Land of Mecklenburg–Vorpommern, 24.3% of the population was at risk of poverty, whilst in the Southern Land of Baden–Württemberg the percentage was only 10.0% (Mertel 2009).<sup>1</sup>

- A regional comparison showed that people living in cities and in the new *Länder* depended more heavily on minimum social security benefits in 2006. With the highest receipt rate of 20.1%, every fifth Berlin inhabitant received benefits to secure basic livelihood. Baden–Württemberg and Bavaria reported the lowest rates, respectively 5.7% and 5.3% of the population (Haustein 2008).

**In conclusion, Germany passed through the Global Financial Crisis rather undamaged in comparison with other European countries. Moreover, it has a strong welfare system. However, social differences persist between East and West Germany.**

1. According to the European Union, the at-risk-of-poverty rate is defined as the share of persons having to make do with less.





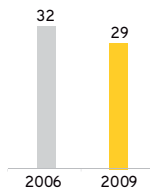
## LEGAL MARKET

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*The tobacco market is an important sector of the German economy. Germany is the first exporter of cigarettes in the world, and exports have grown over the past decade. The tobacco industry employed 10,057 people in 2011. However, national sales have fallen and consumers are shifting to cheaper products.*

## Smokers

Current smoking of any tobacco product (age-standardised rate)  
Source: WHO-Country reports



**29%**

36 out of 147 countries  
(2009)



Last national available data (2012): Smokers (18+) **23%** (Deutsche Krankenversicherung 2012)

## Affordability

% of annual per capita income needed to buy 100 packs of the cheapest cigarettes  
Source: Tobacco Atlas

**1.5%**

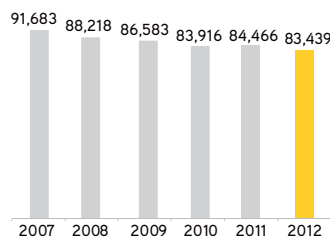
135 out of 168 countries  
(2010)



Last available data (2012): **1.2%** (Euromonitor International 2012, International Monetary Fund 2012)

## Market Size

Cigarette retail volume (mn sticks)  
Source: Euromonitor International



**83,439**

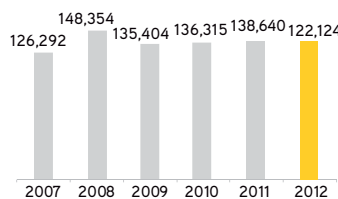
12 out of 209 countries  
(2012)



24

## Balance of Trade

Cigarette exports-imports (mn sticks)  
Source: Euromonitor International



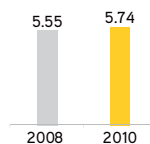
**122,124**

1 out of 72 countries  
(2012)



## Price

Price of a pack of the most sold brand (Int.\$, PPP)  
Source: WHO



**Int.\$, PPP 5.74**

21 out of 166 countries  
(2010)



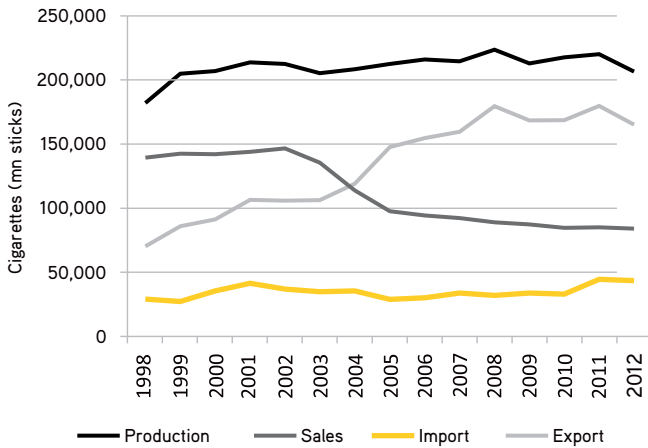
Last available data (2012): **Int.\$, PPP 6.32** (Euromonitor International 2012, International Monetary Fund 2012)

## TOBACCO MARKET

- **Germany is the first world exporter of cigarettes. Indeed, the production of cigarettes has slightly increased in the past decade, even if national sales have fallen (Figure 5).**

Figure 5. National production, sales, imports and exports of cigarettes

Source: Transcrime elaboration on Euromonitor International data



- Germany was the first cigarette exporting country in 2010, when 181.11 bn cigarettes were exported (165 according to Euromonitor) (Eriksen, Mackay, and Ross 2012).
- British American Tobacco (BAT) has two production sites in Germany, in Bayreuth and Bremen. The former factory is the second largest BAT production site in the world. Also Philip Morris has two production sites in Germany, one in Berlin and one in Dresden. The company's second largest production unit in Europe is located in Berlin. It employs around 1,400 people and had a production volume of 63 bn cigarettes in 2009 (Euromonitor International 2012).
- Exports of cigarettes have increased in the past decade. Germany exported more than 80% of national production in 2012 (Figure 5). Furthermore, the country has the biggest balance of trade (exports minus imports in volume). With a positive value of 138,640 mn sticks it ranked 1st out of 72 countries in 2012 (Euromonitor International 2013).
- **The value of the tobacco market in Germany.**
  - In 2012 the sales of tobacco products reached a value of €24.6 bn. In volume, the German market size was 83,439 mn sticks in the same year. The German market is one of the largest in the world (12th out of 209 countries) (Euromonitor International 2013).
  - The German tobacco industry employed 10,057 people in 2011 (Deutscher Zigarettenverband 2012a).
  - Germany is also a minor producer of tobacco. Indeed, the country held nearly 0.2% of the global plantations of tobacco in 2008. Two southern states (Rhineland–Palatinate and Baden–Württemberg) account for about three–quarters of the land under tobacco cultivation (Geist et al. 2009).
- **The German subsidiaries of the four multinationals, Philip Morris, Reemtsma (Imperial Tobacco), British American Tobacco, and Japan Tobacco International dominated the cigarette market.**
  - Philip Morris is the market leader with a 37.5% volume share in 2012. Marlboro is the leading brand of cigarettes, even if its share declined from 2008 to 2012 owing to the price–sensitivity of consumers. In 2012, Marlboro's market share was 21.7% (Euromonitor International 2013).
  - Reemtsma (Imperial Tobacco), with a market share of nearly 25.8%, saw a slight erosion of its volume share from 2010 to 2011, after that its strong volume share increased in 2010 when it took over the distribution of the Gauloises and Gitanes brands. From 2011 to 2012, it kept constant. John Player Special is the second most popular cigarette brand after Marlboro, with a share of 9.8%. It increased its volume share between 2006 (4.4%) and 2012 (9.8%) (Euromonitor International 2013).
  - British American Tobacco, with a market share of 18.3%, was the third company in 2012. The company's key brands, Pall Mall and Lucky Strike, are seen as value–for–money brands and were among the leading cigarette brands in 2012 (Euromonitor International 2013).

- Japan Tobacco International (JTI) has only a minimal presence in Germany (4.8%). JTI's key brands in the German market are Camel and Winston (Euromonitor International 2013).
- Pöschl Tabak is an independent German tobacco manufacturer which is the major seller of snuff tobacco. It has a market share of 95% in Germany and around 50% worldwide (Euromonitor International 2012; Pöschl Tabak 2012).

•• **Mainstream sales channels are dominant in Germany.**

- Food retailers dominate the distribution of cigarettes in Germany, with a volume share of 38% in 2011 (PMG 2012). As for cigars, specialist tobacconists prevail because of the expert advice that they offer as part of their service (Euromonitor International 2012).
- Vending machines have a sizeable volume share in cigarettes (11% in 2011 (PMG 2012)). However, the importance of this channel has diminished. The tobacco legislation of 2007 required ID checks to buy cigarettes. This has negatively affected the market share of vending machines. Furthermore, vending machines in streets, which were once common sight in Germany, have largely disappeared due to legislation to protect children from smoking. In 2011, restaurants, pubs, clubs, and food outlets were the main sites of vending machines (Euromonitor International 2012).
- The Internet is not a significant distribution channel in Germany. Nevertheless, some German companies offer cigarettes through their online shops (Euromonitor International 2012).

**TOBACCO CONSUMPTION**

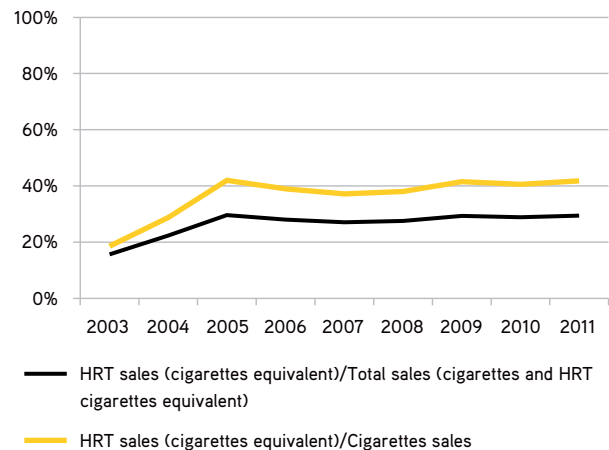
•• **Tobacco sales are declining in Germany.**

- The age-standardised smoking rate was 29% in 2009. Germany ranked 36th out of 147 countries (WHO 2011a).
- Eurostat's tobacco survey of 2012 registered a smoking prevalence of 26% for Germany (EU average of 28%). The country ranked 19th out of 27 Members (European Commission 2012).

- According to the 2009 German Microcensus, smoking prevalence was 25.7%. Around 85% of consumers are regular smokers; 15% are occasional smokers (Destatis–Statistisches Bundesamt 2012a).
- Cigarettes are widespread in Germany. Indeed, 96% of smokers consume cigarettes (or hand rolling tobacco, hereinafter HRT), 3% cigars and cigarillos, and just 1% pipes. Shishas (water pipes) are smoked by 2% of young men aged 15 to 20, and by 1% of the women in that age group (Laue 2010).
- HRT sales in cigarettes equivalent over total sales (cigarettes and HRT cigarettes equivalent) after an increase from 2003 to 2005 was nearly constant at 30% (Figure 6).

Figure 6. Share of HRT sales (2003–2011)

Source: Transcrime elaboration on KPMG 2012 data



**Note:** HRT volumes have been calculated at one stick per 0.75 grams.

- In 2009, 80% of regular cigarette smokers consumed an average of 5 to 20 cigarettes per day, while heavy smokers (i.e. people smoking more than 20 cigarettes per day) represented 14% of regular cigarette smokers (Laue 2010).
- The share of heavy smokers decreased from 18% in 1999 to 14% in 2010. However, the share of those smoking 5 to 20 cigarettes a day slightly increased (from 74% to 80% in the same period) (Laue 2010).
- **The price of cigarettes in Germany is medium-high, while the RIP (Relative Income Price) is low.**



Table 2. Sales of tobacco by category and volume (2001–2012)

Source: Transcrime elaboration on Euromonitor International 2012 data

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Cigarettes (mn sticks)</b>	143,578	146,163	134,968	113,414	96,970	93,673	91,683	88,218	86,583	83,916	84,466	83,439
<b>Cigars (mn units)</b>	1,778	2,571	2,509	3,132	3,651	5,488	6,411	4,974	3,812	3,967	4,118	4,044
<b>HRT (Tonnes)</b>	14,727	16,321	19,473	25,149	34,036	23,641	23,998	23,733	25,212	26,242	27,363	27,658

- The German price of a pack of the most sold brand of cigarettes is among the highest worldwide. Indeed, in 2010 a pack cost International\$ 5.74, and the country ranked 21st out of 166 (WHO 2012a).
- In 2011, cigarette prices increased by an average of 4% due to tax rises introduced in May 2011. Taxes were also raised for HRT (Euromonitor International 2012). In 2013, the price of the pack of the most sold brand went up to International\$ 6.32.<sup>2</sup>
- In May 2012, the price of a 20–size pack of Marlboro was €5.26, a price which ranks Germany 11th out of 35 European countries, including Turkey (Deutscher Zigarettenverband 2012b). Furthermore, according to the ratio of the Marlboro price to GDP per capita, Germany ranks 22nd out of 28 European countries, with a score amounting to 68% of the European average (PMI Field Force and Global Insight 2013).
- In 2010, the relative income price (RIP), i.e. the percentage of per capita GDP needed to purchase 100 packs of the cheapest cigarettes, was 1.5 %. Germany ranked 135th out of 168 (Eriksen, Mackay, and Ross 2012).
- The percentage of per capita GDP needed to purchase 100 20–cigarettes packs of the cheapest brand was 1.5% in 2010 (135th out of 168 countries). In 2013, it went down to 1.2%.<sup>3</sup>
- According to the ‘Big Mac Index of Cigarette Affordability’ – which calculates the number of cigarettes that can be bought for the price of a Big Mac hamburger within the country – in 2006, Germany ranked 27th out of 34 with 18 cigarettes for one Big Mac based on the most popular price category (Scollo 2008).<sup>4</sup>
- The German market is experiencing both a downtrading and a switching–to–cigars trend. Indeed, the consumption of cigarettes has declined, while cigars and HRT sales have shown high growth rates (Table 2).
- Between 2001 and 2011, cigarettes sales declined by 41.2% while cigars recorded high growth, more than doubling their sales. Also HRT sales greatly increased; indeed, they nearly doubled in the last decade (Table 2).
- German consumers did not exhibit a shift to low and ultra–low tar cigarettes. The share in volume sales of these two categories was around 18% of total sales from 2003 to 2011 (Euromonitor International 2012).

## GERMANY EXHIBITS A GREAT VARIETY OF PACK SIZES

German cigarettes packs come in many varieties. The industry calls packs containing 19 sticks Normal, those with 22 to 24 sticks Big, and those with more than 26 sticks per pack Maxi. In 2011, 19–stick packs had the largest share of all cigarette pack sizes, although their volume share declined significantly in the review period. Big packs were the second most popular pack size in 2011.

Pack size is used for several purposes. The main is to create product differentiation at points–of–sale. Moreover, pack size is useful to react to tax increases without changing retail prices. Indeed, after the first tax rises in May 2011, companies raised the prices of their products by a certain amount, while large pack sizes and vending packs were reduced by one cigarette (Euromonitor International 2012).

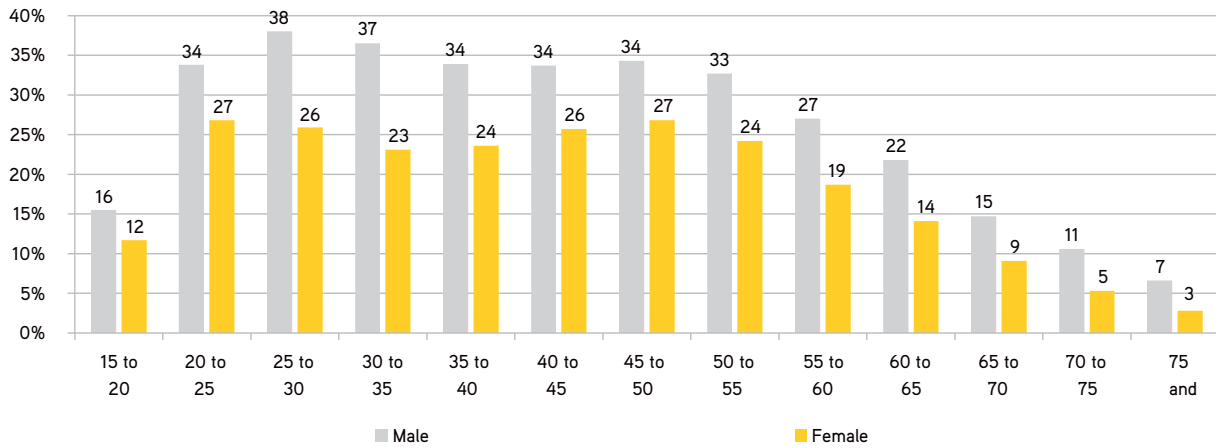
2. Transcrime calculations on Euromonitor International, International Monetary Fund and Industry data.

3. See note 2.

4. The first country in this ranking is the one where fewer cigarettes are needed in order to buy a Big Mac. It is therefore the country where cigarettes are least expensive.

Figure 7. Smoking prevalence per gender and age group (2009)

Source: Transcrime elaboration on Destatis-Statistisches Bundesamt data



28

- Pack size is a strategy used by multinationals to avoid industry restrictions (see Box *Germany exhibits a great variety of pack sizes*, p.27).
- **Socio-demographic and economic variables play a significant role in tobacco consumption.**
- **Gender.** In general, men (30.5%) smoke more than women (21.2%). Furthermore, men smoke more for every age group considered according to the 2009 Microcensus (Figure 7) (Destatis-Statistisches Bundesamt 2012a).
- **Age.** Men in the 25–30 and 30–35 age groups record the highest share of occasional and regular smokers, 44.4% and 42.5% respectively. According to the 2009 Microcensus, 9% of people older than 65 were smokers (Figure 7) (Destatis-Statistisches Bundesamt 2012a).
- Several studies report that smoking is more common in socially disadvantaged groups than in socially privileged ones (Lampert 2010; Nocon, Keil, and Willich 2007; Pfeiffer-Gerschel, Hammes, and Rummel 2012). The risk of smoking is 2.3 times higher among women and 1.9 times higher among men with low levels of education compared with people from the high education group. The differences in education emerge even more clearly when the focus is on heavy smokers (Robert Koch Institut 2011).
- Low **social-status** groups are associated with higher smoking prevalence, except for people aged over 60 (Figure 8). Similarly, lower income level is associated with higher smoking prevalence for every age group, with the sole exception of people aged over 60 (Figure 9, p.29).

Figure 8. Smoking prevalence by social status (2003)

Source: Transcrime elaboration on Lampert 2010 data

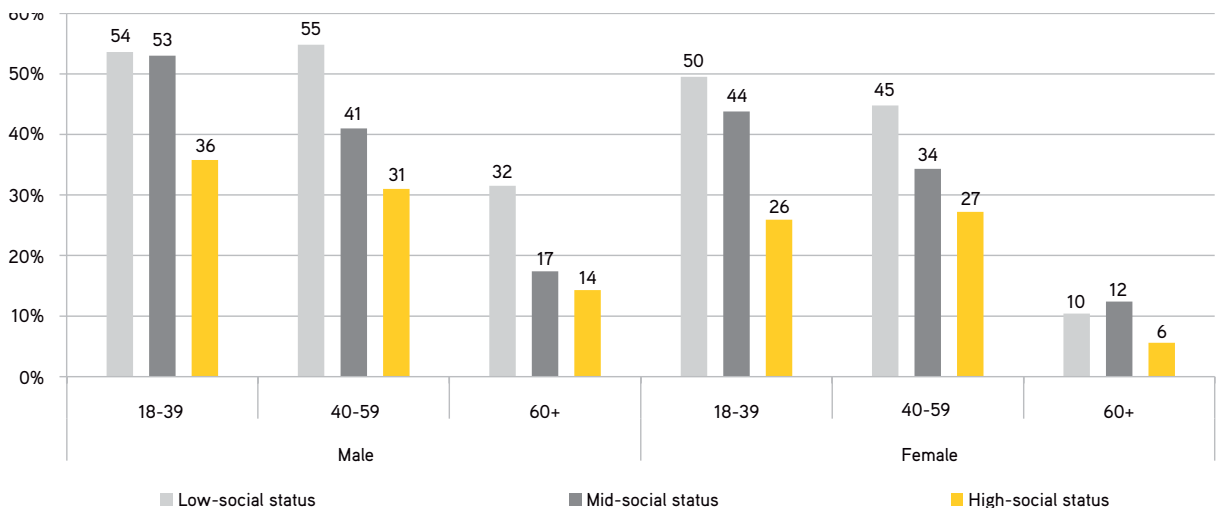
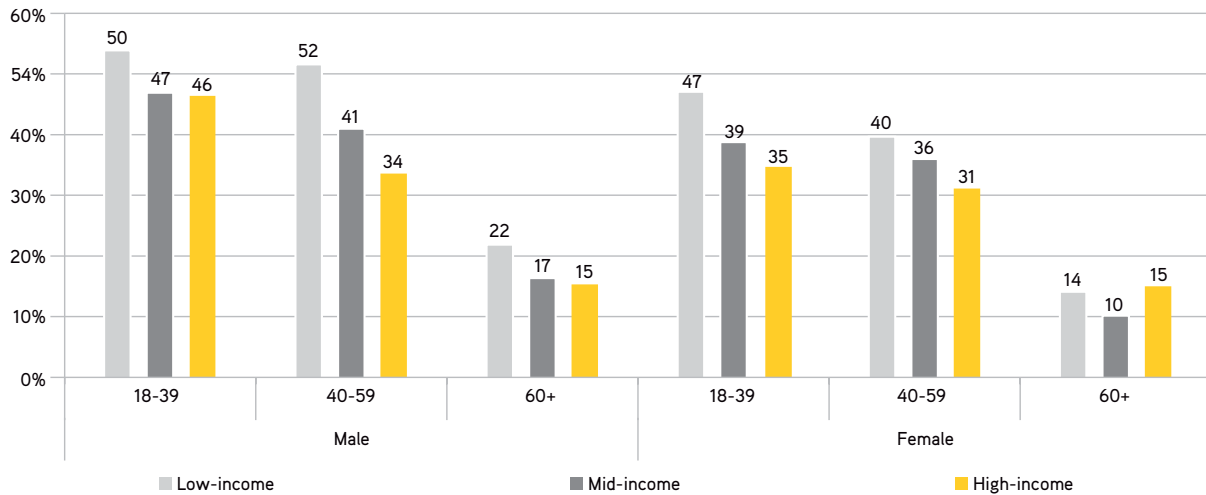


Figure 9. Smoking prevalence by income status (2003)

Source: Transcrime elaboration on Lampert 2010 data



- **Ethnic groups.** In general, ethnic minorities and migrants are more likely to smoke than Germans. Different propensities towards smoking reflect national tastes. Indeed, Greeks are twice more likely to smoke than Germans (Lampert 2010).
- **East–West Germany.** Mecklenburg-Vorpommern and Berlin have the highest smoking prevalences, 33.8% and 33.2% respectively, whilst Western *Länder* such as Bavaria and Baden-Württemberg rank at the bottom. The lowest smoking prevalence has been reported in Saxony, 24.6% (Lampert 2010).

**In conclusion, tobacco sales and consumption are declining in Germany. The tobacco market is experiencing a downtrading trend, i.e. smokers are switching to cheaper brands and different products (HRT and cigars). Males smoke more than females at every age group. Low socio-economic and low income status are correlated with higher smoking consumption. These correlations are generally more marked for heavy smokers.**

**Germany is also an important producer of cigarettes, with slightly increasing volumes in the last decade. The country is exporting a growing share of its production and this confirms the importance of the tobacco sector for the national economy.**





## REGULATION

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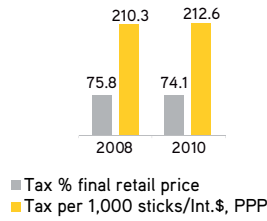
***R**egulation of the tobacco market is medium in Germany. Considering all world countries, tax incidence and tax level in monetary terms are high in Germany. Supply chain control, regulation on tobacco consumption and sales, and on marketing and promotion are medium. Furthermore, some EU regulations have been implemented mildly. The country has invested a low per capita amount of resources in tobacco control policies.*

## Taxation

Tax as % of the final retail price of the most sold brand

Tax per 1,000 sticks in Int.\$, PPP of the most sold brand

Source: WHO



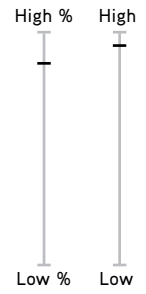
**74.1 %**

31 out of 181 countries

**Int.\$, PPP 212.6**

17 out of 164 countries

(2010)

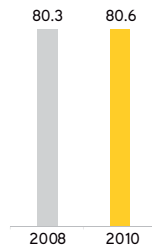


Last available data (2013): **73.6% – Int.\$, PPP 229.8** (European Commission 2013)

## Government Action

Government expenditure on tobacco control not including the control on the ITTP per 1,000 inhabitants (US\$)

Source: WHO–Global Tobacco Epidemic



**US\$ 80.6**

28 out of 106 countries

(last available year)



## Tobacco Supply Control\*

Composite indicator measuring the presence of specific policy measures in the country

Source: Transcrime elaboration



**2.5/5 points**

(2013)

32

## Tobacco Consumption and Sale Control\*

Composite indicator measuring the presence of specific policy measures in the country

Source: Transcrime elaboration



**2.5/5 points**

(2013)

## Tobacco Marketing and Promotion\*

Composite indicator measuring the presence of specific policy measures in the country

Source: Transcrime elaboration



**3/5 points**

(2013)

\* The indicator should not be interpreted as if a higher value is always better than a lower value. The objective is rather to synthetically assess the intensity of policy measures in a specific field.

- **Regulation of the tobacco market is medium. Germany has a less stringent regulation compared to other European countries.**

- In 2010, Germany ranked 26th among 31 European countries on the Tobacco Control Scale (TCS) (Joossens and Raw 2011).<sup>5</sup> Overall, tobacco control is less strict than in other European countries. However, some *Länder* (e.g. Bavaria) have recently adopted smoke-free legislations. Similarly, the World Health Organisation (WHO) report reviewing country policies on tobacco control highlights the lack of some control measures in Germany (WHO 2011b).

- **German regulation must comply with international requirements and standards.**

- In 2003, Germany signed the WHO Framework Convention on Tobacco Control, an international treaty establishing a number of obligations for participants (WHO 2003).<sup>6</sup>
- As a Member State of the European Union, Germany has to implement EU legislation. Since the EU's competence is more limited in the field of health, most EU provisions are focused on the tobacco market and the development of a common market among the 27 EU Member States (Transcrime 2011a). However, these measures inevitably affect also health issues and tobacco control in general.

- **Regulation and control policies are usually set up at *Länder* level within the federal framework.**

- In 2007, Germany introduced a smoking ban in public buildings and restaurants. However, regulation fell under the jurisdiction of each *Land*. Therefore, implementation varies from state to state: indeed, in Baden-Württemberg all food outlets are smoke-free but the owners have the option to provide separate smoking rooms. In Bremen, smoking is allowed in restaurants up to 75 square metres in size with only one room (Euromonitor International 2012).

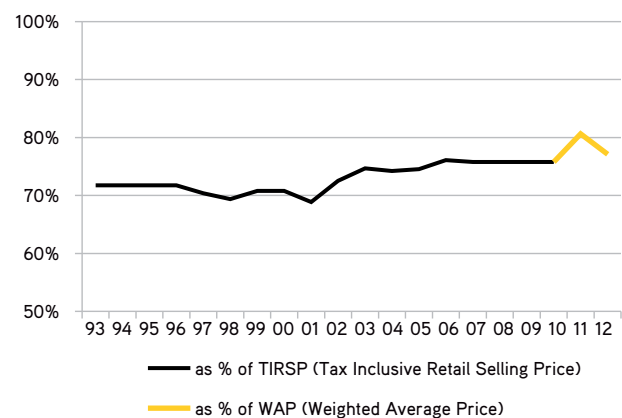
5. The TCS was developed to assess the level of national regulations in the six tobacco control policies identified by the World Bank, comprising higher taxation of tobacco products, bans in public and work places, bans on advertising and promotion, consumer awareness, warning labels, and quitting help (World Bank 2011).

- **Tax incidence in Germany is high compared to all world countries, but medium relatively to OECD members only.**

- According to the WHO, in 2010 tax incidence on the final retail price of the most popular brand accounted for approximately 74.1% of its final retail price. The country ranked 31st out of 191 countries (WHO 2011c). In 2013 tax incidence was 73.6% (European Commission 2013).
- However, Germany ranked 18th out of 31 high-income OECD members for tax incidence on tobacco products (WHO 2011b).
- Overall tax incidence slightly increased from 1993 to 2010, passing from 71% to 75% (Figure 10). In December 2010, the German Government approved a 5-year plan of tax increases. The first increase was on 1st May 2011 (Euromonitor International 2012).

Figure 10. Tax incidence as a share of the final retail price, most popular brand of cigarettes (1993–2012)

Source: Transcrime elaboration on the European Commission–Directorate General Taxation and Customs Union Tax policy data.



**Note:** 2011 and 2012 data do not refer to the final retail price of the most popular brand of cigarettes but to the weighted average price. They must therefore be treated with caution since they are not directly comparable.

6. The WHO report is based on the MPOWER package of measures developed by the WHO. MPOWER is an acronym of the six policy measures, which include: monitor tobacco use and prevention policies; protect people from tobacco smoke; offer help to quit tobacco use; warn about the dangers of tobacco; enforce bans on tobacco advertising, promotion and sponsorship, and; raise taxes on tobacco (WHO 2008).

Table 3. Germany's regulation on supply chain control

Source: Transcrime elaboration

Supply chain control indicator	Value
1) The retail of tobacco products is subject to licensing	0 points
2) The manufacture of tobacco products is subject to licensing	1 point
3) There is a mandatory system of customer identification and verification applied to the supply chain of tobacco products	0.5 points
4) There is a tracking and tracing system for tobacco products	0.5 points
5) Absence of free-trade zones for tobacco products	0.5 points

**Note:** the indicator should not be interpreted as if a higher value is always better than a lower value. Its purpose is rather to synthesise the intensity of policy measures in a specific field.

•• **Concerning tax level, expressed in monetary amount per 1,000 sticks, taxation is high.**

- In 2010 total taxes per 1000 cigarettes of the most sold brand accounted to International\$ 212.6; the country ranked 17th out of 164 (WHO 2011d). In 2013, they rose to International\$ 229.8 (European Commission 2013).

•• **German investments in tobacco control policies are low compared to the population.**

- In 2010, the German Government spent US\$6,591,716 on tobacco control, equal to an expenditure of nearly US\$80.6 per 1,000 inhabitants. Germany ranked 28th out of 106 countries. In Australia expenditure was US\$1,779, more than 20 times the German amount, and in France it was US\$675, more than eight times the German amount (WHO 2011a).

•• **Germany has a medium level of supply chain control (2.5 points out of 5, Table 3).**

- **The retail of tobacco products is not subject to licensing** (Point 1 of Table 3).
- **The manufacture of tobacco products, as well as their export or import, is subject to licensing** in Germany according to paragraph 5 and 6 of the *Tabaksteuergesetz* (Tobacco Tax Act) and paragraph 4 and 5 of the *Verordnung zur Durchführung des Tabaksteuergesetzes* (Regulation on the implementation of the Tobacco Tax Act) (Point 2 of Table 3).

• **There is a mandatory system of customer identification and verification** applied to the supply chain of tobacco products (Point 3 of Table 3). This system has been agreed within the OLAF (European Anti-Fraud Office) agreements. Specifically, tobacco manufacturers must prevent criminals from obtaining their products. In order to do so, they must ensure to sell their products to legitimate clients only (European Commission 2004; European Commission 2007; European Commission 2010a; European Commission 2010b).

- **The largest tobacco manufacturers have agreements with the EU Commission requiring tracking and tracing systems** (Point 4 of Table 3). Indeed, to address the problem of contraband and counterfeit cigarettes, the European Commission has signed legally binding and enforceable agreements with the world's four largest tobacco manufacturers. One of the main obligations is the implementation of a tracking system to help law enforcement authorities (European Commission 2004; European Commission 2007; European Commission 2010a; European Commission 2010b). Furthermore, in the German market, PMI applies the Codentify technology (CVS). It consists of an encrypted, serialised 12-character number used to identify and authenticate each pack of cigarettes (Joossens 2011).



Table 4. Germany's regulation on tobacco consumption and sales

Source: Transcrime elaboration

Tobacco consumption and sales indicator	Value
1) Ban on smoking in public places	1 point
2) Ban on smoking in workplaces	0 points
3) Ban on the sale of tobacco products from vending machines	0 points
4) Prohibition of tobacco sales to minors	1 point
5) Ban on smoking in bars, cafés and restaurants	0.5 points

**Note:** the indicator should not be interpreted as if a higher value is always better than a lower value. Its purpose is rather to synthesise the intensity of policy measures in a specific field.

- **There are no Free Trade Zones** where tobacco products can be handled, stored or manufactured. **Nevertheless, BASCAP** (Business Action to Stop Counterfeiting And Piracy) **identifies the Port of Hamburg as a problematic free trade zone** (Point 5 of Table 3, p.34). Indeed, this port has been identified as receiving Chinese counterfeit products destined for Western and Eastern Europe (BASCAP 2012). Most of the tobacco products (counterfeit or smuggled) seized in Hamburg are bound for other European markets (Zollfahndungsamt Hamburg 2012b; Zollfahndungsamt Hamburg 2010; Hauptzollamt Hamburg-Hafen 2011b).
- **Tobacco regulation on consumption and sales is medium (2.5 points out of 5, Table 4).**
- The Federal Government has jurisdiction over all federal matters (Point 1 of Table 4). According to the Law on protection from passive smoking (*Gesetz zum Schutz vor den Gefahren des Passivrauchens*) enacted in July 2007, smoking is prohibited in government buildings, public transport vehicles, and public railways with the exemption of properly marked places. In March 2007 Germany's 16 *Länder* concluded a framework agreement with the Federal Government on introducing a smoking ban in the areas where the states have responsibility (*Land*, local institutions, educational facilities, health care facilities, cultural institutions, sport facilities, hospitality venues, and other public places). Each *Land* had to enact the law through its own legislature. As a result, **smoking is now banned in indoor workplaces, public transport, indoor public places and, as appropriate, other public places** (WHO 2012b).
- According to federal regulations, **employers must take measures to protect non-smoking employees from tobacco-related health risks**. If necessary, employers must issue a general smoking ban (or restricted to the workplace area) (Point 2 of Table 4). At *Länder* level, employers must adopt all necessary measures to protect non-smoking employees effectively. The amendment in 2008 specified that a ban on smoking in the workplace is one of the ways to provide protection. In workplaces open to the public (i.e. primarily the hospitality sector, but also other areas where smoking by customers and visitors is allowed) the employers' obligations are more limited. The Federal Government has prohibited smoking in government buildings, on public transport (including taxis), and at public transport stations (WHO 2012b).
- **Vending machines** have a sizeable volume share of cigarettes sales, although the channel has gradually lost the important position that it occupied prior to the tobacco legislation introduced in 2007, which obliges consumers to swipe their ID or bank cards in order to buy cigarettes (Point 3 of Table 4). Vending machines in streets, which used to be common in Germany, have largely disappeared because of legislation to protect children from smoking. Since 2011, vending machines are present mostly in restaurants, pubs, clubs and food outlets (Euromonitor International 2012).

Table 5. Germany's regulation on tobacco marketing and promotion

Source: Transcrime elaboration

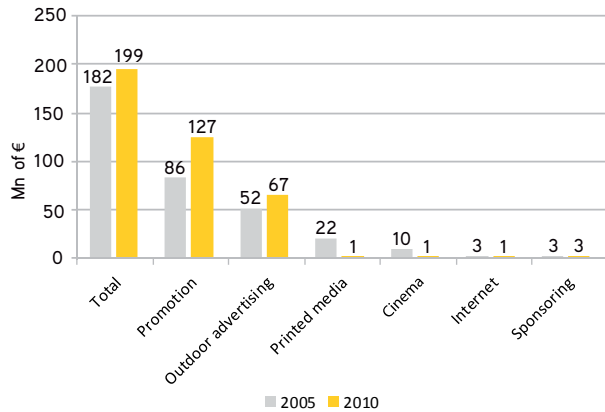
Tobacco marketing and promotion indicator	Value
1) Ban on tobacco sponsorship and advertising on radio, TV, broadcasted programmes and in print media	1 point
2) Ban on billboards and outdoor advertising	1 point
3) Ban on the display of tobacco products at points of sale	0 points
4) Ban on free distribution of tobacco samples	1 point
5) Mandatory pictorial health warnings	0 points

**Note:** the indicator should not necessarily be interpreted as if a higher value is always better than a lower value. Its purpose is rather to synthesise the intensity of policy measures in a specific field.

- **The legal age for the purchase of tobacco products has increased from 16 to 18** since September 2007 (Point 4 of Table 4, p.35). There is no minimum age for the consumption of tobacco, but minors aged below 16 may not consume it in public. There are fines of up to €50,000 for selling tobacco products to minors in Germany (Euromonitor International 2012).
- **Complete free smoke legislation** is in place only in Saarland and Bavaria (Point 5 of Table 4, p.35). The *Länder* have jurisdiction over smoking bans in bars and restaurants. Almost all German states allow exceptions to their smoking bans in bars and restaurants. For example, North Rhine–Westfalen allows bars to have separate smoking rooms. Since March 2009, bars with a size of 75 square metres or less are exempt from the smoking ban as long as no one under the age of 18 is allowed entry and the bar does not serve hot meals. Furthermore, Der Spiegel reported that bans on smoking in bars were being very weakly controlled by the authorities, and that in some places the ban was not observed at all (Wiesel 2009). Indeed, Germany has a low score for smoke-free legislation compliance because only half of the respondents in a recent survey had not seen a person smoking in a bar 6 months before the interview. Germany ranked 18th out of 28 European countries (Joossens and Raw 2011; Euromonitor International 2012).
- **Tobacco marketing and promotion regulation is medium (3 points out of 5, Table 5).**
  - Since 2006, the **sponsorship** of public events, which have a cross-border effect, **has been banned** as part of an EU directive (Point 1 of Table 5). Sponsorship of music events, as well as events attended by young people, is strictly forbidden. Tobacco companies cannot contribute financially to programmes with the aim of promoting their brand or name. This also includes sponsorship of radio, television, internet or any other media. Sponsorship of sports events or any advertising or marketing related to sports is generally illegal. It is not permitted to use well-known figures, such as athletes and celebrities, in tobacco advertising and promotions. Furthermore, all forms of advertising that present smoking as harmless or healthy, or in relation to physical performance are forbidden (Euromonitor International 2012). Nevertheless, it is allowed to advertise tobacco products in cinemas after 6 p.m (DKFZ 2012), although this possibility is little exploited by the tobacco industry.
  - **Nearly all forms of tobacco advertising and sponsorship are prohibited in Germany** (Point 2 of Table 5). The advertising ban became effective in December 2006. Prior to that date there were threats of legal action by both the EU and Germany. Germany revised its position after a recommendation at the European Court of Justice (ECJ) to dismiss a German challenge to the European Union directive banning tobacco advertising in print, on radio and the internet (Euromonitor International 2012).

Figure 11. Marketing and promotion expenditure by main categories (2005 and 2010)

Source: Transcrime elaboration on DKFZ 2012 based on industry self-reports



**In conclusion, regulation of the tobacco market is medium in Germany. Supply chain control, regulation on consumption and sales, and on marketing and promotion are of medium level. Several European requirements, such as textual health warnings, have been set at the minimum level. Each *Land* has competence on smoke-free legislation, making a uniform control policy difficult.**

- In Germany, **the display of tobacco products at points of sale is not banned** (WHO 2012b) (Point 3 of Table 5, p.36). Moreover, the promotion of tobacco products on posters at points of sale is allowed (DKFZ 2012).
- **The free distribution of tobacco samples is banned in Germany** (WHO 2010) (Point 4 of Table 5, p.36).
- **German law does not require pictorial health warnings on tobacco packages** (WHO 2012b) (Point 5 of Table 5, p.36). However, to be in compliance with EU Tobacco Products Directive 2001/37/EC (TPD), Germany has had to implement several general specifications and marketing/sales restrictions on tobacco products. In fact, textual health warnings are mandatory and have to be printed on 30% of the front, 40% of the back, and 10% of one side of the pack. Adjectives like “Light” or “Mild” are not permitted. Claims that tobacco production is ecologically sustainable are prohibited. Finally, Germany opted for the lowest possible degree of regulation when it implemented the EU Directive 2001/37/EC. For instance, Germany set the minimum size for textual (not graphical) health warnings.
- **Tobacco marketing and promotion of tobacco industry changed their structure after regulatory changes.**
- Printed media practically disappeared from 2005 to 2010, while promotion and outdoor advertising increased in absolute values (Figure 11).





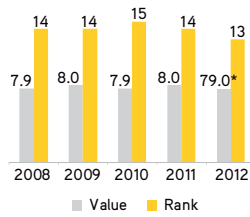
## CRIME ENVIRONMENT

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**C** *Crime rates have slightly increased after years of decreasing pattern, while fear of crime has decreased. Consumption of cannabis, cocaine and heroin is constant and average compared to levels in other developed countries, while other drugs, such as amphetamines, are increasingly popular. Organised crime, corruption, and informal economies are marginal issues.*

## Corruption

Corruption Perception Index  
Source: Transparency International



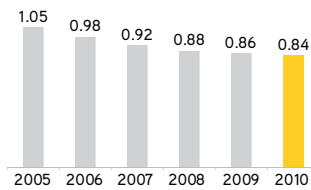
**79.0\***

13 out of 176 countries  
(2012)



## Homicides

Homicide rate per 100,000 inhabitants  
Source: UNODC



**0.84**

175 out of 187 countries  
(last available year)



## Organized Crime Index

Composite Organized Crime Index  
Source: Van Dijk (2008), "The World of Crime"

40

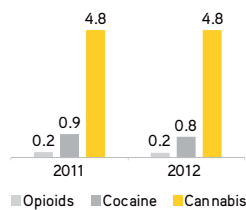
**20.21**

102 out of 156 countries  
(last available year)



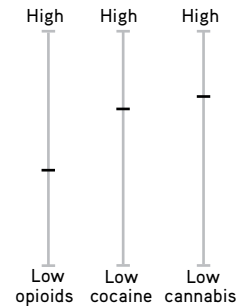
## Drugs

Annual prevalence of opioids (15–64), cocaine and cannabis (18–64) use  
Source: UNODC–World Drug Report



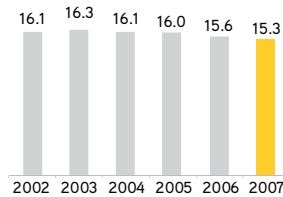
opioids **0.2**  
cocaine **0.8**  
cannabis **4.8**

opioids: 73 out of 132 countries  
cocaine: 31 out of 99 countries  
cannabis: 56 out of 139 countries  
(last available year)



## Shadow Economy

Indicator of the presence of market-based activities that escape the official estimates of GDP  
Source: Schneider, Buehn, Montenegro (2010), "New Estimates for the Shadow Economies all over the World"



**15.3**

17 out of 162 countries  
(2007)



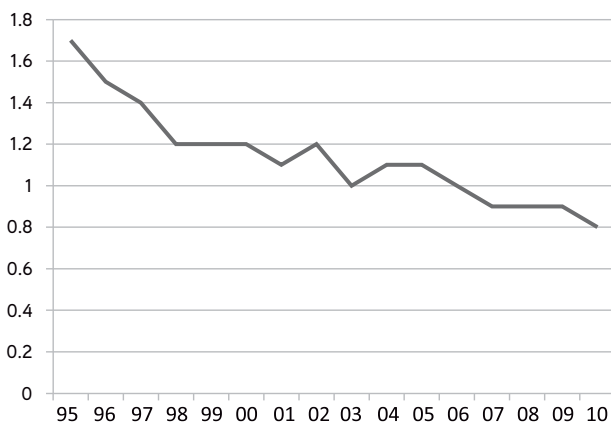
\* Corruption perception index ranged from 0 to 10 until 2011. Since 2012, it ranges from 0 to 100. Highly corrupted countries occupy low positions in this rank.

## CRIMINAL TRENDS

- **Crime figures have fallen in Germany, and police solved a record-breaking number of crimes in 2010.**
- According to official statistics, in 2010 5.99 mn crimes were committed (a 1% increase from the previous year). Violent crimes passed from 201,243 in 2010 to 197,030 in 2011 (a 2.1% drop) (Bundeskriminalamt 2012b).
- The rate of crimes solved in 2011 was 54.7%, a slight decrease from 2009, when it was 56% (Bundeskriminalamt 2012b).
- Drug offences have increased by 2.4%, driven by amphetamines and derivatives related offences (+19.9% from the previous year) (Bundeskriminalamt 2012b).
- The homicide rate has decreased over the past 15 years from 1.7 homicides per 100,000 inhabitants in 1995 to 0.8 in 2010 (Figure 12). According to the last available UNODC data, Germany ranks 175th out of 187 countries in the homicide ranking, in which countries with the highest homicide rates occupy the top positions.
- The percentage of people who feel threatened by crime was below 30% in 2005. According to the last periodic report on crime (Bundesministerium des Innern–Bundesministerium der Justiz 2006), this figure exhibited a decreasing trend from 1991 to 2005.

Figure 12. Homicide rate per 100,000 inhabitants (1995–2010)

Source: Transcrime elaboration on UNODC Homicide Statistics 2012

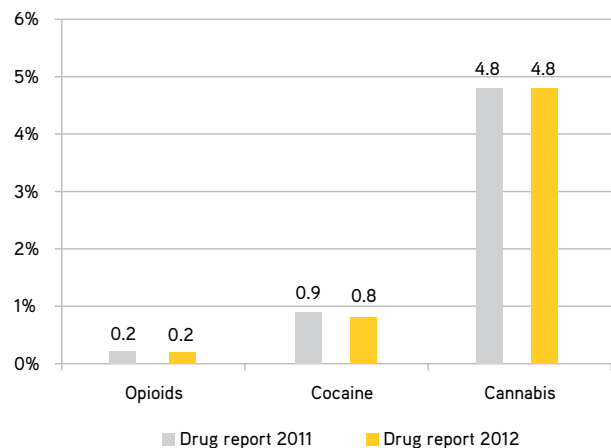


## DRUG CONSUMPTION AND MARKETS

- **Drug use is medium in Germany (Figure 13).**
- The results of the last Epidemiological Survey on Substance Abuse (ESA) carried out in 2009 showed that about a quarter of the adult population in Germany had had experience with drugs. The proportion of adults who had taken drugs in the previous 12 months was still 5%, and 3% had used drugs in the previous 30 days. Cannabis is still by far the most commonly used illicit drug (Pfeiffer-Gerschel, Hammes, and Rummel 2012).
- **The prevalence of cocaine, cannabis and amphetamines is considerable. The use of heroin, LSD and crack is limited (Pfeiffer-Gerschel, Hammes, and Rummel 2012).**
- Overall, first-time drug users increased to 18,621 individuals (+3%) in 2010. Nevertheless, first-time users of heroin and cocaine decreased by nearly 11% each. Also ecstasy use decreased (-38%) prolonging the trend of 2009 (Bundeskriminalamt 2010).
- The prevalence of opioids was 0.2% in 2009 (Figure 13). Germany ranked 73rd out of 127 countries (UNODC 2012a).
- Cocaine consumption was medium-high, with a prevalence use of 0.8% in 2009 (Figure 13). Germany ranked 32nd out of 106 (UNODC 2012a).

Figure 13. Prevalence of cannabis, cocaine and opioids use, (2011–2012)

Source: Transcrime elaboration on UNODC 2011 and 2012 World Drug Report data



### CRYSTAL METH

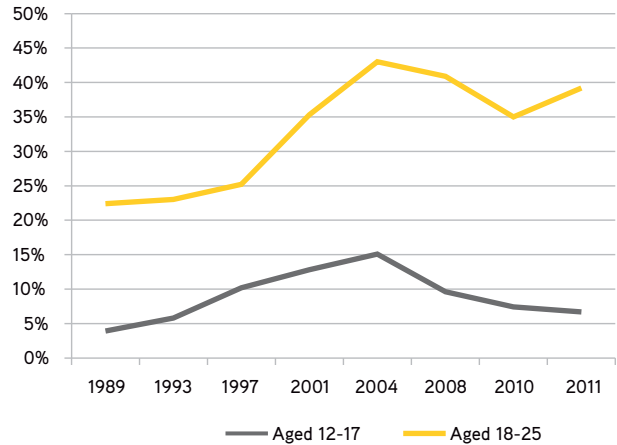
Crystal meth is a synthetic, cheap, and easily producible drug with high addictive potential. The product is usually smuggled from the Czech Republic to Germany and it is first sold in the border region, especially on Vietnamese markets. However, the drug is expanding in other parts of Germany, notably Nürnberg, Dresden and Leipzig. In 2011, 17 kg of crystal were confiscated in Germany, and in 2012 the amount increased to 23 kg. This development is alarming since only 1 gram of crystal provides 40 consumer units (N24 2013; Die Welt 2013). In March 2013, the Czech–German “Operation Poustevnik” transnational project identified a group of smugglers and dealers and confiscated several drugs, money, and a methamphetamine laboratory (Zollfahndungsamt Dresden 2013). Smugglers were reported to use tourists for cross–border smuggling by attaching crystal meth to the undersides of their cars together with a GPS–sender, a tactic which allows the substance to be located afterwards (Die Zeit 2013). Vietnamese sellers started to sell crystal meth in the Czech Republic after Czech customs clamped down on cigarette smuggling across the German/Czech border (Fuchs and Hölzl 2011).

42

- Cannabis is the most commonly used drug, with a consumption rate of 4.8% among the 18–64 population in 2009 (Figure 13, p.41). The country ranked 56th out of 139 (UNODC 2012a). Furthermore, cannabis prevalence is widespread, especially among younger people. Indeed, life–time prevalence in cannabis consumption for people aged 18 to 25 has exhibited an increasing trend in recent years (Figure 14).
- There has been a significant increase in the use of crystal methamphetamine (+76%) and crack (+72%) (see Box *Crystal Meth*). First–time users of amphetamine and LSD increased by nearly 11% in 2010. The use of other drugs was also on the increase (+4%) (Bundeskriminalamt 2010).

Figure 14. Lifetime prevalence of cannabis consumption for young people aged 12–17 and 18–25

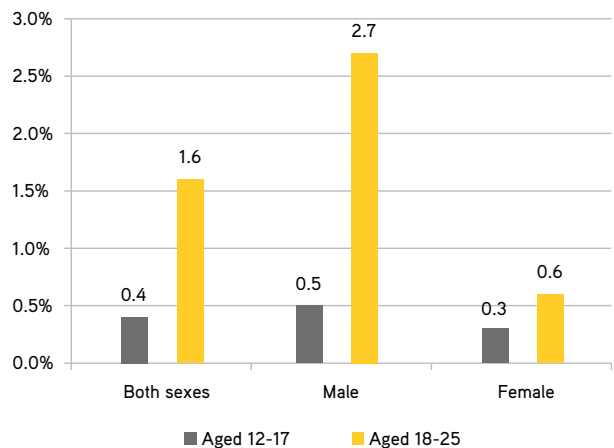
Source: Transcrime elaboration on Die Bundeszentrale für gesundheitliche Aufklärung data



- The overall prevalence of amphetamine use was 0.70% in 2009, and Germany ranked 38th out of 115 countries (UNODC 2012a). The prevalence of amphetamine use was 2.7% among 18–25 year olds in 2011 (Figure 15).
- A large number of German Crime Commission investigations has concerned the smuggling of smaller quantities of drugs imported from the Netherlands into Germany by consumers or small–scale dealers during procurement trips (Bundeskriminalamt 2010).

Figure 15. Annual prevalence of amphetamine use among 12–17 and 18–25 years old (2011)

Source: Transcrime elaboration on Pfeiffer–Gerschel, Hammes, and Rummel 2012 data





- **The illicit drugs market is the main source of revenue for organised crime.**
  - In 2011, nearly 40% of investigations detected the involvement of organised crime groups in drug trafficking and smuggling (Bundeskriminalamt 2012a).
  - Total drug seizures decreased in 2010. However, increases were recorded for amphetamine/methamphetamine and biogenous drugs (Bundeskriminalamt 2010).
- **Drug use is correlated with crime.**
  - The detection rate for drug-related offences is high (94.7%), but police discover only a small percentage of cases. Moreover, in 2011, 7.9% of all solved cases were suspected of having been committed under the influence of drugs (Bundeskriminalamt 2012b).

**In conclusion, crime rates have slightly increased, but crime is not the main concern of Germans. The country has low corruption, and the informal economy is small. There are few structured organised crime groups engaged in drug trafficking. Drug use in the country is medium and stable, although the consumption of amphetamines is increasing. Small and informal drug-smuggling networks are common in Germany.**

## ORGANISED CRIME AND CORRUPTION

- **Germany has a very limited presence of organised crime, and corruption is low.**
  - Germany ranks low on the composite organised crime index, scoring 20.21 and occupying 102nd position out of 156 countries. Low positions signal limited organised crime presence (Van Dijk 2008, 165–166).
  - In general, most investigations concern German and Turkish OC groups, while Italian OC groups, notably the Italian 'Ndrangheta mafia, occupy third place. (Bundeskriminalamt 2012a).
  - Corruption is low. Indeed, Germany ranked 13th out of 176 countries with a score of 79 in the Corruption Perceptions Index. High positions signal limited corruption (Transparency International 2012).
  - Germany's shadow economy is small. It ranked 17th out of 162 countries in a study measuring shadow economies in 1999–2007. Countries ranked first if they had low levels of shadow economy (Schneider, Buehn, and Montenegro 2010).





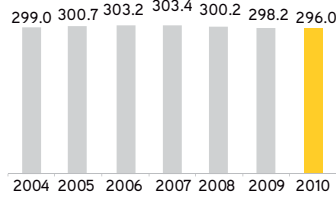
## ENFORCEMENT

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*Law enforcement is generally high, while German action against the ITTP is medium–low. Cooperation between public bodies and tobacco manufacturers is usually set at European level, as well as the legal obligation on producers not to facilitate smuggling. Nevertheless, German Authorities, notably the Zollkriminalamt (Customs Criminal Office), are aware of the problem of illicit tobacco and have undertaken several joint actions with the authorities of neighbouring countries.*

## Police

Police personnel rate per 100,000 inhabitants  
Source: UNODC



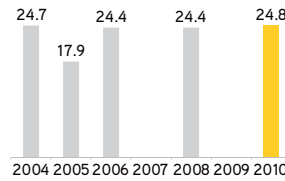
**260.0**

46 out of 81 countries  
(last available year)



## Judiciary

Professional judges rate per 100,000 inhabitants  
Source: UNODC



**24.8**

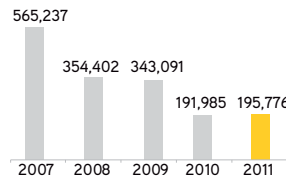
13 out of 73 countries  
(last available year)



## Tobacco Products Seizures

46

Quantity of seized cigarettes in sticks per 100,000 inhabitants  
Source: German Customs



**195,776 sticks**

(2011)

## Penalty for ITTP

Likely maximum penalty for an hypothetical serious case of ITTP  
Source: Transcrime elaboration

**10 years of imprisonment**

## Anti-ITTP Action\*

Composite indicator measuring the presence of specific policy measures in the country  
Source: Transcrime elaboration



**1.5/5 points**

(2013)

\* The indicator should not be interpreted as if a higher value is always better than a lower value. The objective is rather to synthetically assess the intensity of policy measures in a specific field.

## LAW ENFORCEMENT IN GERMANY

- **In Germany, law enforcement is high compared with the level in other countries. The police personnel rate is average; the rate of judges is high; and the prison population has decreased, possibly because of a change in sentencing practices. Crimes solved have reached record rates.**
- The police personnel rate per 100,000 inhabitants was 296 in 2010 (UNODC 2012b). This is an average level compared with those in other countries, and it has been constant over the years. Germany ranks 46th out of 81 countries.
- Each German state is largely autonomous and has its own constitution. The police system comprises the German Federal Police (Bundespolizei) subordinate to the Ministry of Interior (Bundesministerium des Innern) and the Federal Criminal Investigation Office (Bundeskriminalamt). Moreover, each Land has its own state police (*Landespolizei*).
- The rate of judges per 100,000 inhabitants was 24.8 in 2010. Germany ranked 13th out of the 73 countries surveyed by UNODC (UNODC 2012b). The figure has been constant in recent years.
- The prison population continues to decline. This may be due to a change in sentencing practices: the suspension of (the remaining period of) sentences or imprisonment in default of payment of a fine (Destatis–Statistisches Bundesamt 2012b).
- In 2010, the total prison population rate was 70,827 inmates, i.e. 86.1 inmates per 100,000 inhabitants (in 2003, 80,829 inmates and an incarceration rate of 98) (UNODC 2012c). More than half of the countries in the world have a prison population rate below 150 per 100,000 inhabitants (Walmsley 2011). Germany ranked 81st out of 110 countries for prison population in 2010. The International Centre for Prison Studies has ranked Germany 164th out of 221 countries surveyed (ICPS 2012).<sup>7</sup>

7. The ranking is compiled using data from the United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems (CTS), taking the last available year from 2004 to 2010 into account.

- The vast majority of the inmates of German penal institutions are men (approximately 94% as of March 2012). About 38% of them, or 21,900 persons, were under 30 years old; 13% (7,400 persons) were aged over 50 (Destatis–Statistisches Bundesamt 2012b).
- The rate of crimes solved was 56% in 2010, registering a slight increase from the 55.6% in 2009. The 2010 level was a record high (Chelsom–Pill and Hallam 2011).

## THE FIGHT AGAINST THE ITTP IN GERMANY

- **Anti-ITTP action in Germany is medium–low, with 1.5 points out of 5 (Table 6, p.48).**
- **The main bodies involved in the fight against the ITTP are:**
  - **The *Zollkriminalamt* (Customs Criminal Office)**, which coordinates customs investigations and monitors trade. Its main tasks are to uncover violations of EU market regulations, illegal technology exports, drug trafficking and money laundering.
  - **The *Bundeszollverwaltung* (Federal Customs Service)** is an executive and fiscal administrative unit of the German Government and part of the Finance Ministry. Among its tasks are the monitoring of cross–border movements of goods with regard to compliance with tax and customs laws, and the prevention of illicit practices.
  - **The *Bundeskriminalamt* (Federal Criminal Police Office)** acts as information and communication centre of the German police. The BKA provides support to the police forces of the federation and of the states in connection with the prevention and prosecution of crimes that involve more than one German state and that are of international significance or otherwise of considerable significance. Moreover, it is the main player in fighting international organised crime.
  - **The *Bundespolizei* (Federal Police)** has a broad range of responsibilities at land borders and sea ports, at airports and stations, and on trains, and thus in all major search areas nationwide. It is particularly committed to combating cross–border crime: indeed, it was originally called the “Federal Border Police”.

Table 6. Measures against the ITTP in Germany

Source: Transcrime elaboration

Anti-ITTP action indicator	Value
1) National Action Plan against the ITTP	0 points
2) Cooperation agreements between national public bodies and tobacco companies to prevent and control the ITTP	0.5 points
3) National campaign against the various forms of the ITTP	0.5 points
4) Legal obligation on tobacco manufacturers not to facilitate smuggling	0.5 points
5) Official legal estimates of the size of the ITTP	0 points

**Note:** the indicator should not be interpreted as if a higher value is always better than a lower value. Its purpose is rather to synthesise the intensity of policy measures in a specific field.

48

- **The *Landespolizei* (State Police)** operates under the sole jurisdiction of each German state with criminal investigation departments and their own Landeskriminalamt. Its role against the ITTP is important especially in border States.
- **The *Bundesnachrichtendienst* (Federal Intelligence Service)** acts as an early warning system to alert the German Government to threats against German interests from abroad. It depends heavily on wiretapping and the electronic surveillance of international communications. It collects and evaluates information on a variety of areas: international terrorism, weapons proliferation and illegal transfer of technology, organised crime, weapons and drug trafficking, money laundering, illegal migration and information warfare.
- **The *Gemeinsame Ermittlungsgruppe Rauschgift* (Joint drug investigation team)** is a joint team between the Polizei and the Zoll specialised in the fight against drug trafficking, but also against ITTP.
- **The *Staatsanwalt* (German public prosecutors)** play a key role in each proceeding. Indeed, they decide whether to start, continue or stop the proceedings, based on the police findings. Essentially, they are the director of all criminal investigations.
- **There is no national action plan against the ITTP** (Point 1 of Table 6).
- Once a year the Ministry of Finance organises a press conference to review action taken during the previous year in the fight against the illicit trade of various product categories, including illicit tobacco (Bundesministerium der Finanzen 2012).
- The German, Polish and Czech authorities have signed several border collaboration agreements (see Box *Combating illegal trade—Transnational Cooperations*, p.49).
- **There are regular meetings between national public bodies and tobacco companies to prevent and control the ITTP** (Point 2 of Table 6).
- The only written agreements between tobacco industry and public bodies are at European level. Indeed, the European Commission has signed legally binding and enforceable agreements with tobacco manufacturers. The four largest tobacco manufacturers agreed to finance the EU and the countries participating in the agreement and to prevent their products from falling into the hands of criminals. Notably, they must supply only quantities required by the legitimate market, ensure that they sell only to legal clients, and implement a tracking system (European Commission 2004; European Commission 2007; European Commission 2010a; European Commission 2010b).
- However, the tobacco industry meets regularly with the ZKA to discuss the latest trends in the illicit cigarettes trade.

## COMBATING ILLEGAL TRADE–TRANSNATIONAL COOPERATIONS

**Operation Poustevnik** is a cooperation, ongoing since summer 2011, between the Dresden Customs Investigation and the Czech Customs Administration to combat smuggling and organised crime (Zollfahndungsamt Dresden 2013).

**Speedway I** is a 2011 German–Czech control operation on both sides of the border. Officials found 50% more cases than the year before with involving to crystal meth issues in 31 days of intensive car controls (Koschyk 2013).

**Speedway II** lasted from July to December 2012. Officials searched 10,000 persons and 5,000 cars and confiscated 900 grams of crystal meth, 3.5 kg of marijuana, 400 grams of hashish, 34,000 cigarettes, and 5,000 fireworks (Koschyk 2013).

**Hofer Dialog** is a cooperation between the German and Czech police and customs which began in 2012. The main task is to combat drug smuggling in border areas. The authorities plan to include Poland in the cooperation (BR 2013).

**In regard to Polish-German Cooperations**, the Customs Office of Dresden has started close collaboration with the Polish border Customs Department of Niederschlesien. In January 2013, joint customs inspections detected 63,000 cigarettes and more than 40 kg of illegal tobacco. In March, 15,440 cigarettes and 5.4 kg tobacco were confiscated (Hauptzollamt Dresden 2013).

- **There are public awareness campaigns in place, mainly funded by the tobacco companies** (Point 3 of Table 6, p.48).
- **Schwarzrauche–Eine Miese Nummer** (black smoke—a bad number) is a campaign launched by Phillip Morris and BTWE (the German association of tobacco retailers) on June 2008 to persuade consumers not to buy counterfeit and contraband cigarettes. The focus of the campaign is to highlight the negative effects of consuming untaxed cigarettes in Germany.

- In 2004, the German tobacco industry, supported by the German Customs Union, distributed flyers against cigarette smuggling at the Polish and Czech borders. The flyers reported the import regulations for cigarettes (RP 2004).
- **Germany is a Party to the WHO Framework Convention on Tobacco Control (FCTC).**
  - Germany signed the FCTC on 2003. The Treaty entered into force on 2005. Article 15.1 of the Convention states that “parties recognise that elimination of all forms of illicit trade and development and implementation of related national law are essential components of tobacco control”; thus Germany “shall promote and strengthen public awareness of tobacco control issues, using all available communication tools” (WHO 2003).
  - The German Government has not yet signed the WHO Protocol to Eliminate Illicit Trade in Tobacco Products. However, Germany participated in the Seoul Conference that approved the Protocol in November 2012.
- **There is no legal obligation beyond the EC agreements on tobacco manufacturers not to facilitate smuggling** (Point 4 of Table 6, p.48).
  - The prohibition on facilitating smuggling is not a general requirement provided by the law. Only public-private agreements are in place, such as those between the European Commission and the main tobacco manufacturers (European Commission 2004; European Commission 2007; European Commission 2010a; European Commission 2010b).
- **There are no official yearly estimates of the ITTP in Germany** (Point 5 of Table 6, p.48).
  - There are no official and publicly available estimates on the amount of illicit tobacco products.

## HYPOTHETICAL CASE

A criminal organization composed of eleven members used a house in the periphery of a large city as an illicit factory for the production and distribution of tobacco products. For at least sixteen months, with a clear division of tasks and functions among them, the members of the organization illegally manufactured tobacco products (cigarettes and hand-rolling tobacco); packed them in packaging bearing false trademarks of legitimate brands (produced by the same organization); distributed the products to various wholesalers and retailers; and sold the illicit products through a network of bars and street sellers. No tax or duty was ever paid on these products. The law enforcement agencies seized a total of ten tons of illegal tobacco products stocked inside the house. All the members of the organization had previous records for fraud, forgery and illicit trade in tobacco products. They could not justify their incomes through any form of employment, suggesting that the illicit business was their sole source of income.

### Penalties

In theory, there are several offences applicable to the above case:

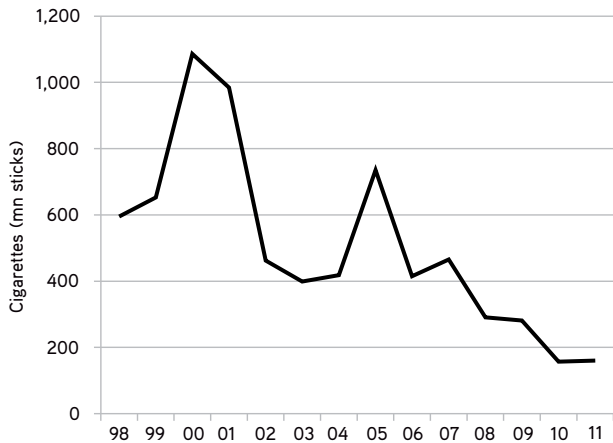
- **Trademark infringement.** According to section 14 § 4 no. 1, § 2, § 3 no. 2, section 14 § 2, § 3 no. 2, section 143, section 143 a of the Trademark Act; article 9 § 1 clause 2, § 2, article 101 § 2 of the Community Trademark Regulation, the penalty is from 6 months to 10 years of imprisonment in qualified cases (large-scale and organised crime).
- **Distribution of imitations of tobacco products.** Section 17 § 1 no. 2a and no. 5b, in connection with section 52 § 1 no. 10 of the Preliminary Tobacco Code, imposes a fine or up to 1 year of imprisonment.
- **Forgery of tax stamps.** According to section 148 § 1 no. 3 of the Penal Code, the penalty is a fine or up to 5 years of imprisonment.
- **Tax evasion (first sale).** According to sections 370 § 1, 4, 374 § 1, 2 of the Fiscal Code, 5, 15 § 1, 2 of the Code on Tobacco Taxes, the penalty is from 6 months to 10 years of imprisonment in qualified (large-scale and organized crime) cases.
- **Tax evaded goods (resale).** Sections 370 § 1, 3, 4 of the Fiscal Code, 5, 15 § 1, 2 of the Code on Tobacco Taxes impose from 6 months to 10 years of imprisonment in qualified cases (large-scale crime, abuse of an official's position, using falsified documents and organized crime having the purpose of evading tax on a continuous basis).
- **Criminal organization.** According to section 129 (1) and (4) of the Criminal Code, the eleven members have formed an organization with the purpose to commit criminal offenses. The qualification of forming a criminal organization under section 129 of the CC implies that there is a decision-making by the group and that each member of the organization subjects itself to the will of the group. The penalty for being a member in a criminal organization ranges between a monetary fine and imprisonment of up to five years. If a member of the group is a leader, or if for any other reason the forming of the criminal organization is regarded as particularly grave, the minimum penalty is 6 months of imprisonment.

Provided that various criminal acts were committed by the eleven individuals as members of a criminal organization, a court would only impose one sentence according to the case law of the Federal Supreme Court and not several sentences, which would then lead to an aggregate sentence. For determining the penalty, if several offenses were committed, the court, according to section 52 (2) of the Criminal Code, considers the most severe penalty. Since the most severe penalty is provided for a grave tax evasion, the maximum likely penalty is 10 years of imprisonment.



Figure 16. Seizures of smuggled cigarettes

Source: Transcrime elaboration on Bundeszollverwaltung year statistics from 1998 to 2011

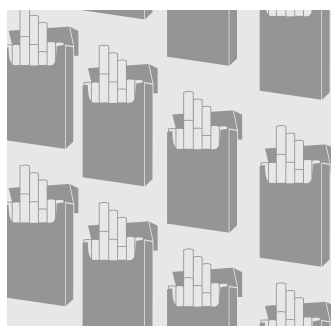
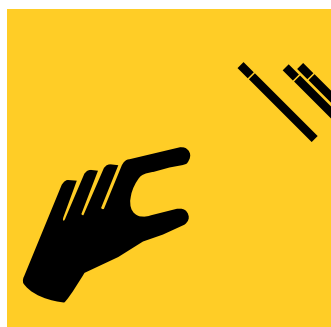


- **German seizures of illicit cigarettes have decreased in recent years after a fluctuating trend (Figure 16).**
  - On 21 December 2007, Poland and the Czech Republic entered the Schengen Area. Passport checks were consequently abolished on the borders with Germany. Stationary customs stations were removed in 2004, and in 2007 so too were border controls (Locke 2010). According to the Zollkriminalamt (Customs Criminal Office), there are currently 60 mobile control units.<sup>8</sup>
- **The German Fiscal Code (*Abgabenordnung*), the German Act on the Protection of Trade Marks and other Symbols (*MarkenG*) and the German Criminal Code (*Strafgesetzbuch*) are the main instruments which regulate smuggling and counterfeiting (see Box *Hypothetical Case*, p.50).**

In conclusion, law enforcement against the ITTP is medium–low. Several agreements and duties accomplish European standards, while at national level the *Zollkriminalamt* is aware of the problems of ITTP. Criminal law also does not seem to deter the ITTP since penalties are relatively mild for small–scale smugglers. Indeed, the penalty is usually a fine the first time smugglers are caught. Nevertheless, penalties for large scale smugglers are more severe.

8. Interview conducted with Mr. Wolfgang Schmitz on 25 March 2013.





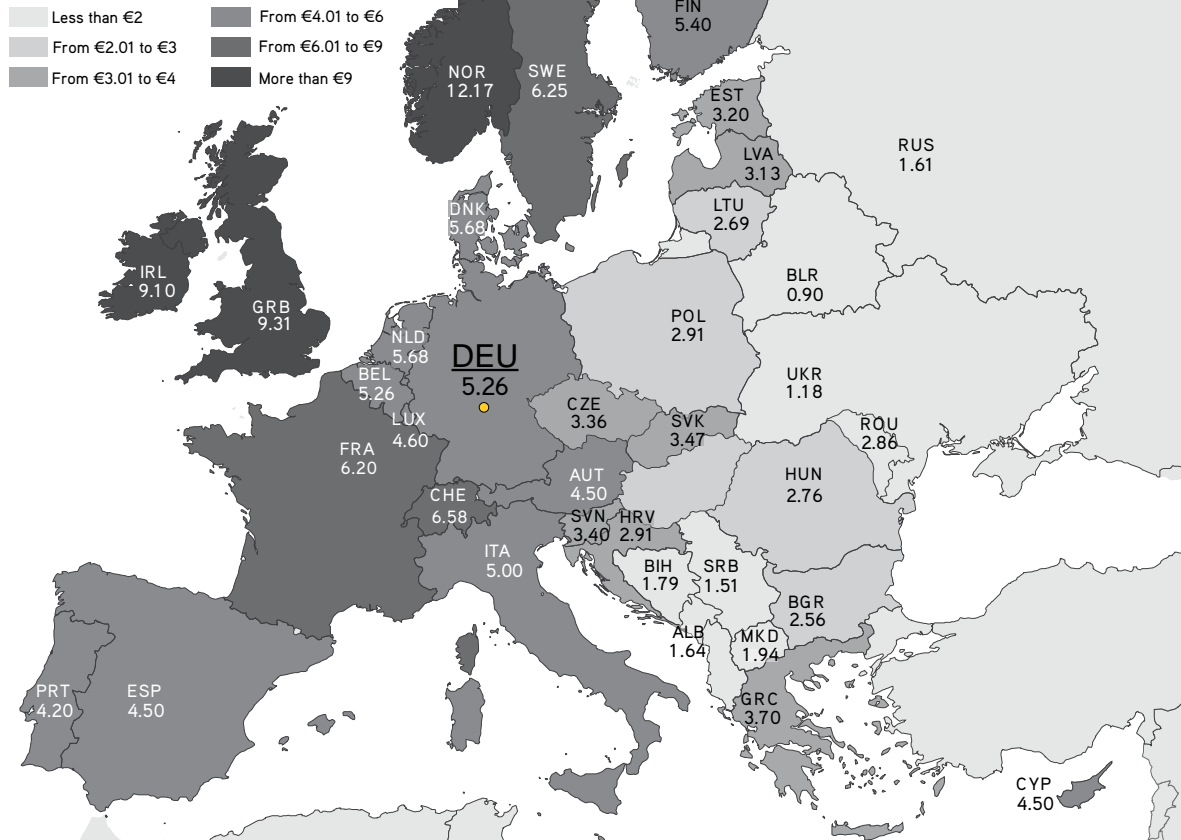
## THE DEMAND

- **An important cause of the demand for illicit tobacco is the price differential between licit and illicit products and between domestic and non-domestic products (Figure 17 and Figure 18, p.54).**
- The demand for illicit tobacco is mainly due to its affordability, particularly in relation with genuine products. The lower the affordability of genuine tobacco (expressed in Price relative to income – % of per capita GDP to buy 100 packs), the higher the incentives for illicit products. Illicit tobacco may cost up to half the price of genuine products, since it evades taxation. The higher the share of taxes out of the retail selling price, the higher the potential savings for consumers of illicit tobacco.
- Price increases have a substantial effect on smokers. Indeed, smoking behaviour changes because people reduce their consumption and/or switch to cheaper tobacco products (Hanewinkel, and Isensee 2007). However, an empirical study did not find a substitution effect between tax and untaxed cigarettes in Germany (Effertz and Schlittgen 2012).
- The increase of price differentials between non German duty-paid and German duty paid products and between retail prices in Germany and neighbouring countries coincided with the growth of the German black market (Von Lampe 2005).
- **However, price differentials alone cannot explain the high share of the illegal market in some particular regions.**
- The German black market is more than proportionally concentrated in Berlin and its surrounding area. Price differential alone cannot explain this geographical concentration. Favourable conditions under which demand meets supply play an important role. The availability of illicit products is therefore an important cause of the demand for illegal products in certain areas (Von Lampe 2005).

Figure 17. European Marlboro prices in euros per 20 cigarettes (July 2012)

Source: Transcrime elaboration on GMBH PMG data

Marlboro price in Euro per 20 cigarettes in July 2012

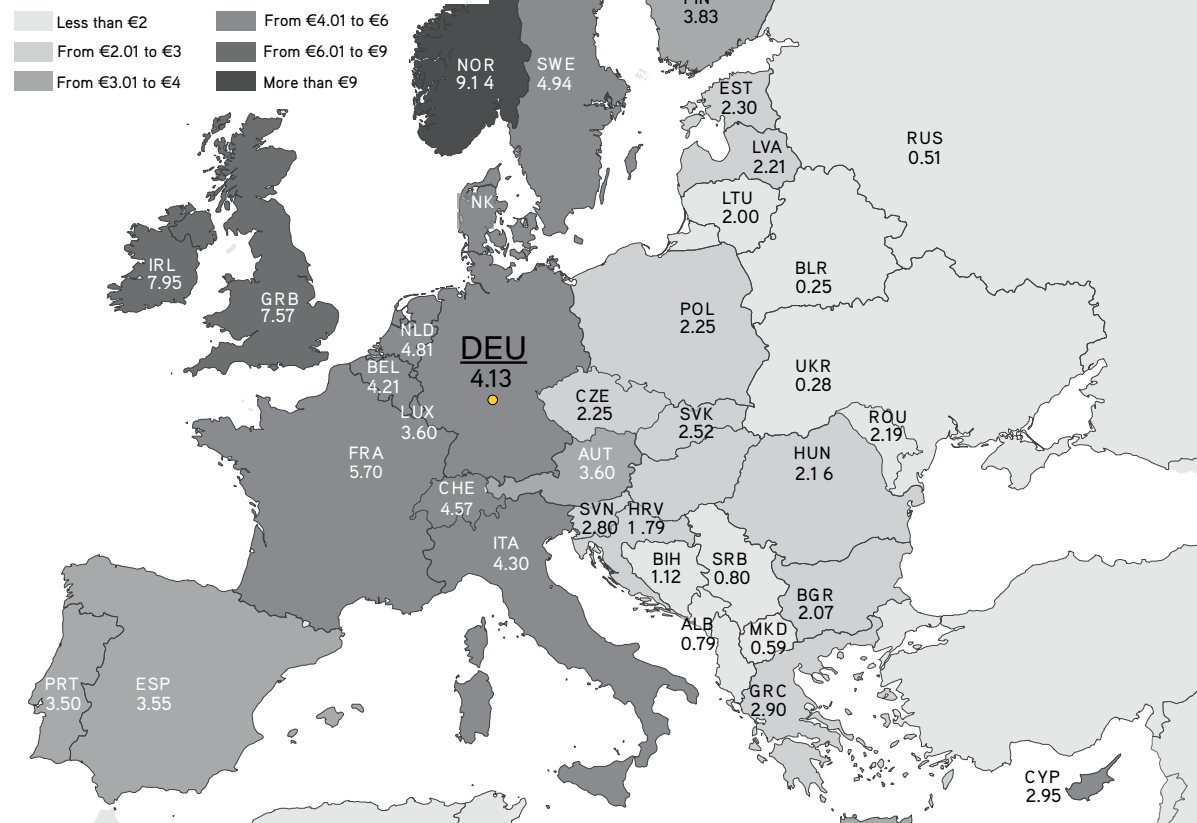


54

Figure 18. Cheapest brand prices in euros per 20 cigarettes (July 2012)

Source: Transcrime elaboration on GMBH PMG data

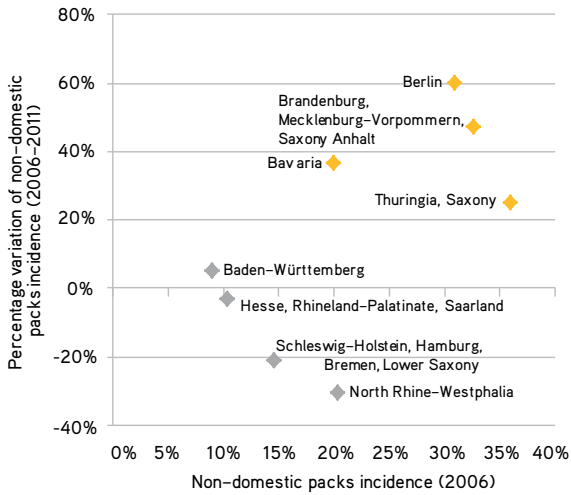
Cheapest brand price in Euro per 20 cigarettes in July 2012



**Note:** Prices for UK and Ireland refer to recommended retail prices. Prices for Cyprus, Estonia, Latvia, Lithuania, Malta, Romania, Slovenia and Sweden refer to maximum retail prices. Norway is a free pricing market. Monthly fixed rates as at July 2012.

Figure 19. Correlation between 2006 non-domestic incidence and non-domestic incidence variation from 2006 to 2011

Source: Transcrime elaboration on EPSs data.



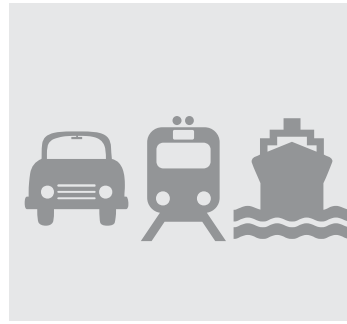
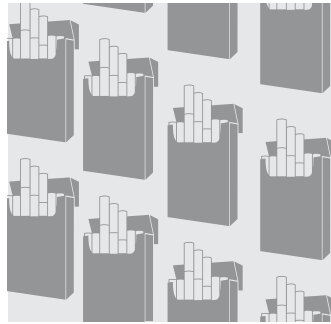
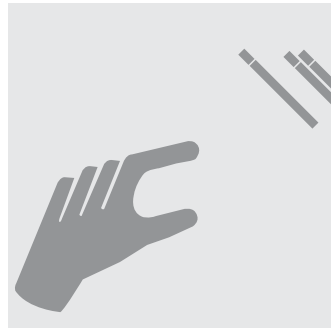
**Note:** *Länder* are aggregated according to the 7+1 “Nielsen-Gebiete”, which is a classification of the *Länder* taking account of social, structural, demographic and commercial conditions. The yellow points represent the four *Länder* with the highest growth rates in non-domestic packs incidence from 2006 to 2011. The grey points refer to the four *Länder* with the lowest four growth rates.

•• **The penetration of illicit tobacco is self-reinforcing.**

- The increase in consumption of untaxed cigarettes in Germany is a self-reinforcing effect (Bräuninger and Stiller 2010). Indeed, the higher the share of non-domestic packs in 2006 EPS, the larger the percentage increase in non-domestic incidence from 2006 to 2011.
- The yellow points (Figure 19) indicate the highest growth rates of non-German packs collected from 2006 to 2011. Three of them ranked first in the 2006 non-domestic packs incidence, while the fourth ranked fifth. The reverse applies for the grey points.

•• **Information on the profiles of illicit tobacco users is scarce.**

- No comprehensive research on the profiles of illicit tobacco users has been conducted in Germany. Nevertheless, a broad picture emerges from an analysis of newspaper articles, reports, and on line forums. The typical illicit tobacco user seems to be a regular smoker (often a heavy one), male, low-income, low-educated. Age varies from the adolescent attracted by illegal products to the low-income retiree (DKFZ 2010; Repinski 2008; Frankfurter Allgemeine 2012; Knut 2012).



## THE SUPPLY

56

- **The supply of illicit tobacco is mainly influenced by profitability.**
- The difference between illegal products prices and legal retail prices provides an incentive for tax avoidance. A large share of this difference is the profit of illegal suppliers (Von Lampe 2005).
- Buying cigarettes in a neighbouring low-price country and selling them in a high-price country like Germany is lucrative. The amounts of the price differential and of the transport costs involved affect the profitability, while the proximity to low-price market affects the opportunity to engage in this activity (Merriman, Yurekli, and Chaloupka 2000).
- The supply of illicit tobacco is due to its profitability, namely to the evasion of the high taxation on tobacco products.
  - The tax level expressed in monetary terms (total taxes per 1,000 cigarettes) may provide incentives for suppliers of illicit tobacco at international level. This is most relevant to large-scale smuggling (counterfeits and illicit whites). The higher the taxes, the greater the potential profit for smugglers.
  - The tax incidence (tax as % of the final retail price) provides incentives for the suppliers of illicit tobacco at national level. This is most relevant to the illicit manufacturing and wholesale/retail distribution of illicit tobacco products within national borders.
- However, the emergence of a cigarette black market in Germany has deep historical and social roots, dating back to the fall of the Iron Curtain (see Box *Origin and development of the German cigarette black market*, p.57).

## ORIGIN AND DEVELOPMENT OF THE GERMAN CIGARETTE BLACK MARKET

The origin and the development of the cigarette black market can be dated back to January 1989, when the visa obligation for Polish citizens was abolished. One of the effects was a chaotic and anarchic increase in cross-border trade. Several Poles started selling a broad range of products on German streets. Illegal cigarettes were among those goods (Von Lampe 2005).

In June 1990, the two German states signed a treaty agreeing on a currency union. The open sale of contraband cigarettes started in other parts of Eastern Germany, while the police authorities undertook firm and successful action to limit the open market in West Berlin. As a result, the number of cigarettes seized by the Customs Service rose from nearly 24 million in the Federal Republic of Germany in 1989 to 260 million in unified Germany in 1991 (Von Lampe 2005).

In the summer of 1991, up to one third of the cigarettes consumed in the territory of the former Democratic Republic of Germany were allegedly illegal (Von Lampe 2005).

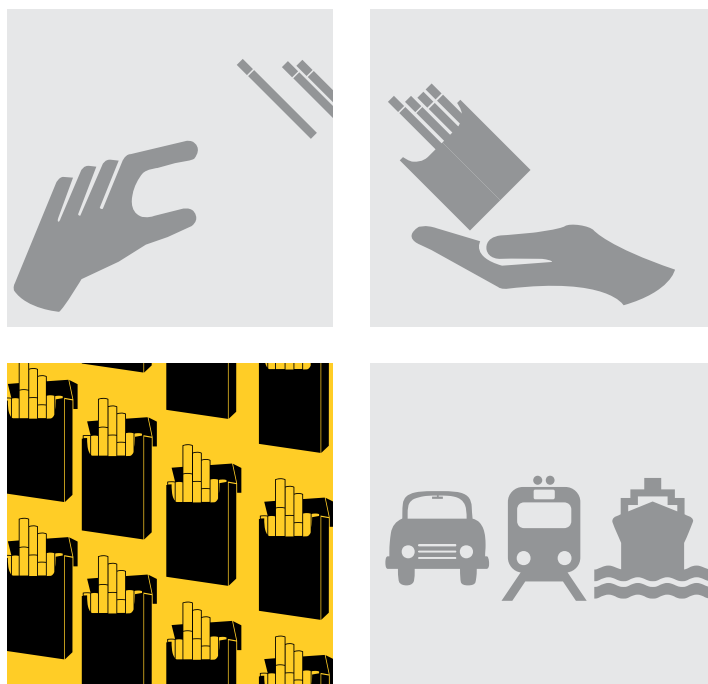
Initially, Polish traffickers controlled all the stages of the black cigarette market. However, after 1991, they approached former Vietnamese guest workers, who had been recruited by the former Eastern Germany socialist government but had been made unemployed by industrial reconstruction following the collapse of the socialist regime. These Vietnamese replaced Poles in the retail distribution of illicit cigarettes (Von Lampe 2005).

- **The supply side of the ITTP is composed of small, simple and undifferentiated groups.**
- The cigarette black market in Germany seems to be composed of low-density networks formed by small, simply-structured enterprises and individual entrepreneurs. These small groups or individuals generally perform relatively simple tasks. Indeed, complicated and sophisticated structures are not necessary to satisfy the demand for illegal tobacco products. The supply side of the illicit trade in tobacco products does not generally involve complex technology, nor does it require complex skills (Von Lampe 2003).
- In Berlin, sales points are generally divided among various “families”, who sell or lease their spots to other individuals such as interim dealers or final sellers. The value of the location is determined by the amount of potential customers and by its safety. Each sales point usually has one or two sellers. Couriers and supervisors may control one or more sales points depending on their proximity. According to an investigation commissioned by Philip Morris, the protection price of a point is between €200 and €500 per month (ECIS Investigations 2011).
- At horizontal level, groups are usually based on strong ties, such as kinship, marriage or friendship, whilst vertical relationships, such as buyer-seller or employer-employee, are based on weak ties or even lack any basis in pre-existing contacts (Von Lampe 2003).
- **Two ethnic groups (Polish and Vietnamese) dominate the illegal cigarette market, especially in Berlin and East Germany. The contraband cigarettes are mainly supplied by Polish traffickers.**
- Originally, Eastern European groups, especially Polish, directly controlled all the phases of the illicit supply chain. They purchased or recovered cigarettes, smuggled them into the country and sold them directly. The Poles soon involved Vietnamese in this illegal trade and started providing them with illegal cigarettes (see Box *Origin and development of the German cigarette black market*).

- Today, the Polish groups usually supply illicit products, while Vietnamese groups occupy the intermediate and retail levels. The typical case, according to law enforcement agencies and case studies, involves Polish smugglers supplying Vietnamese wholesale or retail dealers (Von Lampe 2005; Bundeskriminalamt 2011; Bundeskriminalamt 2012a).
- A review of German Customs press releases has confirmed the dominant role played by Polish groups. Nevertheless, other nationalities account for a large share of smuggling cases, several of which have involved German, Lithuanian, Russian, Belarusian, Serbian or Bosnian actors (Hauptzollamt Frankfurt (Oder) 2012a; Zollfahndungsamt Essen 2012; Hauptzollamt Frankfurt (Oder) 2012c; Zollfahndungsamt Hanover 2012a; Hauptzollamt Erfurt 2012b; Hauptzollamt Karlsruhe 2012).
- **The retail distribution of contraband cigarettes in Germany is commonly associated with street selling by Vietnamese vendors in the Eastern parts of the country (Von Lampe 2006).**
- Former Vietnamese guest workers, who had become unemployed in the course of industrial restructuring, substituted the Poles in retail sales in East Germany. Their involvement gave rise to a vertical differentiation according to ethnicity (Von Lampe 2003).
- Ethnic differentiation is helpful in selling practices: because of their easily recognizable appearance, Vietnamese sellers can be more easily identified by customers, thereby facilitating the first contact with potential buyers (Von Lampe 2003).
- In Germany, the press and media have devoted a great deal of attention to black-market actors in terms of ethnicity. Press releases, media reports and official statements regularly underline the nationality of offenders. The fact that the supply of contraband cigarettes is largely dominated by Eastern Europeans, mostly from Poland, and that the retail level in East Germany is controlled by Vietnamese is a recurrent theme in general descriptions (Birger 2012; Der Tagesspiegel 2008; Die Welt 2010). Another important driver of media attention is violence (Lang 1995; Haak and Schnedelbach 2002; Leyendecker 2010). Indeed, violent confrontations between sellers and extortion gangs have induced reactions by the media and the authorities (Von Lampe 2003; Von Lampe 2006).
- **Organised crime groups engaged in the supply of illicit tobacco are usually not engaged in other criminal activities.**
- According to *Bundeskriminalamt* (Federal Police Office) investigations, group structures display little differentiation, either vertically or horizontally. This seems also to be case when criminal labourers are employed. These are usually hired only to perform one specific task for a certain delimited period, so that it is difficult to consider them as members of long-standing organised crime structures. However, the lack of differentiation was more evident in the past (Von Lampe 2003; Bundeskriminalamt 2011; Bundeskriminalamt 2012a).
- In 2011, the *Bundeskriminalamt* conducted 45 anti-organised crime operations regarding tax and customs offences (51 in 2010). The majority of these investigations involved cigarette smuggling (Bundeskriminalamt 2011; Bundeskriminalamt 2012a).
- The proportion of groups investigated that focused only on one specific type of crime was approximately 73.3 % in 2011. However, this proportion has considerably decreased in recent years. (92% in 2007) (Bundeskriminalamt 2011; Bundeskriminalamt 2012a).



- **Illicit tobacco is sold through various channels.**
  - Open sellers usually operate at fixed locations. The most common are spots where demand can be more easily met: outside a supermarket, or near a train or metro station. Sometimes orders are taken for home deliveries. Further popular locations for the sale of contraband cigarettes, common to both East and West Germany, are flea markets. Even informal distribution channels in network ties between friends, relatives or work mates are relevant for the selling of illegal tobacco products (Von Lampe 2006; Evert 2011).
  
- **Selling practices and group organisations may be influenced by enforcement countermeasures.**
  - The weakness of law enforcement during the period of political transition of the former German Democratic Republic favoured the wide diffusion of the illegal market, while the strong reaction of the authorities successfully halted the growth of the black market in West Berlin (Von Lampe 2005).
  
  - According to the case analysis conducted by Von Lampe (2003), the structure of the groups involved in the black market is generally simple. However, in the past confrontations between Vietnamese seller groups and rival Vietnamese extortion gangs ended in violence, attracting the attention of the media and law enforcement agencies. The outcome of such violence was a strong law–enforcement campaign against the illicit trade in tobacco products (Lang 1995; Haak and Schnedelbach 2002; Leyendecker 2010). Simple seller groups reacted by changing their structure. Notably they increased their complexity in order better to protect their assets such as cigarettes and cash (Von Lampe 2003).



## THE PRODUCTS

60

- **The lack of official updated estimates of the illicit tobacco market makes it difficult to assess the extent of the ITTP.**
- Official data are only sporadically made public during official speeches or press releases. According to the most recent data of this type, one in every six German cigarettes was illegal in 2004 (Von Lampe 2006).
- **However, various unofficial estimates have been produced.**
- Euromonitor International estimates the size of the illicit cigarettes market as a percentage of the total cigarette market.<sup>9</sup> Estimates ranged between 3.3 % and 8.2 % from 2001 to 2011, exhibiting a constant increase. In the decade considered, the incidence of illicit cigarettes more than doubled. In 2012, the estimate was 7.8% (Table 7, p.61).
- The tobacco industry regularly conducts empty pack surveys (EPSs) to estimate the number of non-domestic cigarette packs found in Germany. Use of EPSs data requires especial care when investigating the ITTP. Firstly, the surveys focus on cigarettes and exclude HRT. They analyse packs and not single butts. EPSs identify non-domestic products, which include cigarettes legitimately purchased (e.g. by travellers). Furthermore, EPSs do not identify domestic contraband cigarettes. This may lead to underestimation of the size of the illicit tobacco market. German EPSs are conducted using a method slightly different from the one employed in other European countries. Furthermore, there has been a debate on the reliability of this method (see Box *The Empty Pack Surveys (EPSs)*, p.61).

9. Euromonitor sources for estimating the illicit trade include the trade press, customs offices, interviews with manufacturers and retailers, as well as local knowledge of the market – for example

how porous borders are, how high unit prices are, whether a market is a conduit for cigarettes versus actual consumption.

## THE EMPTY PACK SURVEYS (EPSs)

The German estimation is based on the monthly collection of empty cigarette packs in selected recycling facilities. A total of 12,000 cigarette packs are classified and used to estimate non-domestic incidence. EPSs conducted in other European countries employ a slightly different method: they collect packs on the streets and in public bins in selected areas.

Twenty-two collection points were chosen for the German sample. The combination of the 22 points formed the seven “Nielsen-Gebiete”, which is a classification of the *Länder* taking account of social, structural and demographic conditions, as well as the commercial characteristics. Packages were selected by employees in the respective recycling facilities, put into bags indicating the location of the recycling centre, and then centrally analysed.

There has been a scientific debate on the methodology of German EPSs. Prof. Dr. Michael Adams and Dr. Tobias Effertz, two economists at the University of Hamburg, have criticised the selection of the 22 collection points on the grounds that many collection points were situated close to borders with countries offering lower priced cigarettes, such as the Czech Republic, Poland, Luxembourg and Austria. Moreover, the researchers stressed the proximity of several collection points to *Autobahn* A2 and A12. These are known under the name “*Warschauer Allee*” (Warsaw Avenue) as among the most important smuggling routes to and through Germany (DKFZ 2010; Teevs 2010).

Consequently, the German cigarette association commissioned the Hamburg Institute of International Economics (HWWI) to review the study’s methodology. In their report (2010), Prof. Dr. Michael Bräuninger and Dr. Sven Schulze mentioned difficulties concerning the representation of singular *Nielsen-Gebiete* given that entire *Länder* were not included. Nevertheless, they concluded that the selection of collection points, as well as the projection, did not produce biased results. Indeed, the sample had some desirable properties: for instance, it correctly predicted the shares of different brands in the German tobacco market.

61

- Notwithstanding these limitations, EPSs may provide data useful for analysing the illicit cigarettes market. Indeed, time comparisons and within stations analysis are almost neutral to these problems. German EPSs from 2005 to 2012 show an increase in the proportion of non-domestic packs from 14.9% to 20.6% (Table 7).
- KPMG conducts an annual study for PMI and OLAF as part of EU agreements. KPMG analyses many different sources, including tobacco sales data, consumer surveys, and EPSs. Packs are catalogued as legal domestic, legal non-domestic, and counterfeit & contraband, in order to disentangle the origins of packs collected in Germany. The proportion of the packs classified as counterfeit & contraband provides the estimate of illegal market penetration in Germany (KPMG 2013). Also KPMG data, partially based on EPSs, estimated an increase in the illicit share from 2006.

Table 7. Estimates of the size of the German illicit cigarette market. Percentages of the total market

Source: Transcrime elaboration on Euromonitor International, EPSs and KPMG data

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Euromonitor</b>	3.3%	3.4%	3.7%	4.5%	5.4%	5.6%	5.9%	6.7%	7.6%	8.1%	8.2%	7.8%
<b>KPMG</b>						10.6%	9.7%	10.8%	12.0%	12.5%	13.1%	11.1%
<b>EPSs</b>					14.9%	16.9%	22.6%	19.7%	19.1%	21.1%	21.8%	20.6%

- All the sources considered report an increase in the share of illegal tobacco products, even if it is differently estimated. The growth rate of the market share between 2005 and 2011 ranged from about 46% (Euromonitor) to nearly 25% (EPSs and KPMG) (Table 7 p.61 and Figure 20).

•• **The structure of the illicit tobacco market in Germany.**

- According to Customs press releases, smuggled cigarettes, originating from both very large and very small-scale smuggling operations, are the main types of illicit tobacco products. Illicit whites and counterfeits are less common, but their share is not negligible. Other sources seem to confirm these findings (Philip Morris GMBH 2012): most non-domestic packs of Marlboro and L&M are genuinely non-domestic (smuggled or legally bought abroad), while only a small share is counterfeit. The most common illicit whites brand in Germany, Jin Ling, shows a volatile incidence during EPSs.

- Most of the press releases by German Customs refer to cases of cigarettes smuggling. In Germany unlawful movement from neighbouring tax jurisdictions is facilitated by price differentials, proximity, and geographical configuration. Indeed, Germany has more than 1,300 km of common borders with Poland and the Czech Republic.

- It seems that a concentration of source countries occurred in Germany from 2006 to 2012 (KPMG 2013) (Figure 21). Nearly half of illegal cigarettes come from neighbouring Poland (53%). The Czech Republic (27%) and Russia (7%) play an important role. Other countries had a 61% share in 2006, which decreased to 14% in 2012.

- Poland and the Czech Republic joined the Schengen area in December 2007. Their entry seems to have increased the proportion of cigarettes smuggled from those countries (Locke 2010). Indeed, in 2006, 25% of all counterfeit and contraband cigarettes came from Poland and the Czech Republic. In 2012, the proportion more than doubled, reaching 80% (Figure 21).

**Smuggled cigarettes**

•• **Smuggled cigarettes are the more common products of the illicit tobacco market.**

- Germany and the UK are apparently linked to the same smuggling channels. Germany is at the same time a destination country and a transit country, notably towards the UK (Von Lampe 2006).

Figure 20. Estimates of the size of the German illicit cigarette market, percentages of the total market

Source: Transcrime elaboration on Euromonitor International, EPSs and KPMG data

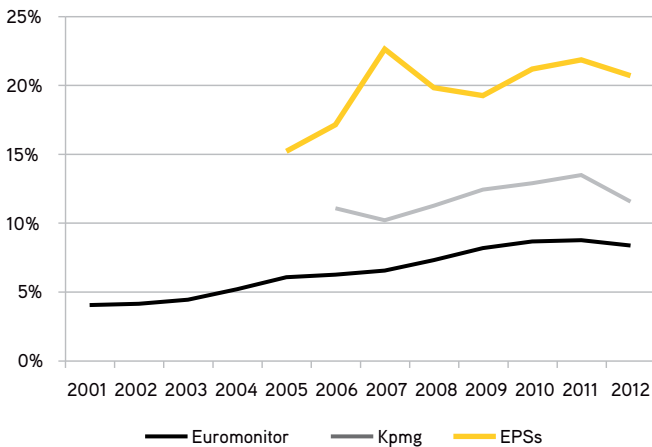
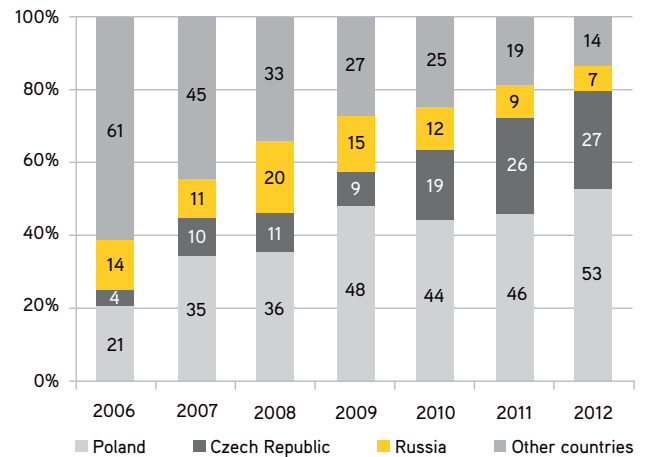


Figure 21. Counterfeit and contraband cigarettes by country of origin, percentages of the total (2006–2012)

Source: Transcrime elaboration on KPMG 2013 data

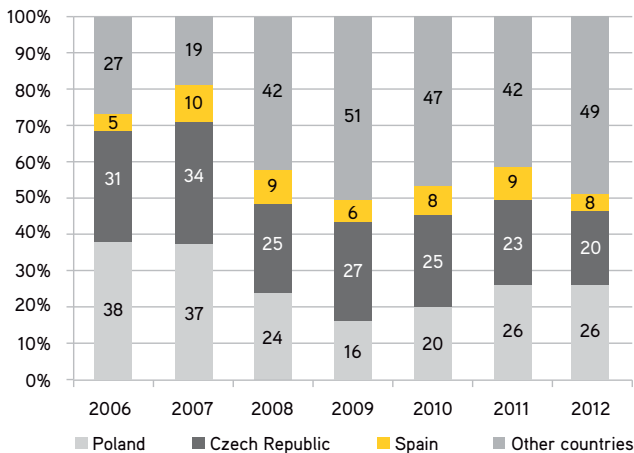


## Bootlegging

- **Bootlegging and small-scale smuggling have been a problem along the borders with Germany and Poland since the fall of the Iron Curtain (Von Lampe 2006).**
- Travellers may bring up to 800 cigarettes into Germany from all EC Member States without any formalities (the limit for HRT is 1 kg). Those transporting more than the above-mentioned amounts are suspected of intending to sell the goods. Nevertheless, travellers can refute this suspicion by proving that they will use the goods for private purposes (Bundesministerium der Finanzen 2013a). The allowance from non-EC countries is 200 cigarettes (250 grams for HRT) (Bundesministerium der Finanzen 2013b).
- In Germany, Marlboro cost €5.26 per 20 sticks, while in Poland and the Czech Republic the price is respectively €2.91 and €3.36 (as of July 2012). The cheapest brand sells at €4.13 per 20 sticks in Germany, while in Poland and Czech Republic it costs €2.19 and €2.25 respectively (Philip Morris GMBH 2012).
- Nearly half of legal non-domestic packs in 2012 came from Poland and the Czech Republic. However, the share of these two countries has decreased since 2006 (69%) (Figure 22). This decrease contrasts with the increase in the proportion of illegal cigarettes coming from these two countries, which more than doubled over the same period (Figure 21, p.62).

Figure 22. Legal sales of non-domestic packs by country of origin. Percentages of total non-domestic legal sales (2006–2012)

Source: Transcrime elaboration on KPMG 2013 data



- Non-domestic packs are only partially linked with tourist destinations. In 2011, Spain was the most popular tourist destination for Germans with a market share of 12.3% (Deutschen ReiseVerband 2012).

## Illicit whites and counterfeit cigarettes

- **Jin Ling is the most common illicit whites brand. However, its presence seems to be volatile over time.**
- The most popular illicit whites in Germany are Jin Ling. They are mainly produced in Kaliningrad, a Russian enclave between Poland and Lithuania, but there are other factories in Ukraine, Moldova and other parts of Russia. The cigarettes are transported by sea container or by inland routes to European market destinations (Hauptzollamt Rosenheim 2012). The factory price of 10 packs is €2, whilst the street seller price is usually more than €20 (Evert 2011), but sometimes less (Hauptzollamt Rosenheim 2012).
- Several German Customs press releases report seizures of Jin Ling packs, from small quantities (e.g. 50,000 cigarettes) up to large ones of even 900,000 cigarettes (Hauptzollamt Berlin 2012; Zollfahndungsamt Essen 2012; Hauptzollamt Frankfurt (Oder) 2012c; Hauptzollamt Düsseldorf 2012c; Hauptzollamt Frankfurt (Oder) 2012b; Hauptzollamt Rosenheim 2012). Furthermore, German Customs estimate that, in the past, Jin Ling has been the ninth brand by share in Germany, even if it can only be found on the black market (Hauptzollamt Rosenheim 2012).
- According to EPSs, Jin Ling packs collected in the third quarter of 2012 represented only 0.1% of the entire sample, both domestic and non-domestic. However, the last available quarter data is extraordinary low considering the whole available historical series. Indeed, in recent years, the Jin Ling share reached a peak in the second quarter of 2011 with a total share of 1.6% (Philip Morris GMBH 2012).

•• **Counterfeiting is not a negligible problem in Germany, especially for the L&M brand.**

- In 2011, German customs seized counterfeit cigarettes for a value of €56,217.99. Some 87.24% of the intercepted goods came from China. The problem of counterfeit cigarettes seems to be minor in Germany. Indeed, intercepted counterfeit cigarettes represent 0.18% of the total value of goods intercepted by German Customs (Bundeszollverwaltung 2012).
- In the third quarter of 2012, 1.9% of Philip Morris packs collected during the EPS were counterfeited.<sup>10</sup> This was a decrease from the first quarter of 2010, when the proportion was 3.2%. Counterfeit L&M among non-domestic packs amounted to 21.2% in the third quarter of 2012, while the proportion for Marlboro was 7.1%. The counterfeit risk varies significantly across brands. In fact, nearly a quarter of non-domestic L&M collected during the third quarter of 2012 were counterfeit. Considering all L&M packs in the sample, 4.1% of them were counterfeited (Figure 23) (Philip Morris GMBH 2012).

**Price and origin of illegal tobacco products**

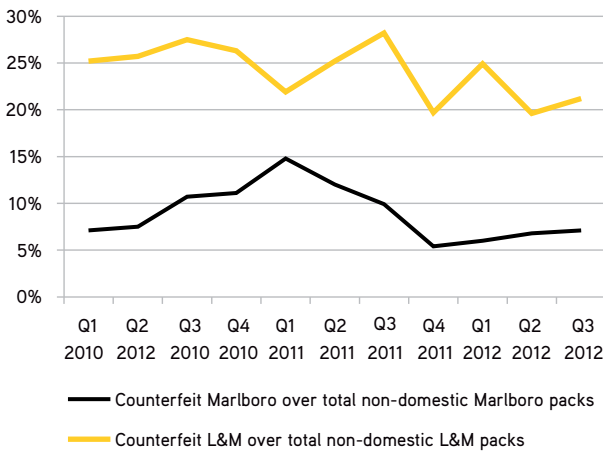
•• **The illegal market offers cheap tobacco products, making it particularly attractive for consumers.**

- According to a survey on street selling in Berlin commissioned by Philip Morris, smuggled and counterfeit cigarettes can be purchased at more than half the legal price. Among the most common brands are Marlboro and L&M, which are generally sold at €22 per carton. These articles may bear a tax stamp of an Eastern European country or they constitute a so-called duty free product (ECIS Investigations 2011).
- Some cash and carry markets in Berlin offer tobacco products of unknown origin at prices below the official ones. An investigation found that some of them offered Marlboro Big (8 x 24) at a price of €35.69 and Marlboro Red (10 x 19) at a price of €36.60. After adding sales tax (19%), the final price was €43.55 for a carton of Marlboro Red, while the official sale price was €49.00 in 2011 (ECIS Investigations 2011).

64

Figure 23. Counterfeit Marlboro and L&M over total non-domestic packs (2010–2012)

Source: Transcrime elaboration on Philip Morris GMBH 2012 data



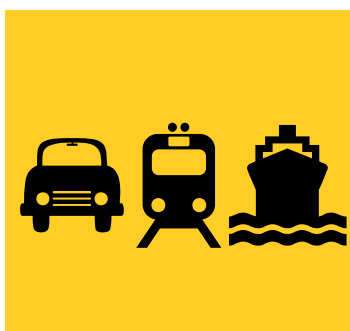
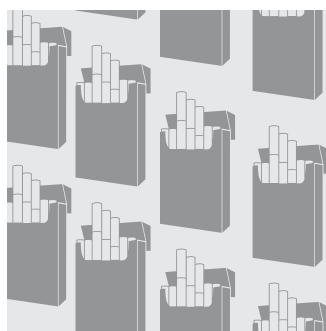
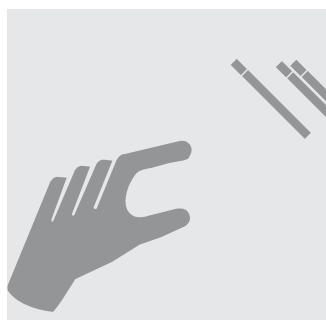
- Illicit whites are generally available at half, or more than half, the price of legal products, ranging from €2 to €2.20 per pack. Ten Jin Ling packs sell for €22 (Evert 2011) or even for less than €20 (Hauptzollamt Rosenheim 2012).

•• **Brands.**

- According to German Customs press releases, the most frequently seized brands are Jin Ling, Marlboro and L&M. Several 2012 investigations seized these brands (Zollfahndungsamt Hanover 2012a; Hauptzollamt Frankfurt (Oder) 2012b; Hauptzollamt Rosenheim 2012; Zollfahndungsamt Essen 2012; Hauptzollamt Landshut 2012c; Hauptzollamt Berlin 2012).

10. Transcrime had access to PMI and DZV EPSs. The former distinguishes between original and counterfeit products only for certain brands, specifically Marlboro and L&M.

- According to the EPS, in the third quarter of 2012, non-domestic products (including genuine and smuggled cigarettes) accounted for 20.9% of the total sample (the figure for all quarters of 2011 was 22.1%). Breakdown by brands highlights that non-domestic L&M sales represent 19.2% of total L&M sales (decreasing from 30.1% in the first quarter of 2010). The proportion of non-domestic Marlboro packs in total Marlboro packs collected was 13.5% (stable from 13% in the first quarter of 2010). The majority of packs collected were genuine non-domestic, while only 0.7% of all Marlboro packs collected were counterfeited (Philip Morris GMBH 2012).
- **The main sources of illicit cigarettes are Eastern European countries, notably Poland and the Czech Republic.**
- According to KPMG, the share of Polish counterfeit or contraband cigarettes has rapidly increased in recent years. In 2012, 53% of illicit non-domestic packs came from Poland, followed by the Czech Republic with a share of 27% (KPMG 2013).
- Most Marlboro non-domestic packs come from Poland (32.4%) and the Czech Republic (11.4%). L&M non-domestic packs are sourced from Poland (28.4%), the Czech Republic (17.5%), Ukraine (12%) and Russia (5.3%) (Philip Morris GMBH 2012).
- According to German Customs press releases, also Serbia and other Balkan countries were substantial sources of illicit cigarettes in 2012 (Hauptzollamt Karlsruhe 2012; Hauptzollamt Landshut 2012b; Hauptzollamt Landshut 2012a).



## MODUS OPERANDI AND GEOGRAPHICAL DISTRIBUTION

### The *modus operandi*

- The *modus operandi* of the illicit tobacco trade varies according to the destination (Germany or other countries), the geographical configuration of Germany, and the need to evade inspections through elaborate concealment strategies.
- Except for the studies by Von Lampe, there are no surveys on the behaviour of importers. Most information comes from press releases issued by Bundeszollverwaltung (German Customs), the national agency most involved in the fight against the ITTP. These press releases are usually focused on large-scale operations, while less attention is paid to small cases. For this reason, the information should be interpreted with caution.
- Germany is not only a destination, but also a transit country. Many intercepted illicit products are directed to the UK, where the importers can benefit from a higher price differential. Indeed, half of the cigarettes seized by the German authorities were bound for the UK (Von Lampe 2003). This trend seems to be confirmed by the analysis of German Customs press releases.
- *Länder* with good transportation links and close to low-price countries are more likely to attract illicit flows and/or to be important junctures along the illicit routes. This is the case not only of East Germany but also of Bavaria.
- The most popular method of smuggling products into Germany involves transportation by car or lorry. Ports and airports are much less commonly used, judging from their frequency of appearance in German Customs press releases.
- The picture that emerges from a review of Customs media reports is a broad spectrum of traditional or sophisticated smuggling schemes. The sophistication of concealment in cars and lorries ranges from contraband cigarettes being hidden in the hand luggage, food, or clothes of travellers to the use of secret compartments in cars, vans, buses and trucks (Von Lampe 2006).



- **Illicit smuggled tobacco products are transported by lorries from their source country into Germany, eluding customs inspections with false declarations or sophisticated concealment methods.**
- The actual smuggling takes place without avoiding customs inspections. Indeed, the transport of illegal products is accompanied by customs forms which are either forged or false declarations (Von Lampe 2005).
- Large-scale smuggling in Germany is characterised by concealed shipments of a considerable number of cigarettes which are hidden inside or behind legal goods, including furniture, food, and timber. The sophistication of concealment may involve the creation of secret compartments (see Box *Uncovered concealments on lorries transporting illegal cigarettes*). Many of the lorries intercepted are headed for the UK (Zollfahndungsamt Hanover 2012c; Zollfahndungsamt Hamburg 2012b).

### UNCOVERED CONCEALMENTS OF CARS OR SMALL VANS TRANSPORTING ILLEGAL CIGARETTES

On the night of 13 December 2012, in Erfurt, customs officials found 20,000 untaxed cigarettes with Belarusian tax bands in a car. The cigarettes were hidden behind the side panels of the doors, in the engine compartment, in the front seat backs, and in the car radio (Hauptzollamt Erfurt 2012c).

During a highway control in Passau, Customs discovered 17,200 untaxed cigarettes presumably from Russia. A non-standard silicone seal was suspicious. The authorities therefore inspected the vehicle more closely and found the illegal cigarettes (Hauptzollamt Landshut 2012c).

German officials stopped a small Lithuanian van for a check near Frankfurt (Oder). They found a complete engine block and a motorcycle with a sidecar on the back of the van. The driver had removed the cylinder and the piston to create as much space as possible to conceal 17,000 contraband cigarettes (Hauptzollamt Frankfurt (Oder) 2012c).

- **Smuggled tobacco products are transported hidden in cars or small vans.**

- While these methods have been consistently used in bootlegging or small-scale smuggling, German customs believe that in recent years they have also been adopted by large-scale smugglers (Von Lampe 2006).
- The concealment can take quite sophisticated forms (see Box *Uncovered concealments in cars or small vans transporting illegal cigarettes*).

### UNCOVERED CONCEALMENTS ON LORRIES TRANSPORTING ILLEGAL CIGARETTES

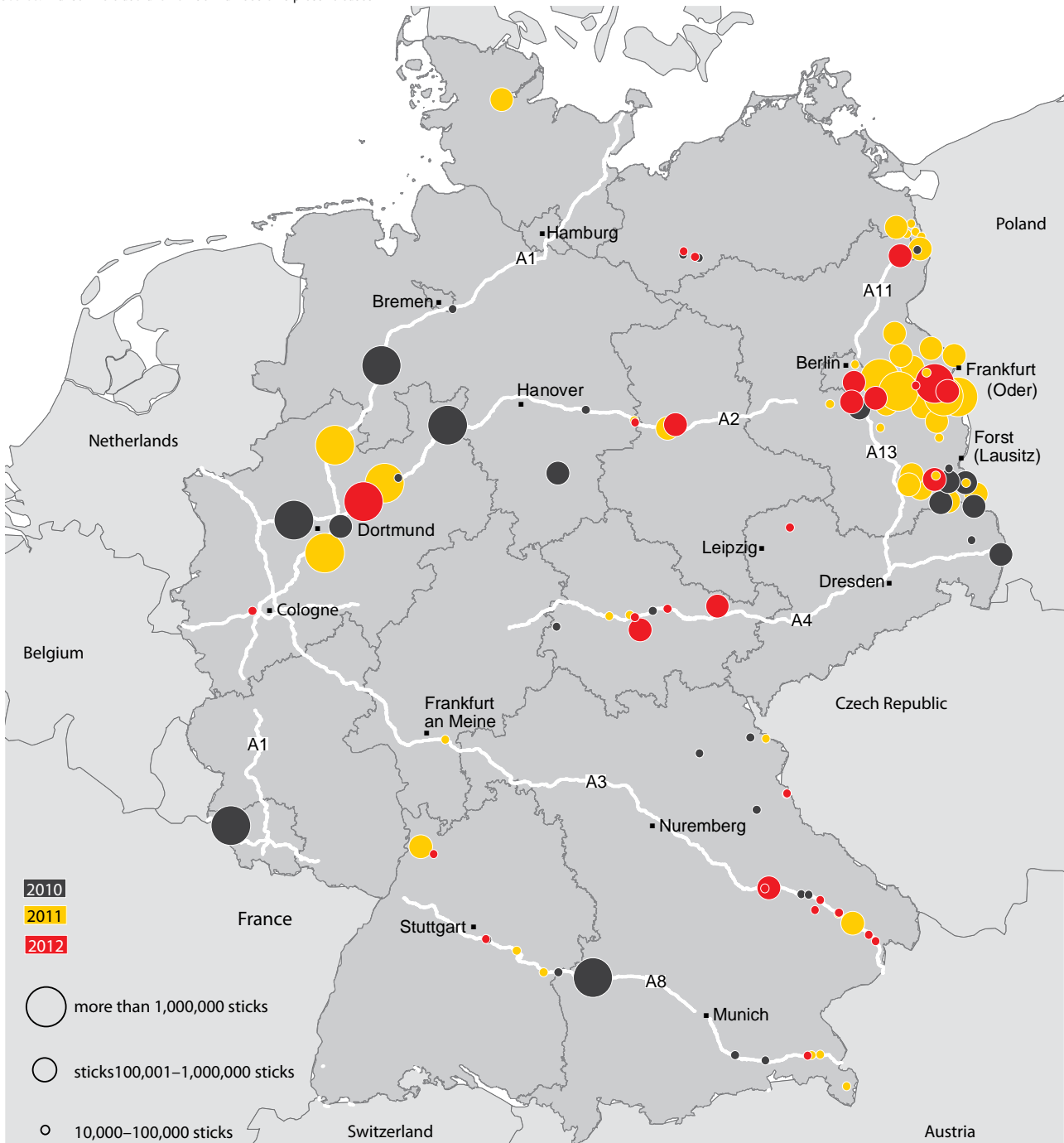
The German authorities arrested three Russians and a German in Oldenburg (Niedersachsen), who were accused of 119 smuggling cases since 2007, involving 172 mn Russian cigarettes for a tax loss amounting to about €31.4 mn. The gang was suspected of having hidden the cigarettes in wooden boards and then selling them to customers in Germany (Zollfahndungsamt Hanover 2012a).

Near Erfurt in Thuringia, the German authorities found 180,000 cigarettes probably imported from Russia. The illegal goods were hidden in plastic bags in the pallet box of a Lithuanian truck (Hauptzollamt Erfurt 2012a).

In Bielefeld (North Rhine-Westphalia), investigators inspecting a truck found one million cigarettes with no stamps. Four pallets of cigarettes were hidden behind other pallets containing legal goods (Hauptzollamt Bielefeld 2012).

Figure 24. German route seizures by amount and year (2010–2012)

Source: Transcrime elaboration on German Customs press releases



68

- **Most interception points are on particular motorways.**
- A very high concentration of smuggled goods has been found in the areas surrounding Berlin, Frankfurt/Oder, and Forst (Lausitz). These cities are situated very close to the Polish border and to *Autobahn* 12 and 2, better known as the “*Warschauer Allee*” (Figure 24).
- On *Autobahn* 3 connecting the Netherlands and Austria through Germany, most smuggling cases have been detected around Cologne, Frankfurt/Main, and in the region adjoining Austria, including the areas around Regensburg, Straubing, Deggendorf, and Passau. Large amounts of illicit tobacco products have been detected in the Austrian border region lying along *Autobahn* 8 leading through Traunstein, Rosenheim and Munich to Stuttgart, with Stuttgart being another concentration point of the illicit wares (Figure 24).

- The Czech Republic and France are connected through Germany by *Autobahn* 6. Increased amounts of illegal products have been discovered along this motorway, especially in the Czech-German border region of Plzen, and in the Heidelberg, Mannheim, Ludwigshafen triangle. Other concentration points are around Hanover and Dortmund, situated along *Autobahn* 2. Finally, high concentrations of smuggled tobacco goods have been reported on *Autobahn* 24 connecting Berlin and Hamburg (Figure 24, p.68).
- **Air transport is another popular method to import illegal tobacco because of the increasing number of air routes easily and cheaply connecting numerous European and non-European cities.**
  - According to the cases reported by *Bundeszollverwaltung* (Federal Customs Administration) press releases, there are two main systems. The first involves one or two German citizens returning from tourist destinations – most frequently Gran Canaria in Spain – with several thousands of contraband cigarettes (Hauptzollamt Dresden 2011; Hauptzollamt Bremen 2012). The second system involves non-German citizens caught during airport controls with several thousands of smuggled cigarettes (Hauptzollamt Düsseldorf 2012a; Hauptzollamt Düsseldorf 2012b; Hauptzollamt Munich – Dienstsitz Sophienstraße – 2012). Some cases regard the illegal importation of several kilograms of water-pipe tobacco from Middle-Eastern countries (Hauptzollamt Düsseldorf 2012d).
- **Sea smuggling is not common in Germany. Nevertheless, the port of Hamburg experienced several cases during 2012.**
  - Ports well linked with other transport infrastructures are likely to be used for the importing of illicit products. This is especially the case of Hamburg, which is the most important German port (see Box *Seizures at the Port of Hamburg*). Container ports are used to ship large quantities of illicit products originating from distant countries like China, Dubai or United Arab Emirates (Zollfahndungsamt Hamburg 2012b; Zollfahndungsamt Hamburg 2012a).

## SEIZURES AT THE PORT OF HAMBURG

In 2011, the Central Customs Office Hamburg–Port confiscated 6,650,152 illegal cigarettes and 6,507,690 kg of other illegal tobacco products. Considering the whole of the North Federal Finance Department, seizures of more than 11 mn illegal cigarettes and nearly 7 mn kg of other tobacco products were reported (Hauptzollamt Hamburg–Hafen 2011a).

In 2010, 171 mn counterfeit illegal cigarettes imported from China were confiscated at the Port of Hamburg. The smuggled goods were probably bound for the entire European market (*Süddeutsche Zeitung* 2010).

A gang of criminals smuggling an amount of 6 mn cigarettes through the Port of Hamburg was uncovered in 2011. The confiscated brands “Rio” and “M1” were hitherto completely unknown in Germany (Zollfahndungsamt Hamburg 2011).

In May 2012, the customs found 18 tons of illegal water-pipe tobacco in what was considered to be the biggest discovery at a German border. The fiscal damage caused would have been equivalent to €1.4 mn (*Hamburger Abendblatt* 2012).

- Germany has a thick net of rivers and channels, which may be used by smugglers. To which extent smugglers have exploited this net has not been investigated and seizures in rivers or channels are scarce. Future research may try to understand if this is a consequence of lack of control or if criminals simply prefer other routes.
- **Street sellers use so-called ‘bunker flats’ to store cigarettes, and they operate in crowded locations like railway stations.**
  - In more than 50 cases of smuggling cigarettes from Eastern Europe, the illicit products were stored in so-called ‘bunker flats’ in Berlin. The aim of the bunker was to supply street sellers (Zollfahndungsamt Berlin-Brandenburg 2012a). Bunker flats may also be mobile: in this case, cigarettes are stored in a car or a small van which is parked near the seller’s operating area (Hauptzollamt Berlin 2012).

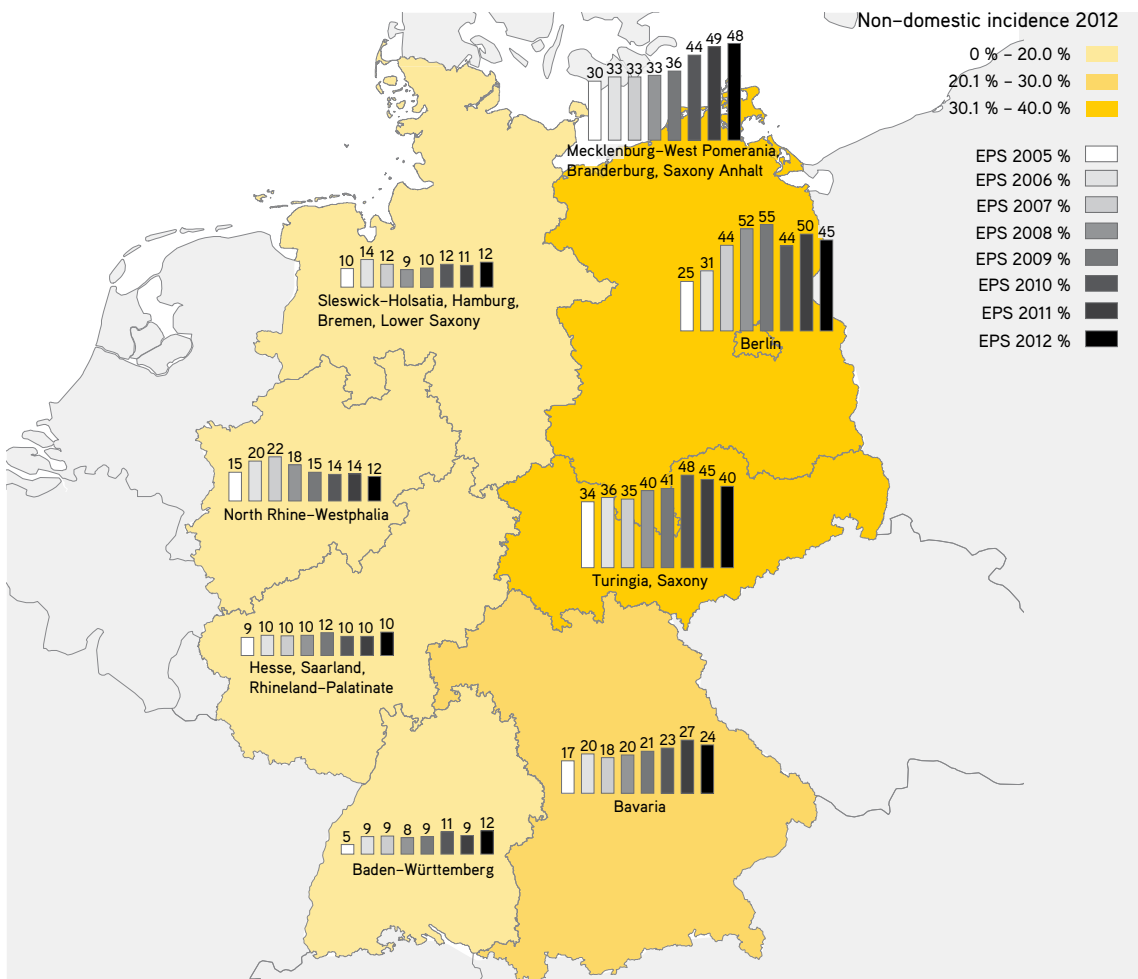
- Street sellers operate in proximity to crowded places in order to meet a larger number of people. Indeed, during a raid at the train station of Schöneweide in Berlin, German customs seized nearly one million cigarettes and arrested five people (Zollfahndungsamt Berlin-Brandenburg 2012b). Other important locations are supermarkets (Evert 2011).
- **Assaults on trucks transporting cigarettes, robberies of large retailers, and diversions of duty-free products are not uncommon.**
- Von Lampe (2003) analysed the most recurrent *modi operandi* of illicit tobacco-market actors. Only one case in his sample involved the diversion to the black market of a container-load of cigarettes officially being transported from the UK to Kaliningrad via Germany. However, investigations by the German Customs officials discovered several similar shipments by the same individuals for which the transit system procedures were not completed.

### The geographical distribution

- **The consumption of illicit tobacco varies among Länder.**
- The phenomenon of widespread street selling is a peculiarity of the territory of the former German Democratic Republic. East Berlin constitutes the largest local black market. In West Germany, the Ruhr region has a similar problem (Von Lampe 2006).
- The EPSs show a percentage of non-domestic cigarettes higher than 40% in the new *Länder*, and approaching 50% in Berlin. Considering the old *Länder*, Bavaria exhibits a proportion of 27.4%, while the percentages for other states were considerably lower in 2011. The Western *Länder* recorded a constant share of non-domestic packs over the years examined, while the share of the Eastern *Länder* increased (Figure 25).

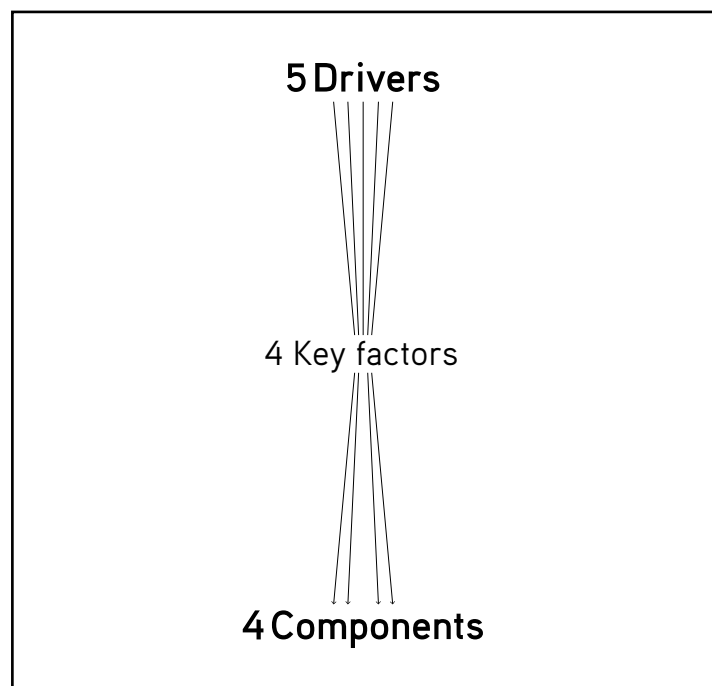
Figure 25. Non-domestic packs by *Länder* (2005–2012)

Source: Transcrime elaboration on EPSs data









## FRAMING THE COMPONENTS IN THE DRIVERS

### INTRODUCTION: THE FOUR KEY FACTORS

This chapter draws on the results of the previous analyses and identifies the key factors of the ITTP. They constitute the **opportunities that can affect ITTP**. As any other market, also the tobacco products market creates illegal opportunities and hosts specific actors and activities. **They derive from the link between drivers and components of the ITTP: drivers impact or may impact on the different components of the ITTP through four key factors.** Therefore, it is necessary to identify the possible interactions between drivers and components to remove any possible opportunity/vulnerability which may ease the action of criminal players and shape the illicit trade in tobacco products.

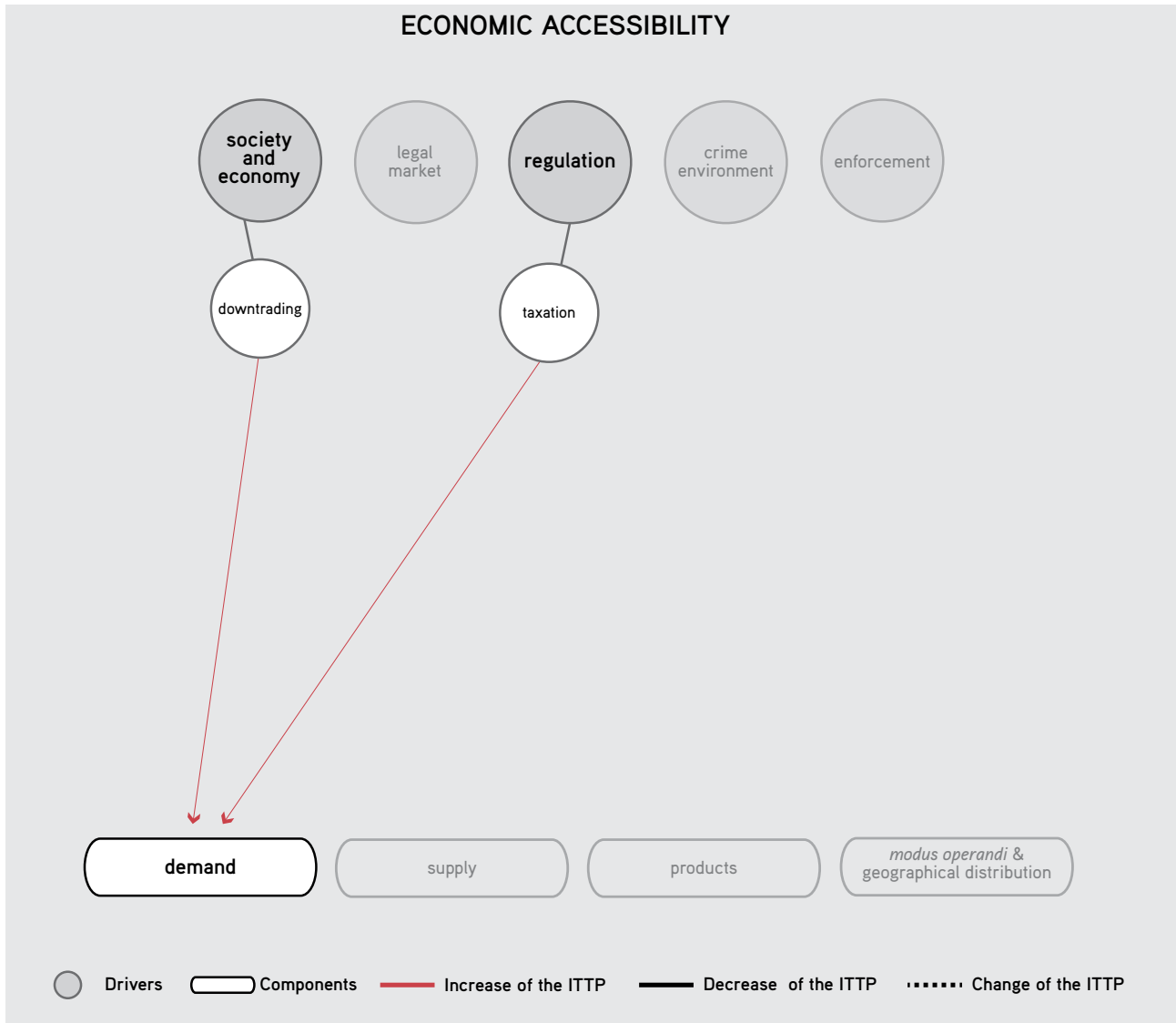
**The four key factors of the ITTP** are economic accessibility, availability, profitability and risk. Hereafter, four subsections analyse how the various elements of the drivers influence the demand, supply, products, *modus operandi* and geographical distribution of the ITTP.

The four key factors:

- **Economic accessibility:** the price of illicit tobacco, and particularly its relative price compared to the price of legal products.
- **Availability:** easiness for both smugglers and consumers to obtain illicit tobacco products.
- **Profitability:** the ability of the ITTP to generate profits that exceed its operational costs.
- **Risk:** the threat of detection/accusation/conviction and the sanctions imposable to the actors involved in the ITTP.

Figure 28. Framing the components in the drivers through the economic accessibility

Source: Transcrime elaboration



74

## ECONOMIC ACCESSIBILITY

(Figure 28).

- **Preferences and downtrading trends may increase the demand for illicit tobacco through its economic accessibility.**
- Several factors together may impact on the demand of ITTP. Moreover, German consumers have not significantly cut their expenditure in tobacco and they have exhibited a downtrading trend towards less expensive products (see Legal Market, p.23). In this scenario, demand for illicit products may increase due to their economic accessibility.

- **Tax hikes and price increases make illicit cigarettes more economically accessible to consumers.** Notably, the government has announced a five-year plan of tax increases in tobacco products. This may increase the demand for ITTP products through their relative price compared to legal products (Euromonitor International 2012).

## AVAILABILITY

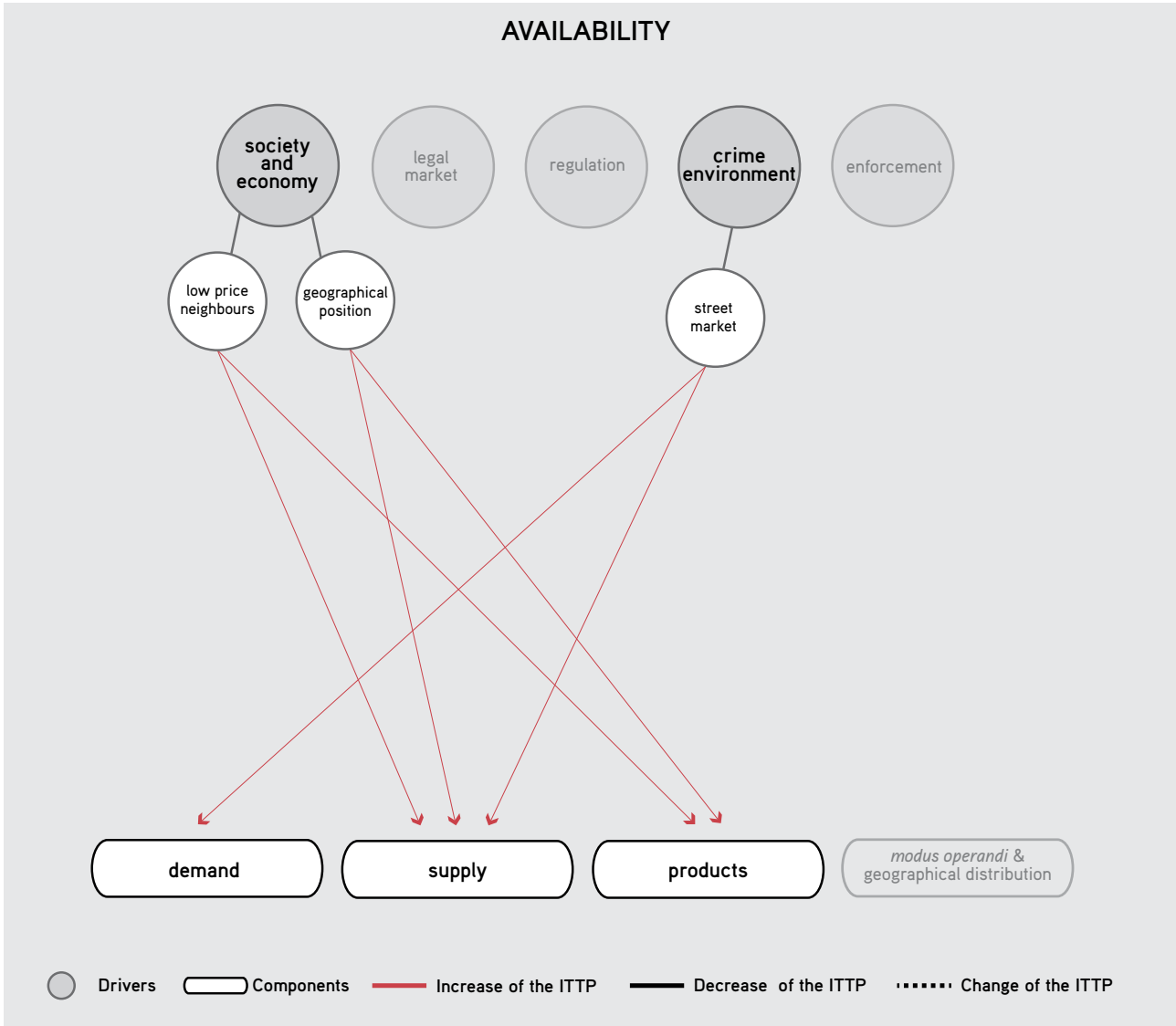
(Figure 29, p.75).

- **The German proximity to source countries of illicit tobacco products affects the range of products through their availability.**



Figure 29. Framing the components in the drivers through the availability

Source: Transcrime elaboration

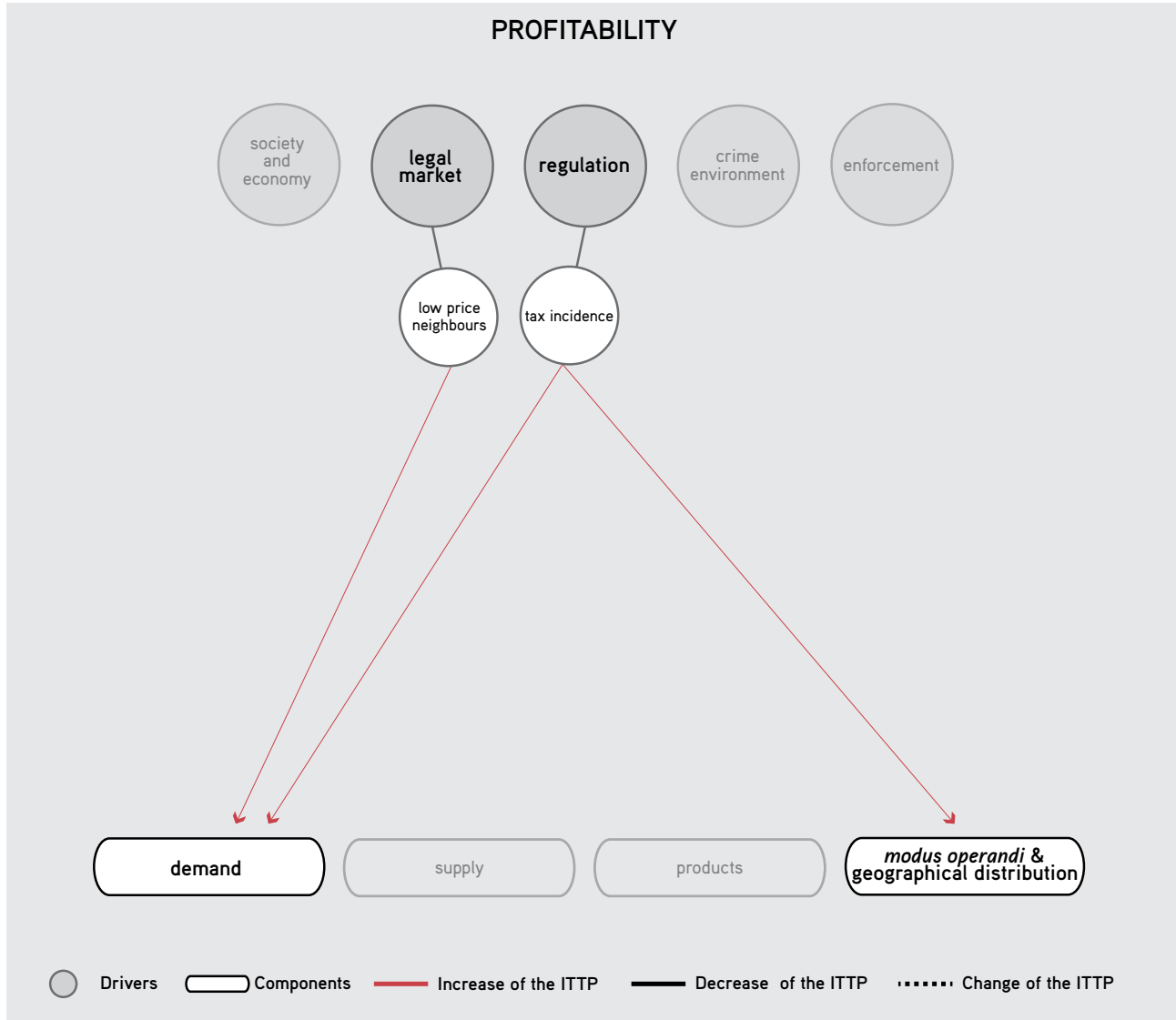


- Proximity to Poland and Czech Republic, where legal retail prices are lower, shapes the extent and the products of the ITTP (see *Modus Operandi* and *Geographical Distribution*, p.66). Indeed, Germany has more than 1,300 km of common borders with Poland and the Czech Republic and EPS show a higher prevalence of non-domestic packs along these borders. Poland and the Czech Republic joined the Schengen area in December 2007. Their entry seems to have increased the proportion of cigarettes smuggled from those countries (Locke 2010). Indeed, in 2006, 25% of all counterfeit and contraband cigarettes came from Poland and the Czech Republic. In 2012, the proportion more than doubled, reaching 80% (see *The products*, p.60).

- **Being at the centre of important East–West routes may increase the supply of illicit products due to their availability.**
- Germany is both a destination and a transit country. Indeed, its position between East and West Europe render him a natural passing point towards Western markets. Indeed, according to Customs press releases, a considerable number of smuggled cigarettes seized is intended for markets other than Germany.
- **The availability of illicit tobacco in street markets increases the demand for illicit tobacco through the relative easiness of finding them.**

Figure 30. Framing the components in the drivers through the profitability

Source: Transcrime elaboration



76

- Contexts of the informal economy, like street markets, facilitate the selling of illicit tobacco products (Joossens et al. 2000; Antonopoulos 2009). In Germany, large informal street markets are located especially in Berlin. This may favour the distribution of ITTP products. Indeed, people may easily find illicit cigarettes (Von Lampe 2005).

**PROFITABILITY**

(Figure 30).

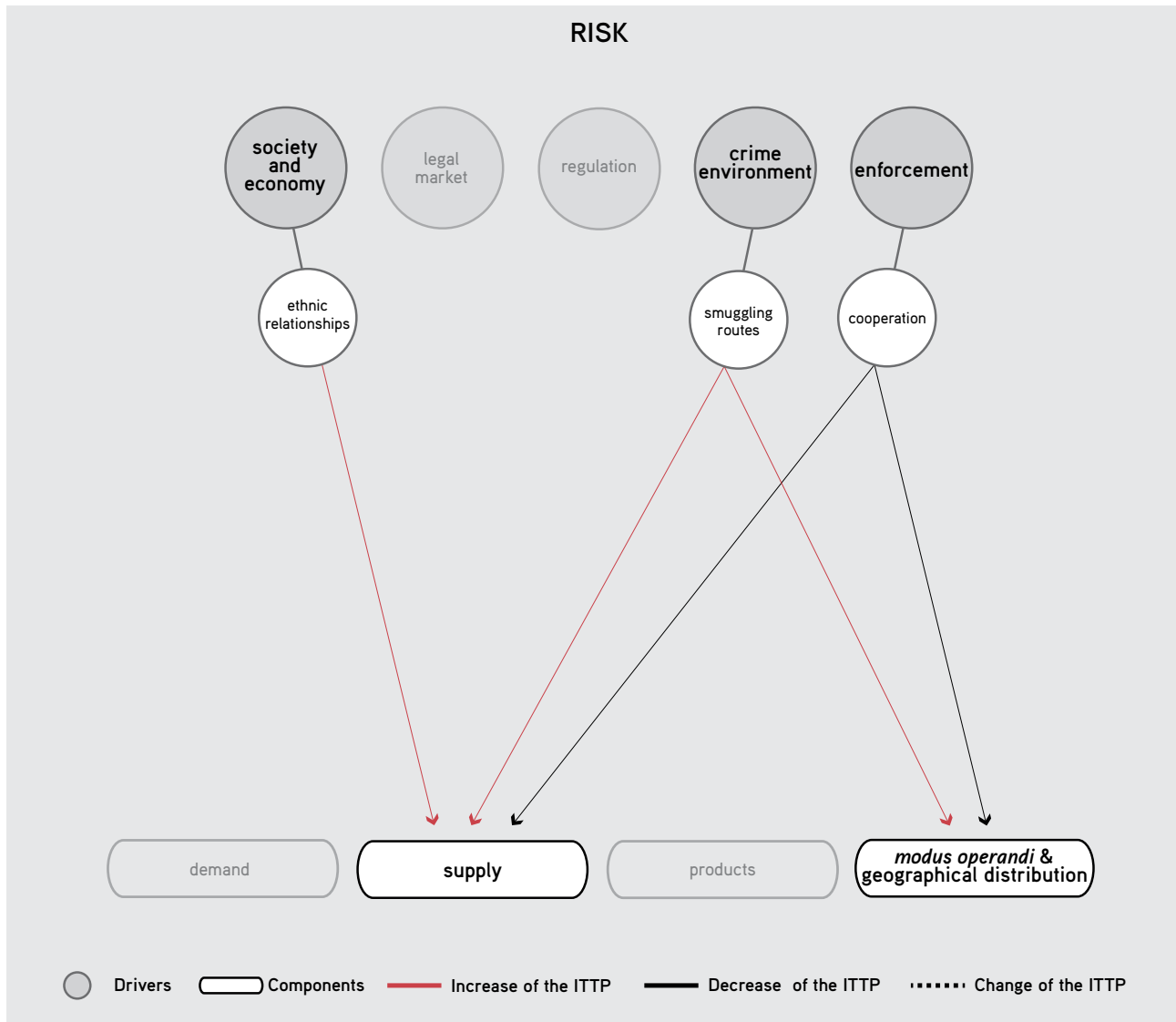
- **Taxes account for a large share of the final retail price of tobacco, making it a highly profitable product to smuggle (Merriman, Yurekli, and Chaloupka 2000).**

- In Germany, the amount of total taxes per 1,000 sticks is high. The tax level expressed in monetary terms (total taxes per 1,000 cigarettes) may provide incentives for suppliers of illicit tobacco at international level. This is most relevant to large-scale smuggling (counterfeits and illicit whites). The higher the taxes, the greater the potential profit for smugglers. (see The supply, p.56).

- The lower retail prices of tobacco products in eastern neighbouring countries (Poland and Czech republic) stimulates bootlegging and smuggling through its profitability. However, as long as these countries, notably Poland, keep on increasing the prices of tobacco products, the situation may reverse since profitability will fall.

Figure 31. Framing the components in the drivers through the risk

Source: Transcrime elaboration



77

## RISK

(Figure 31).

- **Law enforcement cooperation (or lack of) in the fight against tobacco smuggling may significantly affect the extent and the *modus operandi* of the ITTP by increasing or decreasing the risk for the actors involved.**
  - German law enforcement agencies cooperate with neighbouring countries, thus increasing the effectiveness of anti-ITTP actions. Notably, Germany has recently increased its transnational collaboration with Polish and Czech authorities to prevent the entry and transit of illegal products. This may have a positive impact on law enforcement capacity (see Box *Combating illegal trade—Transnational Cooperations*, p.49) (Hauptzollamt Dresden 2013; Zollfahndungsamt Dresden 2013; Koschyk 2013).
- **Established smuggling routes may boost the supply of the ITTP by diminishing the risks for the players.**
  - The German motorway system may favour the transit and arrival of illegal ITTP products, taking into account the presence of consolidated smuggling routes in the country. Moreover, the researchers stressed the proximity of several collection points to *Autobahn* A2 and A12. These are known under the name “Warschauer Allee” (Warsaw Avenue) as among the most important smuggling routes to and through Germany (DKFZ 2010; Teevs 2010).
- **Ethnic and linguistic relationship may increase the supply of ITTP decreasing the risk of being detected/accused/convicted for the actors involved in.**

- The widespread ethnic and kinship trans–border networks facilitate tobacco smuggling activities. The distribution of illicit tobacco frequently relies on personal contacts and networks because these channels are less risky. Further, ethnicity ties ITTP actors together, reducing the risk of this activity (Von Lampe 2003). Moreover, international connections of smuggle groups make their control difficult.
- The retail distribution of contraband cigarettes in Germany is commonly associated with street selling by Vietnamese vendors in the Eastern parts of the country (Von Lampe 2006).

# CONCLUSIONS

**This report has provided the German country profile of the Factbook on the Illicit Trade in Tobacco Products project.** The ITTP is a complex phenomenon comprising a variety of activities, products and actors. The analysis of the illicit trade must take account of a number of factors which may significantly influence it.

**This report has analysed the multiple facets of the ITTP in Germany.** The information gathered originates from academic literature, grey literature, open sources, questionnaires and interviews with experts and stakeholders.

Considering the limited number of previous studies and the lack of data, the results of this study are provisional. They offer a first analysis of the ITTP in Germany and show that more research is needed in this field.

## THE FIVE DRIVERS

Chapter 1 (The five drivers, p.16) of the report analysed in detail the five drivers of the ITTP: society and economy, legal market, regulation, crime environment and enforcement. The five drivers are areas whose structures may affect the ITTP positively or negatively.

- **Society and economy:** Germany is a federal republic composed of 16 states (*Länder*), and it is one of the biggest world economies. The main effect of the 2009 recession was the rise of debt, whilst unemployment fell even in the years of the financial crisis. GDP growth soon resumed in 2010, and household expenditure on non-durable goods, including tobacco, has been constant in recent years. However, regional differences among Eastern and Western *Länder* are still marked.
- **Legal market:** the tobacco market is an important sector of the German economy. Germany is the main cigarettes exporter in the world and exports have grown in the past decade. The tobacco industry employed 10,057 people in 2011. However, national sales have fallen and consumers have shifted to cheaper products.
- **Regulation:** regulation of the tobacco market is of medium intensity in Germany. Considering all world countries, tax incidence is high. However, compared with high-income OECD members it is medium. Tax level in monetary terms is high. Supply chain control is medium. The regulation of tobacco consumption and sales and of marketing and promotion is medium as well. Furthermore, many European requirements have been applied with delays or at minimum levels. The country has invested a low per capita amount of resources in tobacco control policies.

- **Crime environment:** crime rates have slightly increased, while fear of crime is diminishing. Consumption of cannabis, cocaine and heroin is constant and average compared with levels in developed countries, whilst other drugs, such as amphetamines, are increasingly popular. Organised crime, corruption and informal economy are relatively insignificant.
- **Enforcement:** law enforcement is medium–low. Cooperation between public bodies and tobacco manufacturers is usually set at European level, as well as the legal obligation on producers not to facilitate smuggling. Nevertheless, the main body engaged in the fight against ITTP seems to be aware of the problem of illicit tobacco and has undertaken several joint actions with authorities in neighbouring countries.

## THE FOUR COMPONENTS OF THE ITTP

Chapter 2 (The Four Components, p.52) discussed in detail the characteristics of the illicit trade in Germany by framing the illicit tobacco market within its four components: demand, supply, products and *modus operandi*.

- **The demand:** the main causes of the demand for illicit tobacco are low prices and availability. In Germany, illicit cigarettes cost half the legal price. Furthermore, proximity to low price markets makes illicit products easily available.
- **The supply:** the supply of illicit tobacco is mainly influenced by the opportunity to make very high profits with relatively low risks. There is a variety of actors involved in the ITTP.
- **The products:** there are no official estimates of the illicit tobacco market, which makes it difficult to assess the extent of the ITTP. Some unofficial estimates are available, however. The main illicit products are contraband cigarettes given their availability. The market share of illicit whites is smaller but nevertheless significant.

- **Modus operandi and geographical distribution:** inland roads are the main smuggling routes, and some ports play an important role, also as European hub. Germany is often a transit countries from Eastern to Western Europe. Proximity to Polish and Czech borders is correlated with a larger share of non–domestic products.

## FRAMING THE COMPONENTS IN THE DRIVERS

Chapter 3 (Framing the Components in the Drivers, p.72) addressed the interactions between the drivers and the components of the ITTP. The analysis identified four key factors with a fundamental role in shaping the illicit market (economic accessibility, availability, profitability, risk).

**Economic accessibility:** illicit cigarettes and cheap legal ones become more appealing due to the downtrading trend and the increasing taxes.

**Availability:** proximity to low price countries (Poland and the Czech Republic), the geographical position between East and West Europe, the presence of consolidated smuggling routes boost the availability of illicit products both for smugglers and consumers. Moreover, from the point of view of consumers, in some parts of the country, Germans easily find illicit tobacco products from street sellers.

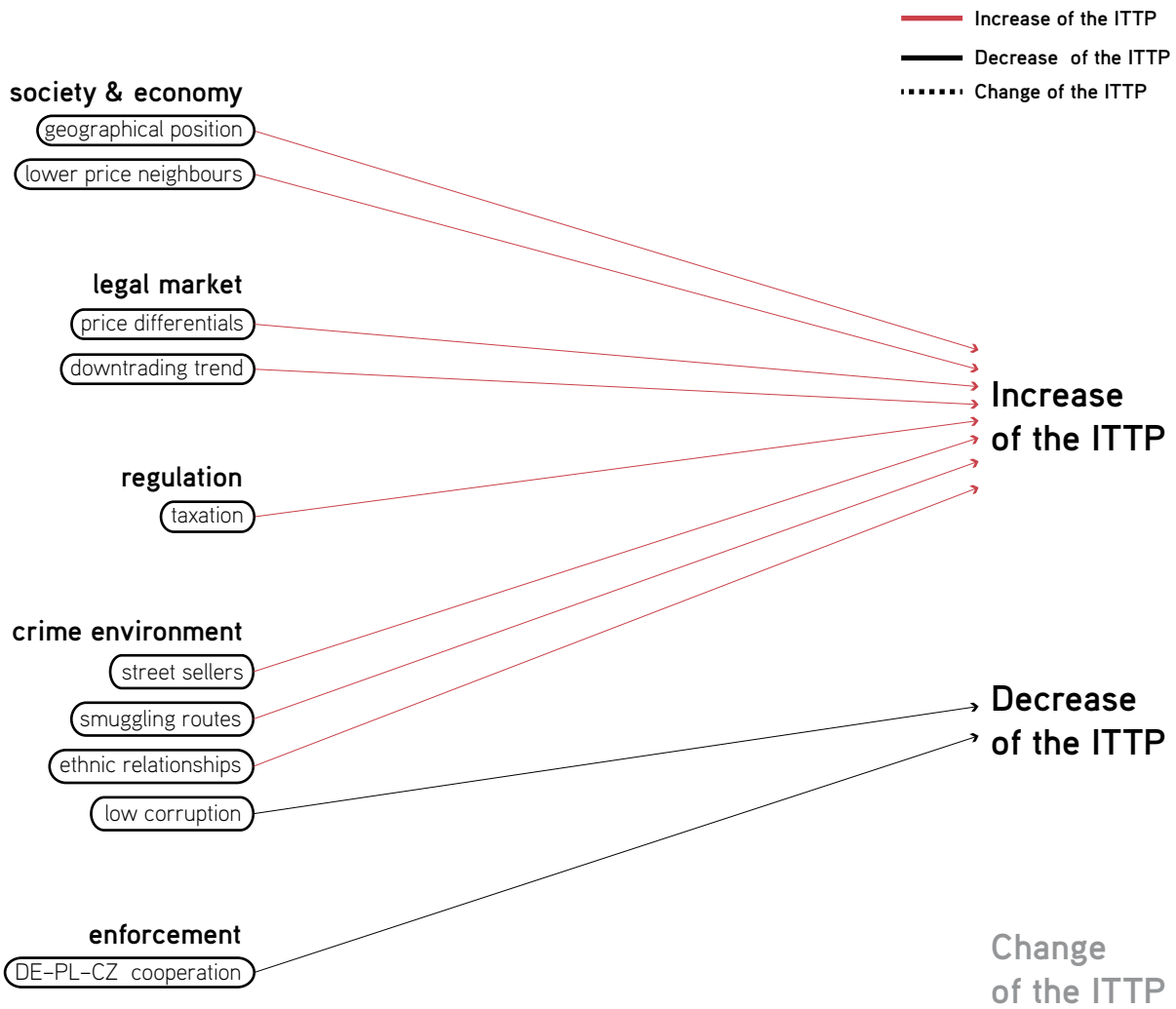
**Profitability:** in Germany, the levels of tax incidence and of taxes per 1,000 sticks are high. These levels guarantee the profitability of the ITTP. At the same way, the price differential between cigarettes in Germany and Eastern neighbours pushes the ITTP.

**Risk:** cooperation agreements among German law enforcement agencies and Polish and Czech ones increase the risk of detection for ITTP players, while lack of controls in important junctures may reduce the risk. Other factors make ITTP more attractive by diminishing the risk associated, these factors are ethnic relationship in the supply chain and the presence of important inland routes exploited by smugglers. However, low level of corruption affect the ITTP in the opposite way.

As pointed out in the present analysis, the ITTP is a complex phenomenon caused by several determinants. From a close analysis on the ITTP in Germany, here follow the main findings of the Factbook (Figure 32, p.81).

Figure 32. Main interactions between the drivers and the components

Source: Transcrime elaboration on EPSs data



**Socio-economic** conditions in Germany shape the dimension of the ITTP. Indeed, the economic disparities between West and East Germany shapes the patterns of consumption, according to the EPSs. Moreover, the geographical proximity to lower price markets such as Poland and Czech Republic impacts on the availability of illicit cigarettes within the country. In particular, the proximity to Poland favours the availability of genuine smuggled cigarettes within German borders. Finally, the central position between Western and Eastern Europe makes Germany an important transit point for ITTP products. **Notably, these aspects impact mainly on demand and supply through economic accessibility and availability.**

The German tobacco **Legal market**, whose prices are highest than in Eastern neighbours, is a crucial factor in determining the extent of the ITTP and the demand for cheaper tobacco products among Germans. Indeed, Germans are experiencing a downtrading trend. Lower price of legal cigarettes in neighbouring Eastern countries also favour the smuggling and bootlegging of genuine products in Germany. **Notably, these characteristics impact mainly on demand through economic accessibility and on supply through profitability.**

**Regulatory** interventions, such as plans to raise taxation on cigarettes, affect the relative price of illegal products when compared to legal ones. Moreover, high taxation in monetary amount per 1,000 sticks makes Germany a profitable market for international smugglers. **Notably, these aspects impact mainly on demand and supply, respectively through economic accessibility and profitability.**

German's "**Crime Environment**" features, such as a low corruption, consolidated smuggling routes and the presence of street sellers (in determined zones of the country) shape the extent of the ITTP. Moreover, strong networks are present among criminals engaged in the ITTP. **Notably, these features affect mainly supply and *modus operandi* increasing or reducing the risk of engaging in the ITTP.**

Moreover, the "**Law enforcement**" has a significant impact on the dimension and geographical distribution of the ITTP in Germany. Effective agreements between the German Customs and neighbouring countries may reduce illicit tobacco products flows into Germany from these entry points and increase the risk of detection for criminals. On the other hand, lack of controls of important junctures may decrease the risk of smuggling activities. **Notably, these characteristics impact mainly on *modus operandi* by increasing or reducing the risk of taking part in the ITTP.**

## RECOMMENDATIONS FOR FURTHER RESEARCH

**The results of this study highlight that it is necessary to conduct further research on the ITTP.**

- There are no surveys or studies on the demand for illicit tobacco products. **Identifying the socio-economic characteristics of consumers and the reasons for illicit purchasing is fundamental for building effective strategies**, preventing illicit behaviours, and reducing the demand for illicit tobacco. This is particularly of interest in order to reduce the East/West difference in the consumption of illicit tobacco products.
- The **sanctions for small-scale smuggling are quite mild in Germany**. Further research should assess whether this contributes to the low risks perceived by those engaged in the ITTP and whether more severe measures would have a deterrent effect.

- **The lack of official estimates** (beyond the KPMG Star report, recognised by EC and OLAF, which should be improved with the involvement of national authorities) **makes it difficult to assess the prevalence of the illicit tobacco market in Germany**. The availability of reliable, yearly official estimates would facilitate future research in any domain concerning the illicit trade in tobacco products. Especially, correctly distinguishing between non-domestic legal and illegal cigarettes is an important challenge for research.

In conclusion, the results of the study have shown that the ITTP is a complex and multifaceted phenomenon. Individual factors, such as socio-demographic status and income, but also structural conditions (for example, Germany's proximity to countries with lower-priced tobacco products) should be considered when developing anti-ITTP strategies. Moreover, low penalties for small-scale smuggling, discontent with rising taxes, and a generally favourable attitude towards illicit tobacco products among German population may be other important factors. **Given the complexity and the multitude of factors involved, the ITTP cannot be reduced to a problem relating exclusively to law enforcement and criminal justice policy. It is necessary to adopt additional, non-criminal measures to prevent illicit consumption and to reduce the corrupt practices that facilitate smugglers' activities.** Finally, the government should tackle the ITTP, especially in the border regions, with comprehensive strategies including criminal, non-criminal/administrative, and other indirect measures, for example through a wide-ranging situational crime prevention approach.



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