

Thursday 3 October 2013

RE: AmCham EU support for the Proposal for a Directive on the Fight against Fraud to the European Union's Financial Interest by Means of Criminal Law

Dear Mr López Aguilar,

I am writing to express AmCham EU's full support for the *Proposal for a Directive on the fight against fraud to the European Union's financial interests by means of criminal law*, [2012/0193 \(COD\)](#), commonly known as 'PIF'.

The European Commission has confirmed that the scope of the draft directive would include medium-to-large-scale counterfeit and contraband activities when customs duties are evaded. Approximately 75% of customs duties collected by Member States go straight to the EU's budget. In the majority of cases, criminals do not pay customs duties on counterfeit and excisable goods trafficked illegally into the EU.

Organized crime is primarily responsible for the increase in counterfeit trade and smuggled goods which result in huge profits for these criminals. . Such activities have a very negative impact on business, , European consumers and society in general. In 2011 alone, EU customs detained over 100 million fake goods with an estimated value of nearly €1.3 billion. At a recent debate in the European Parliament, the European Anti-Fraud Office, OLAF, underlined the importance of 'PIF' by stating: 'We are experiencing increased number of cases of smuggling of highly taxed products, which are increasingly detrimental to the EU budget and are causing significant losses to the national tax payers'. As a further indication of the challenge faced, EU Justice and Home Affairs Ministers decided on 6th June to include both excise fraud and counterfeit goods trafficking in the EU's top priorities for fighting serious crime for 2014-2017.

The 'PIF' legislative proposal would introduce tough sanctions and deterrents right across the EU, providing a powerful, new tool against counterfeiting and smuggling. It outlines common definitions of crimes against the EU's financial interests, and identifies minimum and maximum prison sentences for such crimes and outlines rules for freezing and confiscating criminal assets. It also introduces statutory time limits establishing a harmonised period for investigation, trials and enforcement: a trial and judicial decision must take place at least five years from the time the offence was committed and enforcement penalties must take place at least ten years from the time of conviction.

Today, Member States apply widely differing sanctions for the manufacturing and trafficking of counterfeit products and for the smuggling of excisable goods. In certain cases, only small administrative fines are imposed which are dwarfed by the profits made by the criminals. Also, conviction rates in cases involving offences against the EU budget range from 14% to 80% among Member States.

In the *Serious Organised Crime Threat Assessment for 2013*, Europol's Director, Rob Wainwright, recognised that criminals make the most of these differences stating, '... the effects of globalisation in society and business have facilitated the emergence of significant new variations in criminal activity, in which criminal networks exploit legislative loopholes, the internet, and conditions associated with the economic crisis to generate illicit profits at low risk'.

As you will be aware, EU Justice and Home Affairs Ministers reached a political agreement on 'PIF' on 6th of June 2013 ([general approach 10232/13](#)). The Council position deletes entirely the proposal for minimum prison sentences and proposes that a maximum penalty of at least four years imprisonment would apply only to 'serious offences' for which no common definition exists. The provisions on statutory limitations would also apply only to 'serious offences' and Member States would be permitted to establish a period of less than five years in certain cases. Furthermore, the Council agreement would exclude VAT from the scope of the Directive despite European Court of Justice rulings that VAT does form part of the financial interests of the EU.

We share the disappointment expressed by Commissioner Šemeta on the Council's position during the Parliamentary debate held recently on 18th June 2013.

AmCham EU believes that the EU should not miss this excellent opportunity to strike a blow against serious organised crime, counterfeit and smuggling. We urge the European Parliament to support fully the Commission's proposal, especially the provisions on minimum and maximum sentences, the freezing and confiscation of criminal assets, inclusion of VAT and on statutory limitations.

Thank you very much for your attention to this matter and if you have any questions we remain at your disposal.

Yours sincerely,

Walter van der Meiren
Chair of the Customs and Trade Facilitation Committee