

Tobacco Road

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Legal and fiscal asymmetries in Europe, their impact on the illicit tobacco markets and the counteracting action

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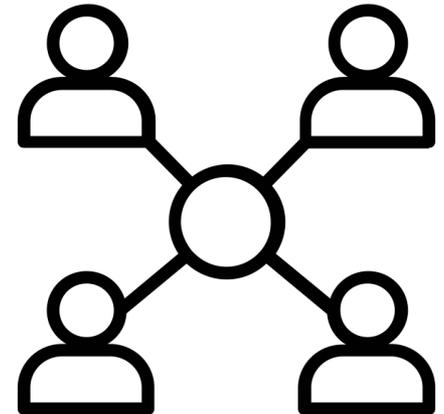
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Legal asymmetries and international cooperation: the challenge

- Changes in the legislation of one country can create **legal asymmetries among countries**
- These legal asymmetries can point out **new criminal opportunities**
- The criminals will **displace** their crimes where these asymmetries are present and where these asymmetries are in their favor



- The best solution to prevent these legal asymmetries is to reduce them
- The cooperation has to be both at legal and enforcement level:
 - ✓ in the **designing of the legislation** to combat some illicit activities
 - ✓ in the **enforcement** against this illicit phenomenon



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Criminogenic asymmetries and crime proofing

- Crime Proofing **considers legislation for its criminogenic effects.**
- **Crime proofing of legislation aims:**
 - ✓ **at pointing out existing** (*ex post* crime proofing) **or future** (*ex ante* crime proofing) **opportunities for crime due to legislation**
 - ✓ and at highlighting related interventions in order to proof it against crime

Legal asymmetries in the EU: the TPD

- **Europe: Tobacco Products Directive (2014)** → entry into force in MSs before May 2016
- Main points:
 - ✓ Larger and mandatory **pictorial health warnings**
 - ✓ **Ban** on cigarettes and RYO with characterising **flavours**
 - ✓ **No more promotional or misleading packages** (e.g. 10-cig. packs)
 - ✓ More regulation on e-cigarettes
 - ✓ Measures to combat illicit trade: **traceability and security features** (e.g. holograms)

Crime proofing on the TPD

- Transcrime conducted a crime proofing on the TPD in 2013, analysing how the different **changes in the legislation** could **impact on the risk of crime**

Source: Transcrime, *Crime proofing of the of the New Tobacco Products Directive, 2013*

	Illicit Trade in Tobacco Products (ITTP) Crime Risks Probability		
	High	Low	Impossible to determine
Art. 5 Mandatory Reporting in harmonised format		■	
Art. 6 Ban on characterizing flavours, including menthol	■ Menthol	■ Candy & Fruity flavours	
Art. 9 Mandatory enlarged picture warnings		■ increasing of retail prices	■ standardization and brand loyalty
Art. 11 Imposing stricter labeling regulation for smokeless tobacco products		■	
Art. 12 Ban of misleading colours, symbols and slim FMC	■ Slim		■ Others
Art. 14 EU tracking and tracing system and security features			■
Art. 16 Cross-Border distance sale		■	
Art. 17 Novel tobacco products		■	
Art. 18 Nicotine Containing Products			■
Art. 19 Herbal Products		■	

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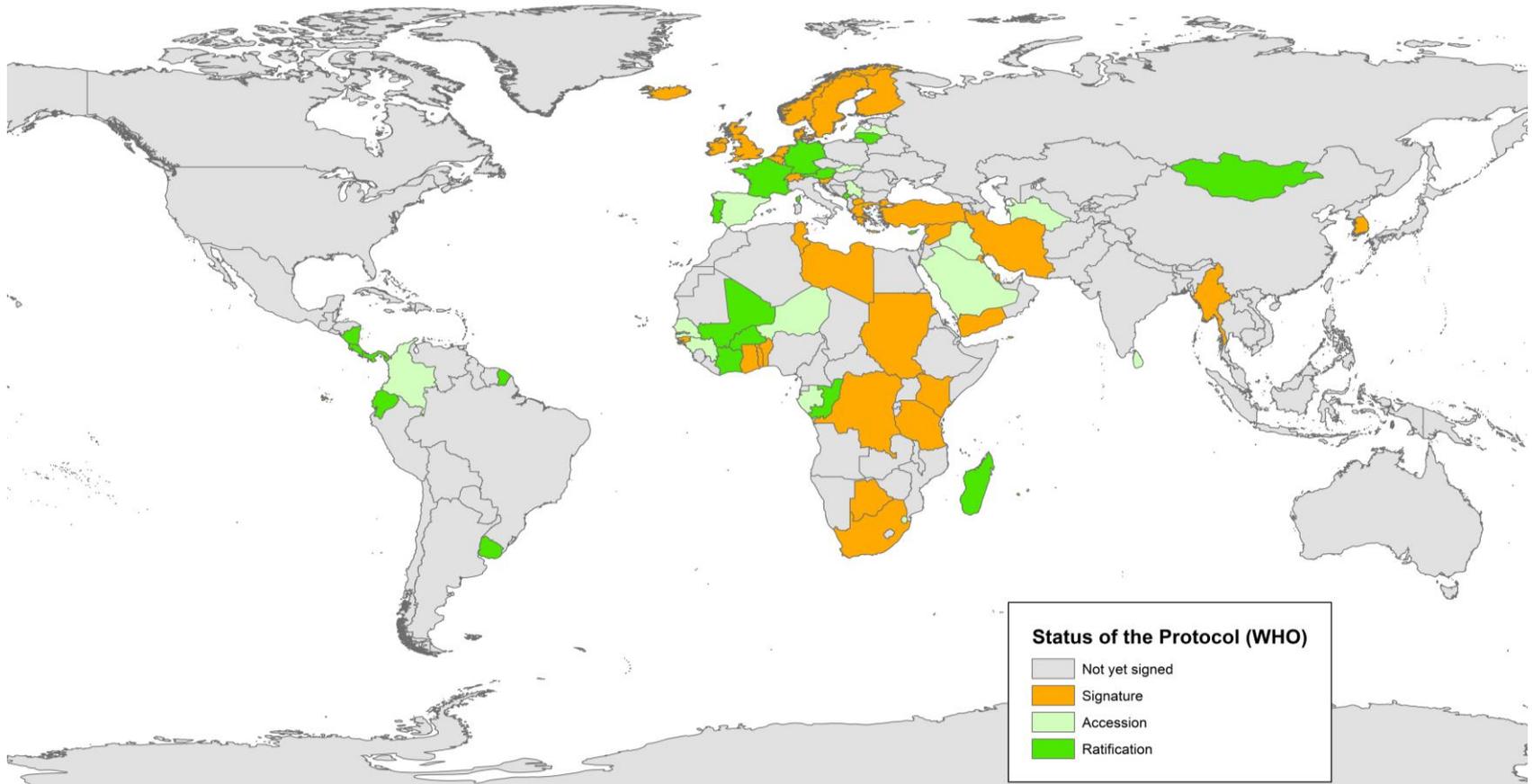
Legal and fiscal asymmetries and their impact on the tobacco market

Legal asymmetries: beyond the EU

- **WHO FCTC Protocol to eliminate illicit trade in tobacco products**
 - ✓ Adopted in November 2012, first signature in January 2014
 - ✓ 90 days after the deposit of the 40th ratification/accession, the Protocol will become a **binding international law** → still 7 parties needed
- **General obligations:**
 - ✓ to adopt measures to **control the supply chain of tobacco**, tobacco products and manufacturing equipment;
 - ✓ to **cooperate** with one another to enhance law enforcement;
 - ✓ to **exchange information**;
 - ✓ to **increase the effectiveness of relevant authorities and services**;

Legal asymmetries: beyond the EU

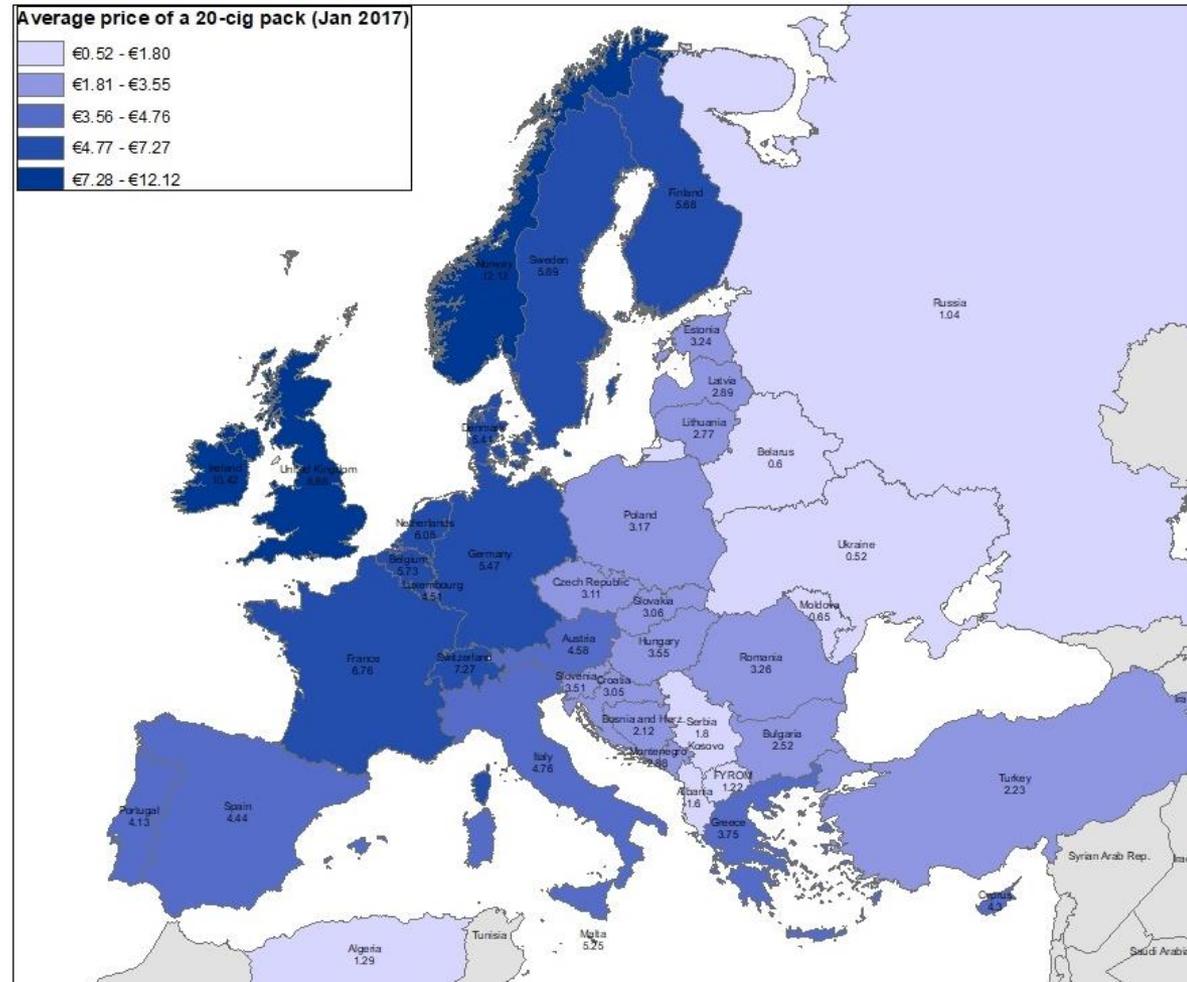
- The European Union has formally confirmed the Protocol (as for the parts within its competence) in June 2016
- None of the countries on the Eastern border of the EU has signed the Protocol



Fiscal asymmetries

- **External problem:** Eastern countries (Russia, Belarus, Ukraine, Moldova)
- **Internal problem:** Eastern countries with lower taxation and prices

→ Interest of criminals in **smuggling legal products from Eastern to Western countries**



An example: Belarusian hub for illicit tobacco

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Belarusian hub for illicit tobacco

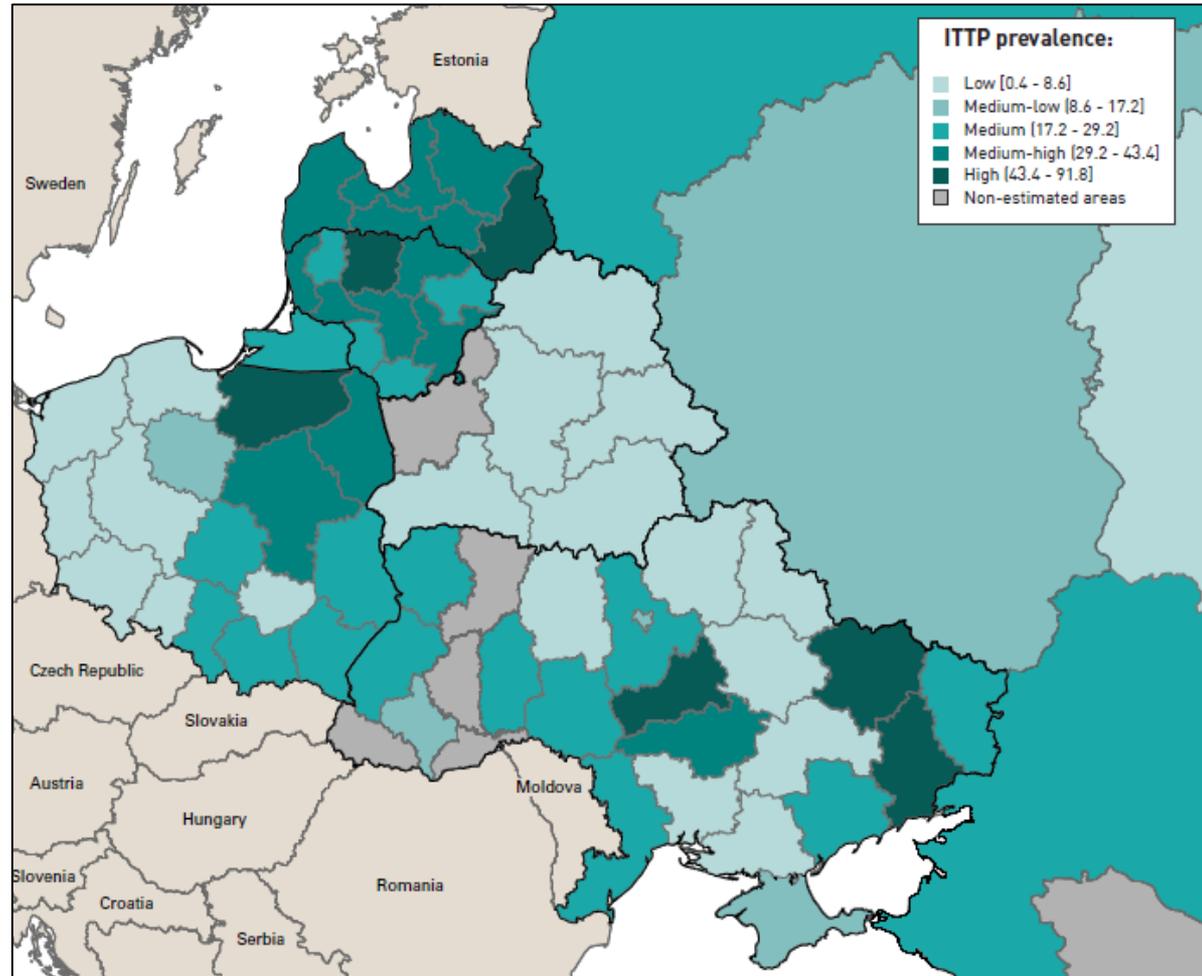
- What is included in the Belarusian Hub?
 - ✓ **Belarus** (center of the hub): source for illegal tobacco products destined to the EU.
 - ✓ **Russia** and **Ukraine**: important sources of illicit products.
 - ✓ **Lithuania, Poland, Latvia**: destination and transit countries of the Belarusian illicit tobacco flows.

- In Belarus **no regulation over key inputs**
 - ✓ In 2013, excess of acetate tow in Belarus was enough to manufacture around 6.4 bn cigarettes
- In Belarus, **export** vulnerable to the ITTP: no strict regulation
- Belarusian and Russian manufacturers → **illicit whites**
- Belarusian factories → manufacture of **flavoured tobacco products** (it is forbidden to sell these products in the EU countries due to the TPD)
- In Belarus, **export** vulnerable to the ITTP: no strict regulation

Belarusian hub: Size of the ITTP

In 2015, highest prevalence in **Latvia** (43.6 mn sticks per 100,000 inhab.), and **Lithuania** (36.0).

Regions of the EU countries bordering Belarus (36.4 mn sticks on average) → prevalence higher than the hub average (22.9 mn).

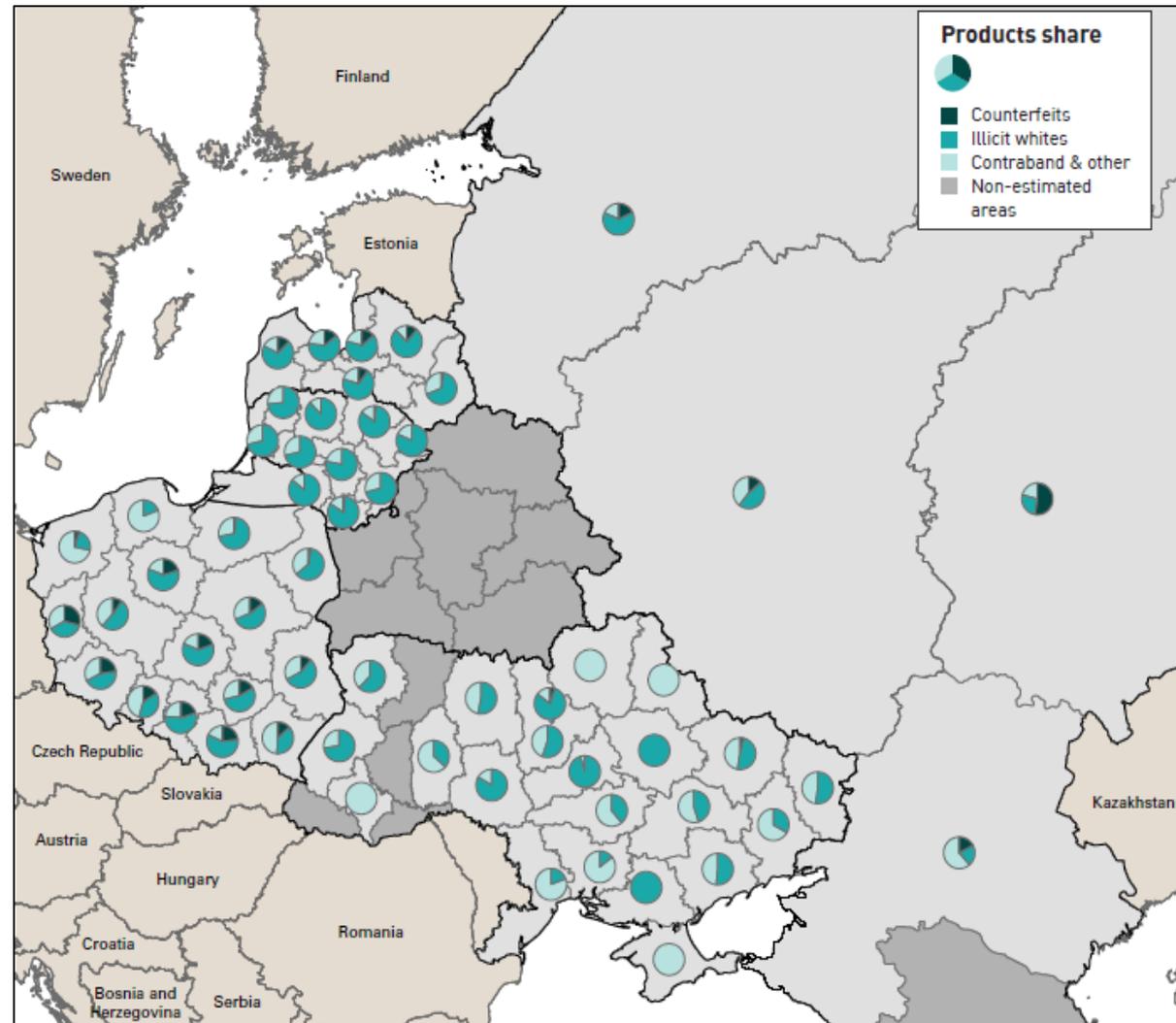


Source: *The Belarusian Hub for Illicit Tobacco, 2016*

Belarusian hub: Products

In 2015, **illicit whites** the most widespread

Belarus major source of illicit whites (IW).
GTF Neman IW: more than 70% of IW in Lithuania, Latvia and Poland.

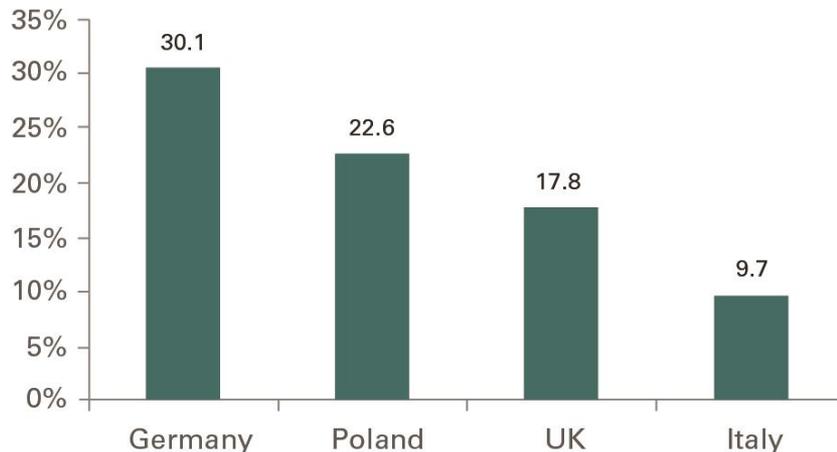


Source: *The Belarusian Hub for Illicit Tobacco*, 2016

Belarusian hub: Flows

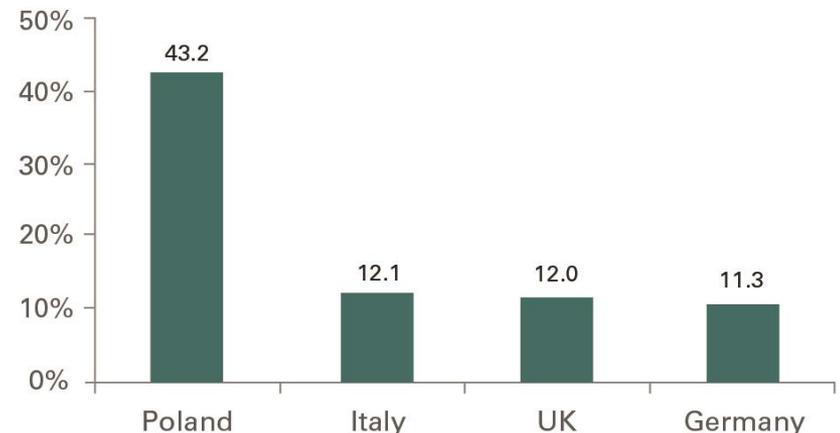
- **Belarus** is the main source country of Non Domestic cigarettes for the EU, not only for the bordering countries
- **Russia** is another important source country in the hub

Main destinations of Belarusian non-domestic cigarettes (% of total Belarusian cigarettes, 2015)



main destination countries

Main destinations of Belarusian hub ND cigarettes (% of total flows from the Belarusian hub, 2015)



main destination countries

Source: *The Belarusian Hub for Illicit Tobacco*, 2016

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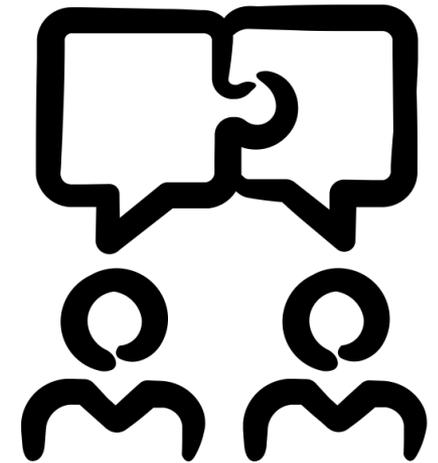
Difficulties in international cooperation

Customs cooperation: the difficulties

- Why is it difficult for customs to cooperate?
 - ✓ **Soft legislation** on cooperation → it is recommended, but not binding
 - ✓ **Strong hierarchical structure** of the enforcement agencies within a country → difficulties in communication and in coordination (Basu G., *Combating illicit trade and transnational smuggling: key challenges for customs and border control agencies*, World Customs Journal, 2016)
 - ✓ **Competition among enforcement agencies** in the different countries → Lack of exchange of information and cooperation
- It is difficult to **evaluate the cooperation** among customs offices → **no studies** on this topic

Working together against the ITTP

- **Cooperation with the Tobacco Industry**
- Increase cooperation with the major player in the legal market of these products:
 - ✓ To create a complete and shared **tracking & tracing system**
 - ✓ To **share information, intelligence and resources**, making illicit trade less attractive to criminals



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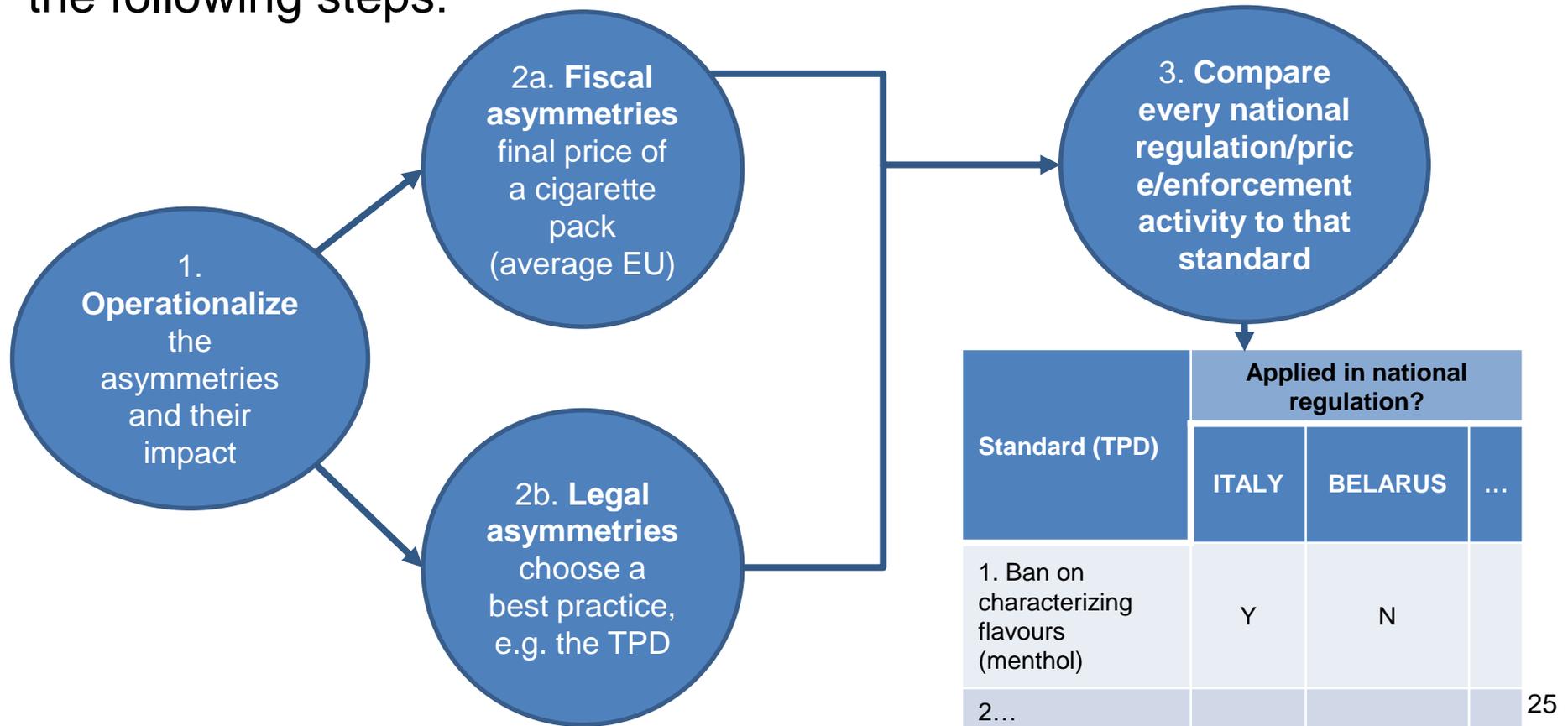
The construction of risk models based on asymmetries

Why a risk model on the asymmetries?

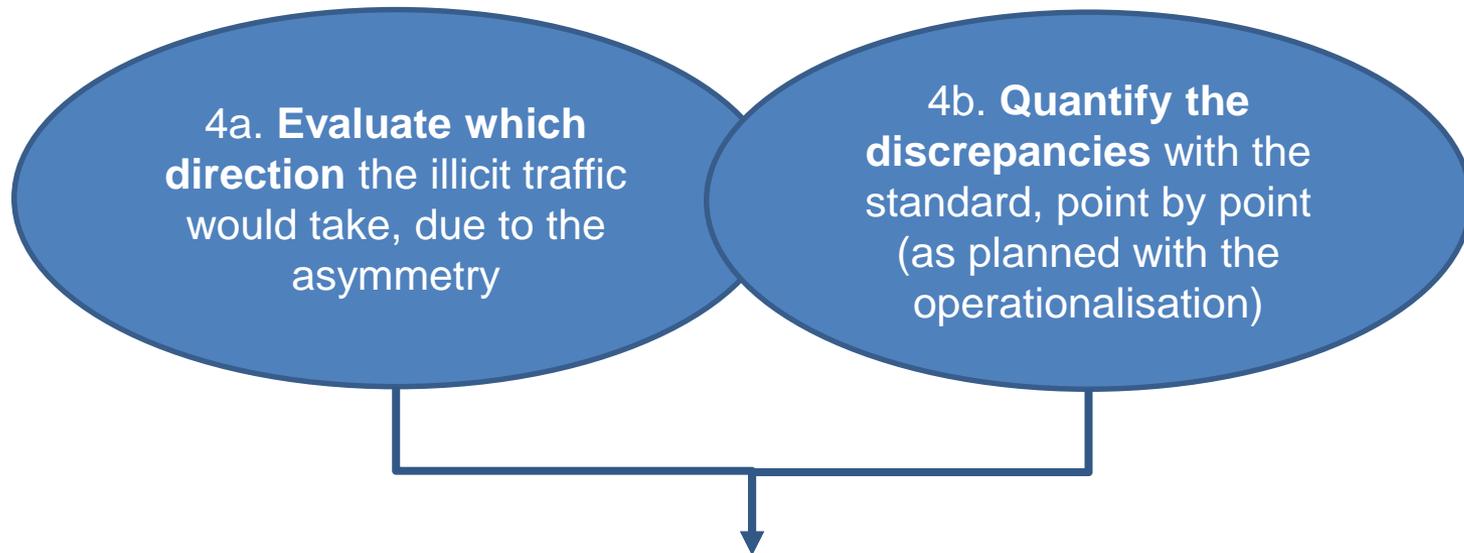
- Since criminals could **displace** their crimes where asymmetries are present and in their favour, it is important to **quantify the asymmetries**, using a risk assessment model
- The best practice will be to:
 - ✓ evaluate, year by year and country by country, the improvement;
 - ✓ find the best practices in all the three fields and find solutions to the problems emerged.

The risk model

A focused and monitored analysis of the asymmetries discussed before could produce a risk analysis. The result could be a view of which country/area has more or less risk and help policy makers to intervene reducing their consequences. This process goes through the following steps:



Hypothesis of a risk model



Standard (TPD)	ITALY			BELARUS		
	Applied in national regulation?	Impact	Quantification	Applied in national regulation?	Impact	Quantification
1. Ban on characterizing flavours (e.g. menthol)	Y	Possible INFLOW of flavoured cigarettes	XX%	N	Possible OUTFLOW of flavoured cigarettes	XX%
2...						
3...						