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## A Law Lecturer's Perspective. Will Brexit create a Gangster's Paradise?

Dr. Simon Sneddon Senior Lecturer in Law has a different take on Brexit and Article 50.

*If I was an OCG, I would be buying light aircraft, booze, a million Marlboro, and praying for a quick, hard Brexit.*

It will not have escaped your notice that on **23rd June 2016, Britain voted by a narrow majority to leave the European Union**. This will be done by triggering Article 50 TEU, and in the last week or so the High Court has held that the government cannot do this by operation of the prerogative, and must go before Parliament.

The judges were very clear in their judgement ([R v Secretary of State for Exiting the European Union, ex p Miller \[2016\] EWHC 2768 \(Admin\)](#)) that “Nothing we say has any bearing on the merits or demerits of a withdrawal by the United Kingdom from the European Union” (para 5).

I am not bound by such restrictions—I think that the vote to leave was a mistake, and that the consequences of leaving the EU will be less than beneficial for the UK. In this post, I will address the issue of how organised crime feels about Brexit. I have not, if you were concerned, started to hunt out and chat to Triad Snakeheads, La Cosa Nostra

Capos, or Yakuza Kumichos. Instead, I have looked at what Organised Crime Groups (OCGs) do, and applied Dwight C Smith's Enterprise Theory of Organised Crime (1980) to the problem, to see what the results may be.

## Enterprise Theory

Smith<sup>[1]</sup> suggested that traditional models of organised crime, particularly the Alien Conspiracy theory were flawed, and pointed out that that theory made five assumptions:

- **Business and crime were distinct and totally separate categories of behaviour;**
- **Business was best understood in terms that encompassed legitimate and legal products or services;**
- **Beyond such product classification, size and ownership were the major distinctions within business;**
- **The professionally managed corporation was the predominant model; and**
- **The structure of the professionally managed corporation provided the most useful parallel to the equivalent area of criminal activity.**

Smith argues that this is the wrong way to look at Organised Crime, and I agree. He says that *“enterprise takes place across a spectrum that includes both business and certain kinds of crime”* and it is that perspective that I will be using here. Much of the activity in which OCGs are involved is demand-led—that is to say, where there is a demand for a product, and the legitimate economy cannot satisfy that demand at an acceptable price, organised crime will fill the vacuum. OCGs are also incredibly flexible, opportunistic and quick to respond to changes in demand—witness the growth in human trafficking activities from Turkey almost within days of the migrant crisis starting.

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## Illegal importation of tobacco and alcohol

One of the things which looks likely to be implemented as part of Brexit is an end to the easy availability of unlimited cigarettes and alcohol from the Continent. Currently, according to the UK Government website,<sup>[2]</sup> as long as they are for personal consumption or to give away as a gift “there are no limits to the alcohol and tobacco you can bring in from EU countries” although if you are transporting more than 800 cigarettes or 110 litres of wine, you are likely to be asked questions.

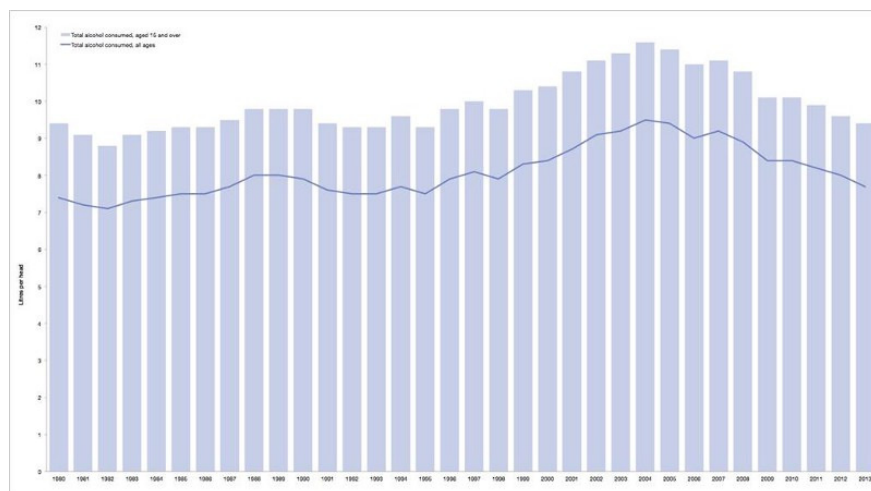
Despite this generous allowance, the HMRC publication “Measuring tax gaps 2016 edition: Tax gap estimates for 2014–15”<sup>[3]</sup> estimates that £1.4bn of VAT was avoided on tobacco products and £1.2bn on alcohol. The same document says that this represents a 12.8% gap in what was expected for tobacco and 10.4% gap for alcohol.

So (sorry, it is maths time):

	A	B	C	D
	VAT unpaid (£bn)	Gap (%)	Total VAT (£bn) (A/Bx100)	Market (£bn) (Cx100/20)
Tobacco	1.4	12.8	10.9	54.5
Alcohol	1.2	10.4	11.5	57.5
		Total	22.4	112

This means that the total market (and thus demand) for alcohol and tobacco in the UK is expected to be £112bn—let us say £100bn as a nice round figure. If this thirst cannot be slaked legally, then it will be slaked illegally, creating a boom period for OCGs.

According to the Institute of Alcohol Studies<sup>[4]</sup> alcohol consumption per person has been falling steadily since 2004, and is now back to levels not seen since the start of a 10-year general increase in 1994.



Source: British Beer & Pub Association (BBPA)

The Tobacco Manufacturer's Association<sup>[5]</sup> goes a step further, and gives an annual estimate of the number of cigarettes smoked in the UK, and the proportion of which are non-UK Duty paid ("smuggled, counterfeit, crossborder shopped and duty-free"). Of course, this does not include other types of tobacco, but the figures show that cigarette consumption in 2014 (1.9bn packs of 20) was about half what it was in 2001 (3.9bn packs), and a 61 per cent drop on 1990 levels (5.1bn packs).

Both markets seem to be contracting, although alcohol consumption is falling quite gently, compared to a sharp drop in smoking. For Organised Crime, this represents a time-limited (but massive) opportunity to generate profits.

Brexit will tighten the grip on what can be imported legally, whilst doing nothing additional to reduce demand. We know from Prohibition in the 1920s that this is the perfect storm for OCGs. Factor in the increased difficulty of legitimate migration into the UK, the illegal mirror of which Organised Crime is more than happy to facilitate, and this is a golden opportunity for such groups.

Whilst nothing can be done to stop the inexorable slide towards Brexit, it is crucial that the Prime Minister and her colleagues work towards a version of Brexit which maintains free movement of goods and people. To squander this opportunity could lead to a country in which organised crime has become the operator and facilitator of a high-profit, high-demand illicit enterprise, and the UK is reinvented as a Gangster's Paradise.

What about Customs officials, the National Crime Agency and other law enforcement bodies, you say? By their own admission,<sup>[6]</sup> existing border controls allow 18–23 tonnes of heroin and 25–30 tonnes of cocaine to enter the country each year, as well as a significant proportion of the 270 tonnes of cannabis that is consumed here. Budgets of these organisations are being cut, so there is even less chance of stopping up the gaps in our porous border.

If I was an OCG, I would be buying light aircraft, booze, a million Marlboro, and praying for a quick, hard Brexit.

. . .

[1] Smith, D., Paragons, Pariahs, and Pirates: A Spectrum-Based Theory of Enterprise, Crime & Delinquency July 1980 26: 358–386

[2] <https://www.gov.uk/duty-free-goods/arrivals-from-eu-countries>

[3]

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/561312/HMRC-measuring-tax-gaps-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561312/HMRC-measuring-tax-gaps-2016.pdf)

[4] <http://www.ias.org.uk/Alcohol-knowledge-centre/Consumption/Factsheets/Total-consumption-in-the-UK.aspx>

[5] <http://www.the-tma.org.uk/tma-publications-research/facts-figures/uk-cigarette-consumption/>

[6] <http://www.nationalcrimeagency.gov.uk/crime-threats/drugs>

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