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# Tracking and tracing the tobacco industry: potential tobacco industry influence over the EU's system for tobacco traceability and security features

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► Additional material is published online only. To view please visit the journal online (<http://dx.doi.org/10.1136/tobaccocontrol-2019-055094>).

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Received 4 April 2019

Revised 7 July 2019

Accepted 9 July 2019

## ABSTRACT

**Background** Subsequent to the transnational tobacco companies' (TTC) history of involvement in tobacco smuggling, the Illicit Trade Protocol (ITP) requires that tobacco tracking and tracing (T&T) systems be established independent of the industry. In response, TTCs developed a T&T system, originally called Codentify, promoting it via an elaborate set of front groups to create a false impression of independence. The European Union (EU) is one of the first and largest jurisdictions to operationalise T&T. We explore how industry efforts to influence T&T have evolved.

**Methods** Analysis of tobacco industry documents, policy documents, submissions to a relevant consultation and relationships between the tobacco industry and organisations proposed by it and approved by the European Commission to provide a data repository function within the EU's T&T system.

**Findings** 17 months after TTCs sold Codentify to Inexto and Philip Morris International claimed Inexto was independent, leaked documents suggest TTCs and Inexto continued to have a financial and operational relationship. Inexto's meetings with TTCs, engagement with EU Member States and promotion of industry-favoured technical standards suggest TTCs influenced Inexto's activities, using the company to undermine EU T&T. The EU's T&T system appears to be inconsistent with the ITP due to its 'mixed' governance and seven of eight organisations approved as data repository providers having pre-existing industry business links.

**Conclusions** TTC's efforts to maximise their control and minimise external scrutiny of T&T systems seriously limit attempts to address tobacco smuggling. Countries implementing T&T should be alert to such efforts and should not replicate the EU system.

## INTRODUCTION

Article 15 of the WHO Framework Convention on Tobacco Control (FCTC) and its supplementary treaty, the Protocol to Eliminate Illicit Trade in Tobacco Products/the Illicit Trade Protocol (ITP), aim to enable a co-ordinated international response to the illicit tobacco trade. The ITP came into force in September 2018 and, as of March 2019, has 51 Parties, including the European Union (EU). ITP Article 8 sets a deadline of 25 September 2023 for a global cigarette tracking and tracing (T&T) system to be established by each Party to the Protocol, with an additional 5 years being given for any additional products containing leaf tobacco.<sup>1</sup>

T&T is a means of supply chain control and its use in this field is fundamentally a response

to overwhelming evidence of tobacco company involvement in illicit trade (including complicity in tobacco smuggling).<sup>2–11</sup> In line with this and the FCTC's acknowledgement of the 'irreconcilable conflict' between the tobacco industry and public health, the ITP requires that Parties must not delegate their T&T obligations to the industry and should be in contact with the industry and its representatives 'only to the extent strictly necessary' to implement Article 8 (on T&T) requirements.<sup>1</sup>

Despite tobacco industry claims of utilising robust supply chain security systems,<sup>12</sup> evidence indicates that tobacco companies continue to fail to control their supply chains.<sup>11</sup> As such, a strong T&T system could lead to them having to make increased tax payments and, were it to demonstrate involvement in tobacco smuggling or a failure to address it, to further litigation. The industry therefore has a vested interest in controlling these systems.<sup>11</sup> In line with this, Transnational Tobacco Companies (TTCs)—namely Philip Morris International (PMI), British American Tobacco (BAT), Japan Tobacco International (JTI) and Imperial Tobacco (now Imperial Brands) (IB), have tried to undermine the ITP's intention to develop an effective global T&T system by creating and promoting their own inadequate<sup>13</sup> and inefficient<sup>14</sup> system, first known as Codentify.<sup>15</sup>

Despite PMI's claim that it is 'not in the track and trace business', in the mid-2000s PMI patented Codentify and in 2010 licensed it for free to BAT, JTI and IB. The four tobacco companies then worked collectively to promote Codentify's adoption.<sup>11 16</sup> A key part of this strategy has been to use third-parties to create the false impression that Codentify is independent from the tobacco industry and thus compliant with the ITP. One of these third parties was the Digital Coding and Tracking Association (DCTA) which was registered by all four TTCs in 2011 and promoted Codentify, often without disclosing its own relationship to the tobacco industry.<sup>13 17 18</sup> The industry's third party strategies have since become more elaborate and include the 2016 sale of Codentify to the technology company Inexto.

JTI's Vice-President of illicit trade prevention has claimed that the transfer occurred because 'a specialised technology company is better placed to further develop the technology'<sup>12</sup> and Inexto's Managing Director stated that PMI sold the system because it was not its 'core business'.<sup>19</sup> However, several of Inexto's top officials are former PMI employees and co-creators of Codentify (including the Managing Director).<sup>11 20 21</sup>



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**To cite:** Gallagher AWA, Gilmore AB, Eads M. *Tob Control* Epub ahead of print: [please include Day Month Year]. doi:10.1136/tobaccocontrol-2019-055094

The industry's promotion of its own T&T system has been part of a broader effort by tobacco companies to reshape their history of involvement in tobacco smuggling and ingratiate themselves with governments as partners in reducing illicit trade.<sup>6 11 13</sup> Examples include tobacco companies engaging in voluntary partnerships or Memorandums of Understanding with law enforcement and custom agencies,<sup>22</sup> funding enforcement agencies, such as Interpol,<sup>13</sup> sniffer dogs for illicit tobacco raids<sup>23</sup> and illicit trade research globally,<sup>24–27</sup> hiring former law enforcement officials<sup>28</sup> and training border patrol and customs officials.<sup>6</sup> It is within this context of growing recent evidence of both tobacco industry involvement in illicit trade and attempts to undermine the ITP that the EU and its Member States began operationalising the ITP's requirements.

This occurred in two phases—the legislative phase in which the legislative requirements for T&T were included in the Tobacco Products Directive (TPD),<sup>11</sup> adopted on 3 April 2014,<sup>29</sup> and then the implementation phase which led to the adoption of delegated and implementing regulations in December 2017.<sup>30 31</sup> On 20 May 2019, T&T for cigarettes and roll-your-own tobacco was implemented in the EU, based on these regulations.<sup>32</sup>

Concerns were raised that the final wording of the TPD in relation to T&T gave tobacco manufacturers considerable influence over key elements of the system.<sup>33</sup> The TPD specifies that tobacco manufacturers (rather than Member States) 'should conclude data storage contracts with independent third parties'.<sup>11</sup> These contracts are for the creation and operation of data repositories which store traceability data for each country crucial to the T&T process. The text also specifies that external auditors required to monitor these third parties should be 'proposed and paid by the tobacco manufacturer', although 'approved' by the Commission.<sup>29</sup> Auditors conduct announced or unannounced audits on, and produce annual reports about the integrity of, the repository they are contracted to audit.

The implementation phase was led by the European Commission which undertook a range of assessments, analyses and consultations<sup>30 31 34–42</sup> culminating in the production of the final implementing and delegated regulations.<sup>30 31</sup> These specified the rules that EU Member States must abide by as they implement T&T including, *inter alia* (online supplementary appendix 1), the criteria for the data repositories and auditors mentioned in the original legislation. The regulations also outlined roles for both primary (national) data repositories and a single European-wide secondary repository containing a copy of all data stored in every primary repository.<sup>31</sup>

As a result of the original legislative text (the TPD), which noted that tobacco manufacturers should agree data storage contracts with 'independent' third-parties, tobacco companies suggested third-parties to the Commission. The Commission then released a list of those deemed suitable for operating data repositories,<sup>35</sup> using three independence criteria (box 1). Neither the original list of third-parties put forward by tobacco companies to the Commission nor the list of auditors selected by tobacco companies and approved by the Commission are currently known.

Concerns have now been raised that the delegated and implementing regulations<sup>43 44 44–46</sup> allow a degree of industry influence incompatible with the ITP and the International Tax Stamp Association (ITSA) has filed a case against the European Commission. ITSA's claim is that the regulations breach the ITP because the EU T&T system is not under the exclusive control of the Commission or Member States.<sup>46 47</sup>

This study therefore aims to explore whether and how the tobacco industry has attempted to influence EU T&T

### Box 1 The European Commission's Independence Criteria for Tobacco Tracking and Tracing Across the European Union

The European Commission uses three criteria to establish the independence of a third-party, including unique identifier (non-removable identification markings which are affixed to or form part of unit packs) issuers and data repository providers, involved in the T&T system from the tobacco industry:

- ▶ Legal, organisational and decision-making independence.
- ▶ Financial independence (that less than 10% of a third-party's annual worldwide turnover comes 'from goods and services supplied to the tobacco sector over the past two calendar years'.<sup>31</sup> The threshold then becomes 20% for each subsequent year.<sup>30</sup> No explanation is provided as to why these particular thresholds were chosen.
- ▶ Absence of conflicts of interests, namely that directors and other governing individuals have not participated in tobacco industry company structures in the last 5 years and shall act independently from any financial or other links to the tobacco industry such as tobacco stocks or private pension programmes.<sup>30</sup>

implementation, whether data repository providers in the EU's T&T system are independent and if the system is compliant with Article 8 of the ITP. It is the first study to critically explore T&T implementation. Given that the EU's T&T system is both one of the first and the largest implementations of tobacco T&T and its solution paradigm is therefore likely to be adopted by other Parties to the ITP, this study's findings have global relevance.

### METHODOLOGY

To understand tobacco company efforts to influence EU T&T implementation and ongoing links between the tobacco industry and Inexto, this paper follows on from previous research<sup>11</sup> by analysing two additional leaked industry documents,<sup>48 49</sup> dated October–November 2017. Qualitative thematic analysis, based on a hermeneutic approach to company document analysis,<sup>50</sup> was applied with analysis focussing specifically on influence within the EU. Attempts were made to triangulate findings via data from other sources namely online news media and academic journals. Findings from this analysis led us to also analyse responses to the Commission's targeted stakeholder consultation<sup>51</sup> (held in May 2015 as part of the implementation phase) to determine which respondents endorsed a specific proposal mentioned in the documents.

To identify relationships between the tobacco industry and data repository providers approved by the European Commission as 'independent', the business relationships between these providers and PMI, BAT, JTI, and IB were systematically assessed. We used a process developed from existing approaches,<sup>52</sup> involving searches of corporate monitoring databases (Tobacco Tactics, Sourcewatch, Powerbase and Spinwatch), industry documents (Legacy Library) and other resources (actor and tobacco company websites, Google search results and the EU Transparency register).

To determine the EU T&T system's compliance with Article 8 of the ITP, the implementing and delegated acts relating to T&T adopted by the European Commission in December 2017<sup>30 31</sup> were compared with the requirements of Article 8 of the ITP.<sup>53</sup> NVivo was used to code the specific requirements of Parties within Article 8's 14 obligations and to identify where these are

met, and potential inconsistencies, within the implementing and delegated acts. Further, a range of EU policy documents (T&T feasibility study, implementation analysis, summaries of the stakeholder and public consultations on T&T and the draft secondary legislation)<sup>30 31 34–42</sup> were reviewed to provide contextual insight into the policy process leading to the final regulations.

## RESULTS

### Tobacco companies' ongoing relationship with Inexto and engagement with EU Member States

Analysis of the two industry documents<sup>48 49</sup> suggests that financial independence between PMI and Inexto had yet to be established 17 months after the 1 June 2016 sale of Codentify<sup>20</sup> to Inexto, despite PMI's claim that 'Inexto is fully independent from the tobacco industry'<sup>21</sup> and Inexto's Managing Director's claim that 'we are independent'.<sup>19</sup>

Minutes from two meetings, dated 2 October 2017 and 7 November 2017,<sup>48 49</sup> show that senior management from PMI, JTI, BAT, IB and representatives of Inexto, including the CEO, met monthly under an 'Operational Management Committee'.<sup>48 49</sup> The minutes refer to a 'Spinoff 2.0' where the relationship between the tobacco industry front group,<sup>54</sup> the DCTA (made up of representatives from BAT, PMI, IB and JTI),<sup>17 18</sup> and Inexto is discussed. The October meeting minutes outline that a 'more arms-length services arrangement' was being worked towards but that 'Further clarity is needed on how revenue independence will be achieved on the Inexto/Impala side'<sup>49</sup> (Impala being Inexto's parent company).<sup>55</sup> It is unclear whether this was ever reached. This discussion took place less than a month after the Commission's draft independence criteria, which featured revenue requirements, had been published.<sup>36</sup>

The minutes also show that, despite financial independence between Inexto and the tobacco industry seemingly not yet having been established, a series of meetings between Inexto and EU Member State government divisions occurred. The minutes refer to a meeting between Inexto and a 'national security printer' in the Czech Republic, a planned meeting between Inexto, Logista (a distributor of tobacco products in Southern Europe, of which IB holds a majority share)<sup>56</sup> and Spain's Royal Mint and a pilot project between Inexto and Poland's national security printer.<sup>49</sup> These follow on from a 2016 T&T pilot project by the German Print Office of which BAT and PMI were partner companies.<sup>57</sup>

### Failed tobacco industry and Inexto effort to influence EU T&T implementation

Unique identifiers, required on cigarette packs by the ITP, are non-removable identification markings which are affixed to or form part of unit packs<sup>53</sup> and under the EU system take the form of alphanumeric codes.<sup>35</sup> The November meeting minutes note that 'Inexto worked out a sGTIN (sic) proposal for the TPD Unique Identifier'.<sup>48</sup> SGTIN (*Serialised Global Trade Item Number*) is an identifier for trade items developed by GS1, which designs and implements supply and demand chain solutions. SGTIN therefore falls under GS1 standards in which brand owners (who, in the case of tobacco products, are usually the manufacturers) are responsible for the generation of unique identifiers.<sup>58–60</sup> In 2014, the DCTA commissioned GS1 and KPMG (which has a long-standing history of being commissioned by the tobacco industry to conduct research and produce reports on illicit trade)<sup>61–64</sup> to produce a report on T&T which highlights GS1 standards.<sup>65</sup>

In their responses to the Commission's targeted stakeholder consultation (held from May–July 2015),<sup>51</sup> BAT, PMI, IB and

JTI all stated that GS1 was their preferred standardisation body for the generation of unique identifiers, with PMI, IB and JTI, as well as the DCTA, endorsing SGTIN specifically<sup>66–70</sup> (online supplementary appendix 2 is a complete list of respondees who endorsed SGTIN).

In November 2017, the European Commission stated that any reference to GS1 standards in the EU's T&T regulations would not be 'legally acceptable' as allowing for self-generation of unique identifiers would not ensure the T&T system's full independence from the tobacco industry.<sup>71</sup> This intervention prevented the industry's SGTIN proposal from going on to become part of the EU's T&T system with the task of applying unique identifiers instead going to an 'independent' third-party appointed by each Member State (online supplementary appendix 1). Independence of the parties is determined using the European Commission's criteria (box 1).<sup>30 31 34</sup>

### Independence of data repository providers

In line with the TPD text, the tobacco industry supplied names of potential data repository providers from which the European Commission, based on its independence criteria (box 1), identified eight as independent and therefore suitable. Eight were identified as primary data repository providers (Atos AG, Atos Information Technology GmbH, Atos IT Solutions and Services A/S, Atos Polska S.A, Dentsu Aegis Network Switzerland AG, IBM, Movilizer and Zetes) and one of the same companies (Dentsu Aegis Network Switzerland AG) as the secondary provider. However, our analysis shows that seven of the eight (all other than Zetes) have prior business links with TTCs, with four being subsidiaries of a single company, Atos.

Atos subsidiaries (Atos AG, Atos Information Technology GmbH, Atos IT Solutions and Services A/S, Atos Polska S.A.)

As outlined in previous research,<sup>11</sup> Atos has extensive business links to the tobacco industry. Atos was involved in the development of Codentify and a 2012 BAT email named Atos as approved, by the TTC, to represent Codentify globally. Atos promoted Codentify in Asia and was involved in its implementation in Lithuania alongside the DCTA.<sup>11</sup> Atos is also a member of The Coalition Against Illicit Trade,<sup>72</sup> whose submissions to both the EU T&T stakeholder consultation and EU transparency register failed to mention that six of the, then seven, members had business links to the tobacco industry.<sup>11</sup>

### IBM UK limited

In 2013, IBM contributed to PMI's sbv IMPROVER funding initiative which awarded grants to scientists who put forward research proposals under defined themes set by PMI.<sup>73</sup> The sbv IMPROVER initiative has been criticised for attempting to muddy the waters on the causal link between tobacco and disease, with PMI using its partnership with IBM to attempt to gain legitimacy among the scientific community.<sup>74</sup> The sbv IMPROVER website now states that IBM Research is no longer working on the project.<sup>75</sup> Sbv IMPROVER resembles another PMI funding initiative—PMI IMPACT, which adopts a similar approach, funding a range of projects related to ITT.<sup>26 27 76</sup> IBM also developed its own T&T system, CLEAR, which was advertised as an ITP-compliant technology which tobacco companies could employ.<sup>77</sup>

### Dentsu Aegis network Switzerland AG

Dentsu Aegis Network Switzerland AG is a subsidiary of Dentsu which had PMI as a client in the mid-1990s and early



2000s.<sup>78 79</sup> The Dentsu Aegis Network purchased blue-infinity in 2017<sup>80 81</sup>—a digital technology company which, since at least 2013, has been closely involved with Codentify and the tobacco industry. Its website claims that it has ‘integrated Codentify solutions for all major players in the tobacco industry’.<sup>82</sup> It also states that blue-infinity is a ‘technology partner’ of JTI<sup>83</sup> and built an ‘e-commerce solution’ for PMI.<sup>84</sup>

Blue-infinity’s T&T system ‘AIT Central’ (which features Codentify) has been promoted by blue-infinity and Videojet (a printing and marking company which advertises Codentify-compatible printing services<sup>85</sup> as a suitable system for compliance with the TPD).<sup>82</sup> Blue-Infinity also cohosted a workshop for manufacturers on their T&T technology and TPD requirements.<sup>82</sup>

#### Movilizer GmbH

In 2010, Movilizer created and developed a Codentify-compatible information system for BAT<sup>86</sup> with BAT then rolling out Movilizer in 42 countries.<sup>87 88</sup> A Movilizer partner website states that BAT and IB use Movilizer to manage and process T&T data in locations across Europe.<sup>89</sup>

#### Zetes S.A.

No prior business relationships were identified.

### Compliance with ITP

Our comparison of EU policy documents with the requirements of Article 8 of the ITP suggests that the EU’s T&T system may not meet all obligations specified in Article 8, namely those which refer to the control of a T&T system and how tasks within the system are delegated. The key underlying elements of the EU’s T&T system responsible for these potential breaches are outlined below.

#### The responsibilities of the tobacco industry

In line with the TPD text, the EU’s T&T system allows tobacco companies to select data repository providers and to select auditors who will monitor the behaviour of these parties (both after approval from the European Commission). By allowing tobacco companies to select and pay actors crucial to both the implementation and control of the EU system, the EU T&T regulations may be inconsistent with ITP Article 8.2’s requirement that the T&T system should be ‘controlled by the Party’.<sup>1</sup>

#### The EU system’s ‘mixed’ governance structure

The EU’s T&T system takes a ‘mixed’ governance approach which hands further control of the system to tobacco companies. As part of the implementation phase, the European Commission commissioned an implementation analysis in 2015<sup>40</sup> and in 2016 undertook an impact assessment on T&T.<sup>38</sup> Both explored three options for the governance of the EU’s T&T system: a system operated exclusively by industry, a mixed solution governed by ‘industry and third party’,<sup>38</sup> and a third-party system (with tobacco companies still choosing and paying data repository providers and auditors). The implementation analysis recommended that a ‘mixed solution’ governed by industry and third-parties would be optimal.<sup>40</sup>

The approach reflected in the EU’s T&T system aligns with this, allowing tobacco manufacturers to assign responsibility for the installation of anti-tampering devices and the generation and application of security features. Tobacco companies thus have primary and fiduciary relationships with service providers rather than these being between service providers and governments directly.

This suggests that the EU’s T&T system is not compliant with both Article 8.2 of the ITP which states that each Party shall establish a T&T system ‘controlled by the Party’ and Article 8.12 which states that ‘Obligations assigned to a Party shall not be performed by or delegated to the tobacco industry’.<sup>53</sup> This concern is furthered by the lack of safeguards within the system to protect against potential industry influence as the third-party solution outlined in the implementation analysis would have involved additional control mechanisms which the mixed solution lacks.<sup>37</sup>

## DISCUSSION

### Key findings

The findings from this paper demonstrate that the tobacco industry has made concerted efforts to influence implementation of T&T in the EU and has been largely successful in maximising industry control and minimising independence of EU T&T. To secure this influence, TTCs operated collectively and with a supposedly independent third-party (Inexto) at both Member State and EU level. Inexto engaged with Member State authorities and developed a policy proposal based on GS1 standards (SGTIN) which, if approved by the European Commission, would have handed additional EU T&T responsibilities to the industry.

Our findings show that the industry’s strategic use of, or interaction with, third parties seemingly in order to secure control of T&T<sup>11</sup> has continued both through Inexto and by the industry selecting companies with which it has close business links to be providers of key elements (eg, data repositories) of EU T&T.

Key to the tobacco industry’s strategy to undermine EU T&T was its ongoing relationship with Inexto which documents suggest PMI<sup>21</sup> and Inexto<sup>19</sup> publicly misrepresented. Meeting minutes analysed in this paper raise doubt over whether Inexto’s independence from the industry was ever a serious prospect. The focus on revenue independence in the minutes was likely a response to the European Commission’s financial requirements for independence (box 1) and suggests that the industry and Inexto were working together to meet criteria which this paper argues are inadequate. It remains unclear whether independence between Inexto and the industry has now been established.

Indeed, rather than operating independently, evidence from the monthly meetings between Inexto and TTCs suggest that they may have been working together to maximise industry control of EU T&T. The meetings and pilot projects between Inexto and EU Member State authorities could be viewed as attempts to influence EU Member States in favour of industry-preferred T&T approaches. Links with national printing offices can be useful for tobacco companies as many of these offices have been designated to generate unique identifiers as part of the EU T&T system.

The jointly developed plan to promote GS1 standards would have given further control to the industry by allowing them to generate unique identifiers. The intervention from the European Commission which rejected this proposal demonstrates the Commission’s efforts to protect the EU T&T’s system integrity. While the Commission’s ability to do this was limited by the underpinning legislative text, other shortfalls in implementation occurred which raise serious concerns over the EU T&T system’s compliance with the ITP.

These include the ‘mixed’ approach to governance selected by the Commission and its independence criteria for vetting third-parties (box 1). Our finding that seven of the eight organisations identified by the Commission as meeting the independence criteria have prior business links with the tobacco industry demonstrates that these criteria are inadequate for ensuring the

systems' independence from the industry. While it is currently unknown which auditors have been selected, there are likely to be questions as to whether they are wholly independent from the industry given its previous work with the world's major accountancy firms (with Ernst & Young,<sup>90</sup> Deloitte,<sup>91</sup> KPMG<sup>64</sup> and PwC)<sup>92</sup> all having been commissioned by the industry to produce reports on illicit tobacco, many of which have been criticised for inaccuracy.<sup>24</sup>

### Strengths and limitations

This research is limited to data that are publicly available and documents provided to us. Our work only examines tobacco industry influence on the implementation phase (post-TPD), though problems seem to have arisen in the legislative phase also. The industry significantly influenced the TPD<sup>93 94</sup> and while previous analyses did not extend to T&T provisions, influence on those provisions also seems likely.

Our findings are consistent with concerns raised in previous research on tobacco industry attempts to influence T&T<sup>11</sup> and the difficulties of policing Article 5.3 due to the industry's extensive and growing use of third parties.<sup>93</sup> The technical complexities of T&T implementation make this harder still with high levels of technical expertise required to identify and make sense of industry interference; the industry's SGTIN proposal being a prime example. There is growing evidence that the industry is using third-parties in attempts to gain control of T&T in a range of countries. In 2012, for example, Codentify was promoted in a T&T tender through the industry-linked third-party, Fracturecode,<sup>11</sup> and in 2017, Atos was one of two firms with tobacco industry links which placed a bid for a T&T tender in Chile.<sup>95</sup>

Most importantly, there is evidence that the tobacco industry has been trying to export text from the TPD into T&T policy in West Africa.<sup>96</sup> This supports our findings in indicating that the industry considers EU T&T legislation to be favourable. It also highlights that other Parties must guard against this possibility. Should such efforts be successful, the tobacco industry may gain control of, and thereby fundamentally undermine, the ITP's envisioned global T&T system, allowing TTCs to avoid adequate scrutiny and to continue to fail to control their own supply chains.<sup>11</sup>

### Policy implications and recommendations

There are steps that the European Commission and EU Member States can take to safeguard EU T&T against industry interference and to ensure its compliance with the ITP. At the Commission level, the independence criteria for third-parties should be revised so that, at the very least, no company involved with the development and/or implementation of the Codentify technology is eligible.

Member States can require that all authentication elements (eg, holograms, microprints, molecular tags, which are used to establish if a product is genuine or not—see online supplementary appendix 1 for more detail) be sourced independently of the industry. Additional measures to safeguard against collusion between manufacturers and service providers could also be taken (such as Member States having access to contracts between the industry and third-parties relating to EU T&T).

Other Parties to the ITP should be aware of the EU T&T system's inconsistencies with the ITP stemming from the TPD's requirements which allow the industry to select data repository providers and auditors, the 'mixed' governance approach adopted by the European Commission, and the insufficient independence criteria which fails to adequately account for the industry's extensive use of third-parties.

### What this paper adds

#### What is already known on this subject

- ▶ The Illicit Trade Protocol (ITP) requires countries to implement a track and trace system for tobacco independent of the tobacco industry. Yet the tobacco industry has a vested interest in controlling any tobacco tracking and tracing system in order to avoid scrutiny and minimise its excise payments. The industry's attempts to have its Codentify-based system implemented as a tracking and tracing solution have become increasingly opaque, including using third-parties to create the false impression that the system is independent from industry.
- ▶ In December 2017, the European Commission adopted regulations for tracking and tracing in the EU based on the text of the 2014 TPD. On 20 May 2019, tracking and tracing for cigarettes and roll-your-own tobacco was implemented in the EU, based on these regulations.

#### What this paper adds

- ▶ 17 months after the sale of Codentify to Inexto and PMI's claim that Inexto was independent from the industry, internal documents suggest the industry and Inexto continued to have a financial and operational relationship. They jointly promoted industry tracking and tracing objectives by engaging with EU Member States and proposing technical standards which would have handed tobacco companies further control of the EU's tracking and tracing system.
- ▶ This study is the first evaluation of tobacco tracking and tracing operationalisation. It finds that the tobacco industry has succeeded in undermining the independence of the EU's track and trace system. The system delegates key responsibilities to the industry and associated third-parties, raising serious concerns about its compliance with the ITP. The European Commission and Member States should take further steps to protect EU tracking and tracing from industry manipulation and other ITP parties must ensure that their own tracking and tracing systems are fully consistent with the ITP and its values and do not replicate the EU's model.

**Contributors** All authors conceived the idea for the study. AWAG and ABG developed the research design. AWAG produced first draft and all authors edited.

**Funding** AWAG & ABG acknowledge the support of Bloomberg Philanthropies Stopping Tobacco Organizations and Products project funding ([www.bloomberg.org](http://www.bloomberg.org)).

**Disclaimer** The opinions expressed are those of the authors' alone.

**Competing interests** None declared.

**Patient consent for publication** Not required.

**Provenance and peer review** Not commissioned; externally peer reviewed.

**Data availability statement** All data relevant to the study are included in the article or uploaded as supplementary information.

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