



**RETAILIRELAND**

advancing our industry

# TACKLING THE BLACK MARKET AND RETAIL CRIME

A report by EPS Consulting for Retail Ireland



Retail Ireland is a business sector within IBEC

[www.retailireland.ie](http://www.retailireland.ie)

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## Foreword

### Frank Gleeson, Chairperson, Retail Ireland



The retail sector is Ireland's biggest employer. It accounts for over ten per cent of Gross Domestic Product (GDP) and 14.5 per cent of total employment; over 260,000 people work in this sector.<sup>1</sup> Our employees depend on customers spending their hard-earned money in our stores and availing of the quality and value that we offer. The current economic downturn has been felt by the retail sector more than most. Retail sales have fallen by over 30% since the recession began and with consumer spending forecast to continue to fall for some time yet, everything must be done to protect jobs and the communities in which Retail Ireland members operate.<sup>2</sup>

The black market is bad for everyone, except the criminals. It endangers jobs, by diverting consumer spending away from the employment-generating legitimate retail industry. It robs the Exchequer of much-needed tax revenues at a time when public spending is already under pressure. It threatens communities by enriching dangerous, often violent groups who care little for the law of the land. Consumers, of course, also lose out. Counterfeit clothing, for example, is rarely of the same quality as the real thing. Laundered fuel is damaging to cars. Illicit alcohol and phoney medicines can kill.

Counterfeit and smuggled goods and the sale of illegal tobacco and alcohol affect retail sales. It is vital that an adequate policy response, backed by the necessary resources, is put in place to bring the criminals to justice and to protect consumers.

This report from EPS Consulting outlines the key areas of the black market that retailers are fighting against every day. As well as outlining the scale of the problem at Irish, European and global level, the report also outlines how retailers themselves are coping with the threat that this activity poses.

Importantly, every problem identified is followed by a range of policy proposals; policies which, if implemented, will help work towards a solution to the black market problem and reduce the influence of criminal groups who pay no tax and adhere to no regulations.

For me the key messages are:

1. Lost Exchequer revenue and lost sales generally which are a direct consequence of black market cost jobs and make retail employment levels vulnerable.
2. Such is the magnitude of the loss to the Exchequer that it makes a lot of sense to apply additional and significant resources to stop the illegal trade that has such a firm foothold in our economy.
3. The current levels of convictions are not a deterrent to even casual criminals. We should adopt a zero tolerance approach to all criminal activity that steals from the taxpayer and Ireland's retailers.

Retail Ireland hopes this document stimulates ideas and results in actions to help retailers, consumers and the State.

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<sup>1</sup> Government Action Plan for Jobs, 2012.

<sup>2</sup> IBEC is predicting a fall in consumer spending of 2% in 2012.

## Executive Summary

The black market in Ireland is large by international standards. The retail sector is the worst affected by the sale of counterfeit, smuggled goods, illegal tobacco and alcohol that arguably has now reached epidemic proportions. The difficult conditions being faced by retailers are exacerbated by this widespread criminal activity.

For the purposes of this research, the black market and retail crime covers fuel laundering, the sale of illegal tobacco and alcohol, counterfeit medicines and goods, shoplifting and theft and entertainment piracy; all pernicious activities. The key findings are:

1. The Exchequer is losing at least €861m a year as a consequence of Irish citizens, wittingly or otherwise, buying illegal goods; this is equivalent to some 5.7% of PAYE collected. As a consequence there is a strong business case that resources need to be redeployed to enhance enforcement activity.
2. While stiff penalties apply and the level of enforcement is impressive in some respects, the vast majority of illegal activity goes undetected. Furthermore, the Courts rarely apply the maximum fines or custodial sentences applicable.
3. As the recession continues, the phenomenon of the black market is growing, not diminishing. Organised criminal gangs are taking advantage of the situation.
4. Consumers need to be made aware of the consequences of purchasing counterfeit and smuggled goods.
5. Jobs are being lost as retailers struggle to cope with the sale of illegal and counterfeit goods at local markets.

### Summary of Key Recommendations

#### General

- Instead of imposing fines, current and future State payments, benefits and concessions should be reduced from persons and businesses found guilty to the value of the loss to the Exchequer of the goods smuggled, counterfeited or stolen.
- Custodial sentences should only be imposed for the most serious of offences.
- For serious offences (for example, involving a net loss to the Exchequer in excess of €100,000), criminals' assets should be seized by the Criminal Assets Bureau.
- Resources should be redeployed into enforcement activities from other areas of Garda activity, routine road traffic policing for example.
- An award of up to €10,000 should be given to every person who reports (via a confidential hot-line) an illegal trade which results in a summary conviction.
- All whistle blowers should be protected by legislation i.e. the Protected Disclosure in the Public Interest Bill, 2012.
- An awareness campaign should be launched alerting taxpayers about the additional burden they have to pay because of the criminal actions of a few.
- A whole of Government approach to the phenomenon of the black market and unlawful activity impacting on the retail sector should be adopted. The Department of the Taoiseach should convene and act as secretariat for an inter-departmental group with a mandate (and resources) to tackle counterfeit and fraud affecting the retail trade.

- A risk based approach to counterfeit and fraud affecting the retail sector suggests Government has no option but to tackle this endemic problem head on and face down the criminals who are clearly not deterred from continuing with this unlawful activity.

#### **EU Dimension**

- The Government should seek EU co-financing for high-impact actions from the [Fiscalis](#) and other EU funded programme such as Hercule II, AFIS and Pericles.
- Given the significant loss of excise duty and VAT, EU co-financing should be sought towards the cost of the proposed specialist investigator team (see below).
- The Government should play a more pro-active role in the [EU Observatory on Counterfeiting and Piracy](#). The retail sector should be better briefed about EU enforcement projects.

#### **Fuel Laundering**

- The conclusions of the Joint Committee on the Environment, Transport, Culture and the Gaeltacht, as follows, should be supported.
  - The introduction of a registration system for fuel users, distributors and retailers
  - Strengthen the licensing of persons to sell oil
  - Intensify inspection levels
  - Introduce more punitive penalties
- A rebate scheme to farmers should guarantee no cash flow loss to farmers - to minimise paperwork, the scheme should be e-linked to another regular agriculture payment scheme. The operation of the rebate scheme should be outsourced by way of a tender competition.
- Another option is the introduction of a more effective fuel marker.

#### **Illegal Tobacco**

- A consumer awareness campaign modelled on [www.dodgycigs.co.uk/](http://www.dodgycigs.co.uk/) should be undertaken about the health consequences of smoking often dubious products.
- A competitive tender competition should be used to source experienced investigators to work alongside the Revenue and Gardai personnel for a two to three year period.
- The sale of any tobacco products at a market or fair should be banned. To this end, the penalties available under the Casual Trading Act should be made as strict as those which exist under the Finance Acts.

#### **Illicit Alcohol**

- The best way to curtail trade in counterfeit alcohol is to educate consumers, with retailers playing a pro-active and central part of the campaign.
- Addressing the problem of illicit alcohol should be part of the industry's overall response to the national alcohol policy.

#### **Counterfeit Products and Piracy**

- The Casual Trading Act 1995 should be amended to allow for the proper regulation of all street and other markets.
- At local and community level, there should be more regular checks on casual traders to ensure the law is not being broken and counterfeit products are not for sale.
- IP guidelines for business should be developed and published.

#### **Counterfeit Medicines**

- An industry-driven awareness campaign (in co-operation with the Irish Pharmaceutical Union) should be undertaken to point out the severity of the risks involved in consuming prescription only medicines without a prescription.

- The materials and research of the [International Products Anti-Counterfeiting Taskforce](#) should be used to better effect.

**Digital Piracy**

- Given the scale of counterfeit, piracy and copyright infringements a specialist court dealing with intellectual property cases should be set up.
- The proposed (independent) Copyright Council is a positive idea provided it has a statutory basis with a clear and unambiguous remit.

**Shoplifting and Theft**

- An Garda Síochána (2011) [Theft from Shops Prevention and Reduction Strategy](#) should be implemented.

## 1. Overview

Retail Ireland commissioned this research from EPS Consulting as the problem of the black market is now having quite a significant and noticeable impact on the retail trade over and above the serious consequences of the on-going recession and against a backdrop of a 30% fall in sales since 2008.

Black market activity and retail crime threatens the retail sector that employs around 250,000 people in the Irish economy. Jobs have already been lost because counterfeit sales, contraband goods and smuggling activity affecting the retail sector are on the rise and the trend is continuing.

Another feature which deserves to be highlighted is the high and rising amount of Exchequer revenue lost due to smuggling, contraband and counterfeit.

If only because taxpayers stand to lose an estimated €4.3 billion over the coming five years, there is an urgent need to adopt a whole of Government approach for this pernicious problem.

## 2. The Impact of the Black Market and Retail Crime

### **Ireland's black market**

There is always an element of hidden economy activity within any jurisdiction. This is often exacerbated during times of economic recession and high unemployment.<sup>3</sup> However, when this unlawful activity reaches a scale, as is the case at present, where it is impacting on jobs, business viability and results in unsustainable losses to the Exchequer something must be done.

The criminal enterprise of today represents a multi-billion euro set of networks that prey on every set of society. Crime gangs are, for example, behind the significant trade in counterfeit goods. In common with other countries the current economic crisis is also influencing the spread of organised crime.

Europol has warned about the increased level of activity from these criminal gangs.<sup>4</sup>

### **The scale of the problem**

In terms of lost Exchequer revenue, counterfeit activity, contraband, smuggling, piracy and theft in the retail sector represents some €861m per annum i.e. some 6% of PAYE collected last year.

The following assumptions have been made in generating this estimate.

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<sup>3</sup> The Advisory Group for Small Business, A Plan of Action, 2011.

<sup>4</sup> EU Organised Crime Threat Assessment, Europol, May 2011.

**Table 1: Black market and retail crime - cost to the Exchequer and other impacts**

Action	Source	Lost to the Exchequer	Other Impacts
Fuel laundering	IPRA	€155m	
Illegal tobacco	ITMAC (Revenue Commissioners)	€526m (€250m) <sup>5</sup>	Loss of at least €500m in retail sales with 700 jobs lost
Counterfeit medicines	Pfizer	n/a	Valued at €86m per annum
Shoplifting and theft	Centre for Retail Research	€110m	Total loss to retailers of some €480m per annum (up from €350m in 2005)
Counterfeit goods	Havocscope	€62m	Valued at \$337m (€268m) per annum
Digital piracy	Irish Record Music Association	€4.5m	The loss to Irish record companies and performers is €19.6m per annum
Petrol theft	CSNA	€3.5m	Lost sales amount to at least €5.4m per annum.
<b>TOTAL</b>		<b>€861m</b>	

It is acknowledged that the Revenue Commissioners estimates of the losses to the Exchequer from fuel laundering and tobacco smuggling are lower than industry projections.

In addition, lost revenue also means lost sales and lost sales means redundancies. If the Exchequer was able to recover lost excise duty and VAT the overall tax burden would fall.

### 3. Enforcement and Penalties

An Garda Síochána and the Revenue Commissioners are acutely aware of the black market and retail crime.

The following table highlights recent actions.

**Table 2: Actions taken against unlawful activity**

<b>Diesel laundering</b>	<p>Since 2010, 19 oil laundries have been detected and closed and 690,000 litres of oil, with ten oil tankers and 38 other vehicles seized. A further 366,000 litres of illicit mineral oil was seized from retail outlets or in the course of delivery to such outlets. 52 filling stations have been shut by the Revenue Commissioners because they did not have a licence or were in breach of licensing conditions.<sup>6</sup></p> <p>The oil laundries uncovered this year were in Hackballscross (Co. Louth), Glasmullagh, Emyvale (Co. Monaghan), Virginia (Co. Cavan) and Rathmore (Co. Kilkenny).</p>
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<sup>5</sup> This lower estimate was provided in a reply to Parliamentary Question No, 26838/12 on 6<sup>th</sup> June 2012.

<sup>6</sup> Houses of the Oireachtas, replies to Parliamentary Questions, 28 March and 11<sup>th</sup> July 2012.



	<p>The Finance Act 2010 increased the level of fines applicable and a person convicted on indictment of an offence of evading or attempting to evade excise duty can be sentenced to imprisonment for up to five years or receive a fine, or both. The Finance Act 2012 strengthened the provisions for the control and supervision of the fuel supply chain. From 1 July 2012, a new auto-fuel trader's licence is required. A requirement to have a marked fuel trader's licence comes into operation with effect from 1 October 2012. New regulations, which apply from the start of next year, will introduce additional record keeping provisions.</p>
<b>Illegal tobacco</b>	<p>The Finance Act 2010 (Section 99), has increased the monetary penalty on summary conviction on indictment to a fine not exceeding €126,970, or where the value of the excisable products concerned is greater than €250,000, to a fine not exceeding three times the value of the products. Imprisonment for a term not exceeding twelve months was provided for in the Finance Act 2011 (Section 119).</p> <p>Last year, 109 million illegal cigarettes with a retail value of €45.9 million were seized in Ireland.<sup>7</sup> Nine 'blitz-type' operations have been conducted over the past two years. Revenue's customs officers are seeking to secure 150 convictions this year. In April/May 2012, some 47 million illegal cigarettes were seized.</p>
<b>Alcohol</b>	<p>The Intoxicating Liquor Acts provide the basis for the control and sale of alcohol in Ireland. Action by Revenue to combat smuggling and duty evasion and to ensure that the appropriate duty is paid on alcohol is taken under the Finance Acts. The Finance Act 2012 (Section 75) defines what is meant by 'illicit alcohol product'. The term covers counterfeit product and product produced outside an approved tax warehouse and does not encompass all alcohol in respect of which an offence could be committed e.g. smuggled 'legitimate' product.</p> <p>Seizures of counterfeit alcohol rose from 252 litres in 2010 to 1,309 litres last year.<sup>8</sup> Industry sources put the figure much higher, with some 44,276 litres of alcohol seized during 2010 in 287 different raids; the value of the goods was €600,000. Some 18 beer raids in 2011 seized product representing a loss to the Exchequer of some €10,000. 184 raids were carried out in relation to spirit retailers, with products with a loss to the Exchequer of some €107,000 confiscated. 57 wine raids were also carried out; with products with a loss to the Exchequer of some €120,000.</p>
<b>Shoplifting</b>	<p>An Garda Síochána recorded 5,083 incidents of theft from shops in the third quarter of 2011.<sup>9</sup></p>
<b>Counterfeit Goods</b>	<p>Some 66,853 individual counterfeit articles were intercepted in Ireland in 2010.<sup>10</sup> While this was down dramatically on the figure of 2009, the</p>

<sup>7</sup> Houses of the Oireachtas, reply to Parliamentary Question, 18 April 2012.

<sup>8</sup> Customs Criminal Investigation Unit, Revenue Commissioners, 2012.

<sup>9</sup> An Garda Síochána (2011) [Theft from Shops Prevention and Reduction Strategy](#)

	<p>problem remains serious – the number of cases of attempted importation of counterfeit products rose by a quarter to 1,277.</p> <p>For example, it was reported in April 2012 that a gang producing counterfeit clothing containing labels like Tommy Hilfiger, Adidas and Nike were operating a series of warehouses and seized clothing with a retail value of €600,000.<sup>11</sup></p>
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Enforcement levels appear to be generally poor as the following examples illustrate.

**Table 3: Enforcement levels**

<b>Diesel laundering</b>	<p>There were four court convictions in 2010 for laundered oil offences. Sixteen persons were arrested in 2011; of these the Director of Public Prosecutions has issued directions to prosecute on indictment in respect of five cases and on summary disposal in a further case. This year there have been two court convictions; with a fine of €2,500 imposed in one case and a suspended sentence in the other.<sup>12</sup></p>
<b>Illegal tobacco</b>	<p>In 2011, Revenue obtained 103 convictions relating to cigarette smuggling, with fines of €136,300 imposed. While 31 custodial sentences were secured 21 were suspended.<sup>13</sup></p> <p>Fines for cigarette smuggling are about €1,600 on average (2011/Q2) despite the maximum available penalty (€126,970) under the Finance Act 2010.<sup>14</sup></p>
<b>Illicit alcohol</b>	<p>The penalties for those found guilty of supplying illegal alcohol totalled €5,500.<sup>15</sup></p>

The rising incidences of the black market and crime in the retail sector suggests that the current penalties applied by the courts are not a deterrent.

As a consequence, serious consideration should be given – instead of imposing fines – to the reduction of current and future State payments, benefits and concessions to persons found guilty to the value of the loss to the Exchequer of the goods smuggled, counterfeited or stolen. Thus a cigarette smuggler found with goods where the loss in excise is €5000 could have, for instance, his/her social welfare payments reduced until the monies stolen from the general taxpayers are repaid in full as determined by the Courts having regard to the person's individual circumstances; even criminals should be left with a minimum level of income.

<sup>10</sup> Op cit, Revenue Commissioners, page 22.

<sup>11</sup> [Irish Independent](#), 2 April 2012.

<sup>12</sup> Houses of the Oireachtas, reply to Parliamentary Question, 11<sup>th</sup> July 2012.

<sup>13</sup> ITMAC, May 2012.

<sup>14</sup> Retailers Against Smuggling (2012).

<sup>15</sup> Revenue Commissioners, January 2012.

The same principle would apply to a business found guilty; with the possible additional sanction of the owner, for example, losing his/her licence for a period.

Custodial sentences should only be imposed for the most serious of offences.

For serious offences (for example, involving a net loss to the Exchequer in excess of €100,000), criminals' assets should be seized by the Criminal Assets Bureau as a matter of routine rather than the exception to the rule which appears to be case at present.

Unless a major offensive is mounted to tackle the problems identified in this report the Exchequer will lose €4.3 billion over the next five years; this is the equivalent to 30% of PAYE collected in 2011. Thus income tax rates could be reduced by an appreciable amount (or frontline services enhanced) if the revenue lost through crime was recovered.

The Revenue Commissioner's Statement of Strategy (2010-2014) makes it clear that it will prioritise its resources to tackle the shadow economy, targeting the highest risk areas and improving cross-agency cooperation, information matching and use of intelligence. For example, Revenue have committed to applying ten per cent of their compliance resources to combating the illicit trade in mineral oil. However, given the level of this Exchequer loss, there is a business case that resources should be redeployed, for instance into enforcement activities from other areas of Garda activity, routine road traffic policing for example, until the campaign starts to deliver results.

An award of up to €10,000 should be given to those persons who report (via a confidential hot-line) an illegal trade which results in a summary conviction. All whistle blowers should be protected by legislation i.e. the Protected Disclosure in the Public Interest Bill, 2012. This should be part of a wider awareness campaign alerting taxpayers about the additional burden they have to pay because of the criminal actions of a few.

In addition to better enforcement and a tougher set of penalties other actions could also be taken which are described in the sections below.

In summary, instead of adopting an approach specific to a particular sector/product, a whole of Government approach to the phenomenon of the black market should be adopted. The best way to do this would be for the Department of the Taoiseach to convene and act as secretariat for an inter-departmental group with a mandate (and resources) to tackle counterfeit and fraud affecting the retail trade. All relevant agencies, including those responsible for enforcement, should participate. The group should be open to representative organisations such as Retail Ireland and be chaired by an experienced member of the retail industry.

A risk based approach to counterfeit and fraud affecting the retail sector suggests the Government has no option but to tackle this endemic problem head on and face down the criminals who are clearly not deterred from continuing with this unlawful activity.

## 4. EU Dimension

Lost VAT through smuggling and other unlawful activity means that Ireland's contribution to the EU's budget is below what it should be.<sup>16</sup> Thus the European Commission has more than a passing interest in the Government's efforts to minimise Exchequer leakage.

At EU level, some €10 billion a year is lost in customs and tax revenues due to cigarette and alcohol smuggling. Action plans have been drawn up to tackle this problem. Thus there have been several successful joint customs operations in recent months. Chasing fuel smugglers is not, however, an EU priority.<sup>17</sup>

The Government should seek EU co-financing for high-impact actions from the [Fiscalis](#) and other EU funded programme such as Hercule II, AFIS and Pericles.

## 5. Fuel Laundering

### The problem

With €1.1 billion collected annually in excise duty from road diesel, illegal laundering and smuggling represents a serious threat to the Exchequer; to the retail sector and to the environment. While the majority of adulterated fuel is normally sold through unbranded sites, diesel is now being sold through some branded sites.

The Revenue Commissioners are acutely aware of the threat posed to the Exchequer.

At present fuel for off-road use is taxed at a lower rate; the price differential between the two types of diesel is 51.6 cent.<sup>18</sup> Diesel used other than as auto-diesel has a special dye added to it to differentiate it from diesel to be used for motorists.

However, the price differential acts as an incentive for criminal elements to launder the fuel and remove the dye. These illegal operations are an environmental hazard, polluting local water with harmful consequences for livestock and a huge loss to the Exchequer. Illegal diesel is also seriously damaging to cars.<sup>19</sup>

The illegal fuel trade is costing the Exchequer some €155 million in lost taxes every year; at least 12% of all diesel sold in Ireland is illegal.<sup>20</sup>

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<sup>16</sup> In common with other Member States Ireland's contribution to the EU budget is based, in part, on a share of VAT collected.

<sup>17</sup> European Commission, FAQ on the EU's Anti-Fraud Strategy (CAFS), 24 June 2011.

<sup>18</sup> Irish Petrol Retailers Association, 2011.

<sup>19</sup> *Irish Examiner*, 3 April 2012.

<sup>20</sup> Irish Petrol Retailers Association, 2011. The Revenue Commissioners point out that estimates of this kind must be viewed with caution.

Legitimate fuel retailers are struggling to survive in a difficult economic environment. Their livelihoods are being threatened because they are being undercut by cheaper laundered diesel. The inevitable consequence is fewer hours worked, job losses and in some cases business closures.

**Testimony**

***This illegal trade, once a phenomenon confined to border counties, is now a nationwide problem and one which is growing. Legitimate companies like Maxol cannot stop motorists buying laundered fuel; but the Governments on both sides of the border surely can if a concerted effort was made to clamp down on the criminals behind this activity.***

**Maxol Ireland**

### **Additional measures**

Finding a solution is complex as was evident from the conclusions of the Joint Committee on the Environment, Transport, Culture and the Gaeltacht.<sup>21</sup>

The Joint Committee's main recommendations, as follows, should be supported.

- The introduction of a registration system for fuel users, distributors and retailers
- Strengthen the licensing of persons to sell oil
- Intensify inspection levels
- Introduce more punitive penalties

In addition, the introduction of a rebate scheme to farmers has the potential to almost eliminate the problem. To address the concerns expressed by the Irish Farmers Association, the rebate scheme's design should guarantee no cash flow loss to farmers and to minimise paperwork the scheme should be e-linked to another regular agriculture payment scheme. The operation of the rebate scheme should be outsourced by way of a tender competition thereby ensuring it is administered not only at the lowest possible cost but at a small fraction of the current loss to the Exchequer.

Another option is the introduction of a more effective fuel marker. It is encouraging to note that the Revenue Commissioners and the UK authorities are co-operating on the introduction of such a new marker.<sup>22</sup>

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<sup>21</sup> Houses of the Oireachtas, report to the Minister for Finance on its consideration of fuel laundering and the loss of revenue to the State and its impact on the road haulage sector and retailers, Joint Committee on the Environment, Transport, Culture and the Gaeltacht, February 2012.

<sup>22</sup> A Memorandum of Understanding has been signed between the two authorities and a joint 'Invitation to Make Submissions' seeking proposals was published in June.

## 6. Petrol Theft

Research conducted by the [Convenience Stores and Newsagents Association](#) suggests that the numbers of motorists who drive away without paying for their fuel has increased threefold and retailers can lose up to €500 in a bad week. There are an estimated 1,042 petrol retail sites in Ireland<sup>23</sup> and assuming that an average loss of €100 per site per week this amounts to lost sales of €5.4m.

## 7. Illegal Tobacco

### The problem

Irish criminal gangs are making about €3m a week in selling illegal cigarettes. This illegal trade includes the smuggling of genuine product as well as counterfeit products.

According to the [Irish Tobacco Manufacturers' Association](#), international criminal gangs and local thieves are operating throughout the country with one in four cigarettes evading Irish excise duty.

Tobacco sales are an important source of revenue for the Irish Exchequer, with taxation on cigarettes and other tobacco products raising in excess of €1 billion every year.<sup>24</sup>

These sales are also important for retailers. For example, the average newsagents' turnover from cigarette sales is in the order of 20-22% of total sales; in forecourts this can rise to 35% of total sales; and in convenient stores the figure is still high at 16-19%.<sup>25</sup>

According to [Retailers Against Smuggling](#) the price of illegal cigarettes has fallen from €4 a packet to as low as €3.20, while the current recommended price is now nearly €9 (with taxation accounting for 80% of the price).

All tobacco products are harmful. Smoking is bad for health and the Government is rightly involved in taking measures to encourage people to quit smoking and discouraging others from taking up the habit in the first place. Nevertheless, where demand for tobacco exists, it is important that the demand is met through the legitimate retail channel and a situation is not allowed to develop where criminal gangs are involved in the supply.

Unfortunately, at present, the illegal tobacco market is large and growing. It is estimated that the legitimate cigarette market has shrunk from 6.7 billion in 2000 to 4.3 billion cigarettes in 2010, with no commensurate drop in smoking prevalence rates.<sup>26</sup> Industry sources suggest that almost 25% of the Irish cigarette market is made up of illicit product, with over 1.8 billion cigarettes smoked in Ireland sourced from the black market. Therefore it is no wonder, according to Europol, that Ireland is one of five European countries that is a 'preferred destination' for cigarette smugglers.

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<sup>23</sup> [The Irish Petroleum Industry Association](#) (2012).

<sup>24</sup> Department of Finance, Tax Strategy Group, report 10/21.

<sup>25</sup> Convenience Stores and Newsagents' Association, letter from the CEO to members (2011).

<sup>26</sup> Industry sources. The Revenue Commissioners estimate the figure is nearer to 14%.

Retailers Against Smuggling believe that despite the Revenue Commissioners best efforts that ‘organised crime has an iron grip on smuggling’. Difficult trading conditions are putting upwards of 6,000 jobs at risk.<sup>27</sup> This illegal trade is clearly having a devastating impact on retailers, which are already struggling to keep people in jobs, with tobacco smuggling costing an average retailer some €12,000 in lost profit per annum.<sup>28</sup>

The requirement, for example, that anyone selling cigarettes at a street market must be registered with the National Tobacco Control Office is seldom if ever respected.

This criminal activity costs the Exchequer up to €250m per annum in lost taxes (excise duty plus VAT) as 20% of all cigarettes consumed are sold illegally; 14% is illicit product and 6% imported by passengers arriving from other jurisdictions.<sup>29</sup> ITMAC estimated the figure to be higher at €526m.

The Revenue Commissioners have established a high level internal group, chaired at Commissioner level, to examine the risks related to tobacco products’ tax evasion and to oversee and optimise the detection of contraband and counterfeit tobacco products. In addition, Ireland (with other Member States) has signed formal binding agreements with the four major global tobacco manufacturers with the aim of instituting formal cooperation arrangements to combat cigarette and tobacco smuggling. However, despite the high priority attached by Revenue to tackling the illicit tobacco trade there is no evidence that the root causes of this problem have been cracked.

Revenue is also of the view that:

*Increasing the taxation of cigarettes in Ireland no longer carries the combined benefits of better public health and higher revenue for the public finances that would have arisen from such increases in the past. At the very least, **these benefits are severely weakened by the substitution of untaxed for taxed consumption.***<sup>30</sup>

**Testimony**

***Our customers tell us that they now buy their cigarettes at local markets where they are sold at a third of the price that we sell at. We are regulated to sell tobacco; those selling cigarettes in open defiance of the law are not. Why is the Government not putting these criminals in jail?***

**Benny’s Store, Emmet Street, Dublin**

<sup>27</sup> Retailers Against Smuggling, press release, 17 May 2012.

<sup>28</sup> Convenient Store and Newsagents’ Association (2012).

<sup>29</sup> Houses of the Oireachtas, reply to Parliamentary Question, 18 April 2012.

<sup>30</sup> Revenue Commissioners, Economics of Tobacco, February 2011.

## Additional measures

Additional measures could include:

- A consumer awareness campaign (perhaps modelling on [www.dodgycigs.co.uk/](http://www.dodgycigs.co.uk/)) about the health consequences of smoking often dubious products. Given that smugglers target children, parents in particular should be educated about spotting illegal products.
- Investment of more resources into detecting cigarette smuggling. Given the scale of on-going Exchequer losses, a competitive tender competition should be used to source experienced investigators to work alongside Revenue and Garda personnel for a two to three year period. This proposition is made as Revenue have reduced their staff (from 6,581 in January 2009 to some 5,960 in January 2012) and it would be unreasonable to ask this enforcement agency to mount a resource-intensive crack down with current staffing levels. Should the principle of outsourcing be accepted then it could also be extended to (and coordinated with) other areas where there is a significant and on-going loss to the Exchequer.
- The sale of any tobacco products at a market or fair should be banned. To this end, the penalties available under the Casual Trading Act 1995 should be made as strict as those which exist under the Finance Acts.
- Given the significant loss of excise duty and VAT, EU co-financing should be sought towards the cost of the above-mentioned specialist investigator team.

## 8. Illicit Alcohol

### The problem

Alcohol fraud occurs in three main ways: smuggling of alcohol from countries with lower alcohol rates; excise duty fraud and production and distribution of counterfeit spirits.<sup>31</sup> At EU level counterfeit alcohol results in an estimated annual loss of some €900m to national Exchequers.<sup>32</sup>

With some 42m litres consumed in Ireland (2011)<sup>33</sup> and while not at all on the same scale as smuggled tobacco, illegal and counterfeit alcohol sales in Ireland are still a problem primarily for the on-trade sector.

There have been several reports of seizures of large quantities of contraband alcohol destined for the Irish (and UK) markets. In one recent case (August 2011) some 84,000 litres of illegal spirits partly destined for Ireland were confiscated at Channel ferry ports.<sup>34</sup> In the UK, alcohol seizures increased fivefold from 2009 to 2011 to 148 incidents. In one case, a consignment of £430,000 worth

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<sup>31</sup> An Garda Síochána and the Police Force of Northern Ireland, Cross-Border Organised Crime Assessment, 2008.

<sup>32</sup> International Federation of Spirit Producers.

<sup>33</sup> Foley. A. 'The Drinks Market Performance in 2011, a report for Drinks Industry Group of Ireland, April 2012.

<sup>34</sup> 'France-UK alcohol smuggling surges', *The Connection*, 24 August 2011.



of pure alcohol, disguised as car wash fluid, was seized in Dublin en route to the UK.<sup>35</sup> However, the Revenue Commissioners have no estimate of the value of lost Exchequer revenue resulting from trade in contraband or illegal alcohol.

While the retail sector, which adheres to strict laws and industry codes of practice relating to the sale of alcohol products, is impacted adversely upon by these sales, so too is the Exchequer and the health of the general public.

The Revenue Commissioners have said that counterfeit alcohol, which is then often packaged to resemble well-known or premium brands and sold at markets, can contain methanol, rather than ethanol which is found in legitimate beverages. Methanol is dangerous to human health and can cause side effects including blindness.<sup>36</sup> Recent seizures of alcohol in the UK showed the products contained isopropyl alcohol, an industrial solvent, commonly found in nail varnish remover and screen wash.<sup>37</sup> Europol, the European police agency, stated that in a recent case in Turkey, 23 people had died when they consumed alcohol that contained very high levels of methyl alcohol.<sup>38</sup>

As alcohol is relatively inexpensive, the level of unlawful activity is much lower as compared to tobacco. However, if the mooted sharp rise in duty on alcohol is accepted by Government for public health reasons there inevitably will be a fall in revenue as bootleg suppliers satisfy demand. A risk based approach to the issue of the price of alcohol suggests that heightened criminal activity will result depending on the level of the proposed increase and where it applies i.e. if certain outlets only are affected.

### **Additional measures**

The best way to curtail trade in counterfeit alcohol is to educate consumers, with retailers playing a pro-active and central part of the campaign.

An awareness campaign should highlight that 1,000 people a year die from drinking bootleg liquor across the EU. It is relatively easy to recognise altered logos and spelling mistakes that appear on bottles. Low quality labels and packaging are also a tell-tale sign as are foreign safety warnings.

Addressing the problem of illicit alcohol should be part of the industry's overall response to the national alcohol policy.

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<sup>35</sup> 'Seizures of counterfeit alcohol increase fivefold in two year as criminals target lucrative market, *Daily Mail*, 3 February 2012.

<sup>36</sup> Revenue Commissioners, January 2012

<sup>37</sup> Oxfordshire County Council, 'Trading Standards seize over 200 bottles of counterfeit alcohol, [press release](#), 24 April 2012.

<sup>38</sup> 'Fake drink can kill or cause blindness, warns revenue' [The Examiner](#), 24 January 2012.

## 9. Counterfeit Products and Piracy

### The problem

Counterfeiting and piracy are terms used to describe a range of illicit activities linked to Intellectual Property Rights (IPR) infringement.

Because it is a covert criminal activity, no conclusive figures are available about the scale of the problem.<sup>39</sup> The OECD estimated (2005) that fakes seized by customs at borders amount to some \$250 billion a year; a significant under-estimate as only goods confiscated are taken into account and domestically produced fake products are also excluded.<sup>40</sup> The International Chamber of Commerce put the figure higher at \$600 billion. In the UK, the current estimated loss to all industry sectors affected by counterfeiting is £11 billion a year. While this is a large figure it is a small fraction of total UK retail sales. Whatever way one looks at it, counterfeiting is big business.

While no figures are available for the loss of trade in Ireland, few cross-border cases involving the enforcement of IPR have been taken. At EU level, customs officials seized fake goods worth €1.3 billion in 2011; some 115 million products. China was the main source of counterfeit goods, though goods from India, Thailand and Turkey were also seized in substantial quantities. In total, almost 80,000 packages were intercepted; 50,000 of these were in the postal network.<sup>41</sup>

The main fake product categories which customers knowingly purchase include clothing (27%); watches (15%); and perfumes (13%). Consumers are aware that such purchases damage domestic businesses and affect Exchequer revenues.<sup>42</sup>

According to An Garda Síochána, clothing is the most common item produced and sold by counterfeiters with individual items being produced in the Far East at a cost often as low as 50 cent per garment. Poison in children's clothing is the latest risk emerging from counterfeiters. A recent investigation found formaldehyde in woollen and cotton clothes that were 500 times higher than recommended safe levels.<sup>43</sup> According to the World Health Organisation, the chemical used to give a permanent press effect to clothes causes eye, skin and nasal irritation, respiratory problems, asthma and skin cancer.

The Gardai believe that around six criminal groups are responsible for the bulk of the fake goods trade in Ireland.

In addition, street markets are a major source of illegally sold goods. However, as the Casual Trading Act 1995 only applies to public markets, non-public markets are not regulated. Criminals know this and take full advantage of this gap in the law.

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<sup>39</sup> [The Anti-Counterfeit Group](#) (2012).

<sup>40</sup> The Economic Impact of Counterfeiting and Piracy, OECD (2007), up-dated in 2009.

<sup>41</sup> European Commission, Report on EU Customs Enforcement of IPR, DG Taxation and Customs, 2010.

<sup>42</sup> The Anti-Counterfeit Group (2011).

<sup>43</sup> Europol, Counterfeit Products: why buying fakes can be bad for your health (and more) (2012).

According to the OECD, Governments need to find ways to enhance enforcement and to raise awareness of counterfeiting and piracy. At EU level, the Office for Harmonisation in the Internal Market has been assigned, since April 2012, with the task of enforcing IPR.

**Testimony**

***Counterfeit items are of exceptionally poor quality, made from low-grade materials and nothing like the standard of the products they attempt to imitate. They represent bad value for customers and rob the State of much needed tax revenues.***

**Brown Thomas**

### **Additional measures**

The problem of counterfeit products, in particular clothing, should be dealt with on a number of levels:

- At EU level, the Irish Government should play a more pro-active role in the [EU Observatory on Counterfeiting and Piracy](#). The retail sector should be better briefed about EU enforcement projects. The EU's Memorandum of Understanding on the sale of counterfeit goods over the internet is one such initiative.
- At national level, the Casual Trading Act 1995 should be amended to allow for the proper regulation of all street and other markets.
- At local and community level, there should be more regular checks on casual traders to ensure the law is not being broken and counterfeit products are not for sale.
- IP guidelines for business should be developed and published.

## **10. Counterfeit Medicines**

### **The problem**

Counterfeit medicines are medicines that are intentionally mis-labelled with regard to either identity and/or source. They can range from life-saving medicines to regular painkillers, which have not been approved by regulated standards. Many contain too much or too little of the active ingredient; have the wrong ingredients; or contain ingredients but with misleading packaging. Use of counterfeit medicines can result in lack of correct treatment, or even death, with both generic and branded medicines being susceptible to this fraud.

Global counterfeit medicine sales are in the region of €75 billion a year (2010 estimate); a major problem for Ireland as the location for practically all of the global pharmaceutical companies. Counterfeit medicine sales in Ireland could be as high as €86m with one in five people putting their

health at risk. Some 55% of medicines are purchased over the internet from websites outside the country. Upwards of 90% of medicines bought from internet sources that conceal their physical address are counterfeit. Nearly a sixth of purchases were in response to email/spam advertising the medicine.<sup>44</sup>

Some 600,000 people in Ireland willingly (or otherwise) put themselves at risk by purchasing prescription-only medicines without a prescription. In essence, the risk comes in two ways;

- Taking such medicines without the authority of a doctor means individuals may be self-medicating inappropriately, harming their physical health.
- If the products are counterfeit, they may contain too much or too little of the active ingredient they need. The product may not contain that ingredient at all.<sup>45</sup> Or the product may contain other harmful ingredients such as rat poison, boric acid or lead paint.<sup>46</sup>

The Pfizer report found that 400,000 people did not acknowledge that taking prescription-only medicines without a prescription is a risky activity.

In Ireland, strict regulation of the supply of medicines is critical to ensure the proper functioning, safe and secure provision of drugs to the population, thus ensuring public health is protected. Some medicines can only be obtained through the acquisition of a prescription from one's doctor and obtained via a pharmacy. Others can be obtained without prescription from a pharmacy while other products can be purchased over the counter in mixed trading environments.

#### Testimony

***We are seeing more and more patients calling to our pharmacies with prescription medicines bought over the internet from unknown suppliers. Buying prescription medicines on line is a very risky business. It is also illegal to do so in Ireland. Patients want to know about the side effects they are experiencing, some of which are very serious indeed. It is a total false economy to buy medicines in this way. The sale of counterfeit medicines is a big problem and poses huge health risks.***

**Sam McCauley Chemists**

<sup>44</sup> Cracking Counterfeit, Pfizer, January 2010.

<sup>45</sup> [WHO factsheet](#), Counterfeit medicines, 2006.

<sup>46</sup> Solomon, S., BC Woman killed by fake drugs bought online, *National Review of Medicine*. 2007; 4:13 and other industry sources.

## Additional Measures

An industry-driven awareness campaign (in co-operation with the Irish Pharmaceutical Union) should be undertaken to point out the severity of the risks involved in consuming prescription only medicines without a prescription.

The materials and research of the [International Products Anti-Counterfeiting Taskforce](#) should be used to good effect. The IMPACT message is clear: [Counterfeit drugs kill!](#)

## 11. Digital Piracy

### The problem

In a recent survey over 50% of people who downloaded movies admitted they rarely if ever paid for the download.<sup>47</sup> This illegal gain is unfair not only to the producers of this artistic content but also to the retailers who sell such material. The Irish music and recording industry is also experiencing a dramatic and accelerating decline in income (€64m between 2005 and 2009) with the sector estimating there are some 770,000 illegal downloaders in Ireland.<sup>48</sup>

On the one hand Ireland is trying to become a global cluster – a ‘creative centre’ – for the audio-visual, gaming and music industry, which currently employs 5,000 and is seeking to double this figure. On the other hand, a significant proportion of the population does not see the connection between their digital piracy (i.e. unauthorised duplication or distribution of an original creative work without the consent of the rights owner) and the sustainability of what is a growing €550m business sector. Ireland will find it difficult to attract inward investors if the incidence of digital piracy in Ireland continues at current levels. It is of little comfort that this is a global problem; there are 20 illegal music downloads for every legal track sold.<sup>49</sup> The damage caused by digital piracy caused the loss of 185,000 jobs in the in EU in 2008 alone.<sup>50</sup>

There is a determined effort in Ireland to stamp out entertainment copyright infringements.<sup>51</sup> A consultation on the draft statutory instrument requiring internet service providers to exclude customers committing digital copyright theft has concluded. However, Ireland has not ratified the Anti-Counterfeiting Trade Agreement.<sup>52</sup> Supporters of ACTA believe it is needed to standardise international laws that protect intellectual property rights. As the European Parliament has voted (July 2012) against ACTA, on the grounds that it would limit internet freedom, the prospect of the Treaty being ratified in the short term are slim. The Courts have ruled that Irish legislation seeking to

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<sup>47</sup> Industry source (2012).

<sup>48</sup> Witness statement of Dick Doyle, 6<sup>th</sup> April 2010, the High Court case between several plaintiffs and UPC Communications Ireland Limited.

<sup>49</sup> [IRMA](#) (FAQ).

<sup>50</sup> Audiovisual Federation, submission on the consultation paper ‘Copyright and innovation’, 29 June 2012.

<sup>51</sup> [INFACT](#) for example have been active for the past 25 years against copyright abuse.

<sup>52</sup> Statement from Sean Sherlock, Minister of State at the Department of Jobs, Enterprise and Innovation, 5 July 2012.

identify and disconnect copyright infringers is unenforceable. In his ruling, Justice Peter Charleton acknowledged that illegal downloading 'is destructive of an important native industry'.

The EU's Copyright Directive (2001) is designed inter alia to implement the WIPO Copyright Treaty. There has been on-going controversy about its implementation into national law as Member States have a degree of flexibility about the transposition of certain key provisions, for example as regards exceptions and limitations. The Government's Copyright Review Committee extended until end-June 2012 the deadline for the making of submissions on the wide-ranging [Copyright Review](#). In February 2012, the Committee published an interim consultation paper on copyright and innovation. On foot of the 180 submissions received following the recent public consultation, the Review Committee's final report will set out recommendations for legislative change, including change at EU level.

While there is clear political will to modernise and adapt copyright legislation, it is also clear that this process is going to take time and therefore the prospects of having primary legislation enacted before the end of 2014 is remote.

The solutions that all parties are eagerly seeking will be found in the Committee's findings.

**Testimony**

***Xtra-vision's business is critically impacted by the unrestricted online availability of pirated movies. There is presently no effective way to restrict this illegal activity, and if this situation continues Xtra-vision's business and the livelihoods of its 1,200 employees will be lost.***

***Xtra-Vision***

**Additional measures**

It is unreasonable that a copyright holder whose rights are being infringed has to go to the High Court to seek redress. It is arguable given the scale of counterfeit, piracy and copyright infringements that a specialist court dealing with intellectual property cases should be set up.

The proposed (independent) Copyright Council is a positive idea provided it has a statutory basis with a clear and unambiguous remit.

## 12. Shoplifting and theft

### The problem

Shoplifting is a serious crime and it is not just retailers who are the victims.

With 35% of businesses overall reporting theft of stock (up from 19% in 2009) the problem has reached an unsustainable level.<sup>53</sup> International evidence supports this contention with 'shrinkage' (i.e. inventory loss caused by crime measured as a percentage of retail sales value) in Ireland at 1.43% in 2011; the equivalent value in sales of some €512m. While this is significantly lower than countries like the United States (1.59%) and the Czech Republic (1.50%), it remains higher than the United Kingdom (1.37%) and Spain (1.4%). Ireland ranks an embarrassing 11<sup>th</sup> out of 22 countries in Europe for shop lifting, with employee theft accounting for over a third of the total; the highest rate in Europe.<sup>54</sup>

This is a staggeringly high cost that is factored into retailers' pricing decisions; so the consumers ultimately pay for the criminal activity of the few.

### Additional measures

An Garda Síochána (2011) [\*Theft from Shops Prevention and Reduction Strategy\*](#) is a good starting point. The strategy is a proactive collaborative effort to prevent retail theft by the retail community and the Gardai involving awareness raising, cooperation and specific prevention measures that will, it is hoped, reduce the prevalence of retail crime.

It is important that:

- The strategy is fully implemented by all stakeholders.
- Local retail theft fora are set up involving local Gardai and retailers to allow for the sharing of intelligence and best practice in tackling retail theft on the ground.
- Retailers should fully inform themselves of the strategy's recommendations and put into practice those for which they have responsibility for, including provisions around appropriate store lay-outs.
- In cases where shoplifting occurs, the full force of the law is brought to bear and adequate penalties are imposed upon those prosecuted.

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<sup>53</sup> Small Firms Association, Crime Survey Results, March 2012.

<sup>54</sup> Global Retail Theft Barometer, Centre for Retail Research, 2012. Data suggests that the most commonly shoplifted items are cheese and raw meats. Op cit. Centre for Retail Research.

## 13. Conclusions

Crime is present in all societies and retailers will never be immune to the problem. Given the scale of the retail sector in Ireland, and the geographical spread of retailers, it is perhaps inevitable that some level of retail crime will always be present.

However, the extent of the losses endured by legitimate retailers to illegal operators is not sustainable. It is costing jobs and it is a disincentive to investment.

Consumers who, on the face of it, may feel they are getting good value, are actually losing out. Counterfeit products are shoddy, dangerous or both.

All three groups – retailers, consumers and the Government - have a vested interest in the reduction of retail crime.

The time has come for a coordinated and significant crack down on the black market and associated activity affecting the retail trade. There should be zero tolerance even for the most minor of crimes. In addition, penalties should be more commensurate to the scale of the crime.

A coordinated cross-Government approach is needed.

More resources need to be (re-)deployed towards enforcement activities.

In addition, and very much part of the package, a major awareness campaign needs to be undertaken to coincide with a nationwide crackdown on counterfeit and fraud affecting the retail industry.

While the retail industry will depend on Government for action, it should take a leadership role in this space and in cooperation with other representative bodies set up what might be called a Business Action Group to Stop Counterfeiting and Piracy.<sup>55</sup> The terms of reference could include information exchange, monitoring of trends, assessing how the OECD proposals for enforcement and regulation can be adapted to best suit Irish circumstances and the exchange of best practice. It should provide inputs into the work of the EU Observatory and the Government's taskforce above-mentioned.

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<sup>55</sup> This could be modelled on the International Chamber of Commerce [BASCAP](#) initiative.





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