



MEETING OF THE SUBGROUP ON TRACEABILITY AND SECURITY FEATURES SUMMARY RECORD

Date: 22 June 2017

Place: Brussels

1. Welcome and Introduction

DG SANTE welcomed the participants and recalled the general system architecture resulting from the provisionally preferred options.

2. Financial aspects

DG SANTE then gave a brief presentation on financial aspects of the traceability and security features systems. It explained that the analysis of the impact of the policy options has been grouped into social and economic impacts. An overview of the findings was provided and the affected stakeholders were specified.

An indication of the costs associated with each of the policy options was then presented and it was explained that, according to the analysis carried out by DG SANTE, as well as by its external contractor, the benefits likely to result from the systems are largely expected to outweigh the costs. It was nevertheless stressed that the effectiveness of the systems in fighting illicit trade will depend to a large extent on the use that Member States will make of the new tools that will be at their disposal.

Finally, DG SANTE confirmed that in carrying out the above analysis particular attention had been paid to SMEs and the impact of each policy option on smaller operators had been assessed. With reference to the 'near-real time' policy option for recording and transmission of data, DG SANTE confirmed that specific provisions to limit the impact on SMEs, without compromising the effectiveness and proper functioning of the traceability system, are under evaluation.

One Member State suggested that the costs of the traceability system to be borne by tobacco industries should ideally reflect their market share.

3. Discussion on the comments received:

a) Independency requirement

Under this point, DG SANTE clarified that the requirement for independence will likely apply to the ID issuers, the providers of repository services and the providers of anti-tampering devices, and that these entities will be required to exercise their functions impartially. It will likely be for Member States to assess the independence of ID issuers,

in the context of their appointment, while the independence of the providers of repository services will be assessed by the Commission, as provided for under Art. 15(8) of the TPD.

The implementing act is therefore likely to contain criteria to assist the assessment of independence, focusing on two main aspects:

- a) independence from the tobacco industry in terms of legal form, organisation as well as legal and economic decision making of the entity. For example the entity should not be under the direct or indirect control of the tobacco industry, nor financially dependent on the tobacco industry;
- b) absence of conflicts of interests with the tobacco industry of the persons responsible for the management of the entity.

Member States strongly agreed that independence is a key principle of the system and stressed the importance of clear assessment criteria in this respect.

Discussions also concerned the definition of SMEs applicable for the purpose of the implementing act.

b) Unique identifier (UI)

As outlined at the last meeting of the subgroup, DG SANTE explained that the 'mixed' solution had been provisionally identified as the preferred policy option for the marking of packages with a UI.

It clarified that the ID issuer would be responsible for the generation of UIs for unit and aggregated level packages and outlined the key steps that would be involved in requesting and delivering UIs. The allocation of this function to an independent third party appointed by each Member State would guarantee the independence of this process and enable Member States to control a key aspect of the traceability system. ID issuers should have the possibility to charge proportionate fees for the generation of UIs for unit and aggregated level packages.

DG SANTE said that the length of the UI is an important element to be considered as it will have an impact on the speed of printing. In order to meet the requirements of Art. 15(2) of the TPD, some of the required information will need to be identified by a code. In relation to the UIs for the aggregated packaging, DG SANTE explained that, as provided under Art. 15(5) TPD, this requirement aims at facilitating the recording obligations, whilst ensuring that identification of the unit packets contained in the aggregated packaging levels remains possible.

Finally, DG SANTE explained that the anti-tampering devices should protect the device used to verify the readability of unit level UI.

c) Recording and transmission of data

DG SANTE explained that in relation to the provisionally preferred option for recording and transmission of information – 'near real-time' time lag –, following input from Member States and stakeholders the possibility to introduce a transitional period and derogation for SMEs is under evaluation. As to the events to be recorded, DG SANTE clarified that it is possible to group them into 2 broad categories:

- a) Events necessary for the determination of the actual shipment route,

b) Events related to transactional information (order, invoice and payment).

DG SANTE presented an example of the information which should form part of the message transmitting an event to the storage system.

d) Processing, storing and accessing data

Under this point, DG SANTE confirmed that the provisionally preferred option is the 'combined data storage model', composed of three sub-components: a primary repository system (selected by manufacturers or importers), a secondary repository system (selected by the solution providers operating the primary repositories among themselves), and a router, which should form part of the secondary repository system. In relation to the functioning of the repository system, general requirements should be set concerning elements such as: interoperability of the system's components, uptime, storing and receipt of data, security procedures, and the data flow between different system components.

DG SANTE explained that a surveillance tool is also envisaged to provide Member States with access to the stored data. It said that this will be a key element of the traceability system as it will enable authorities to trace supply-chain activities and to analyse or determine abnormal patterns in the flow of tobacco products across the EU. It was further explained that links to existing systems, such as the EU-CEG, could be envisaged (e.g. via requiring economic operators to indicate the TP-ID in product description), and that data transfer to external systems should be technically possible.

In terms of costs for the repository system, DG SANTE clarified that these should be non-discriminatory and proportionate to the number of UIs requested by a manufacturer or importer.

One Member State indicated a preference for a decentralised data storage model per Member State.

In relation to the approval of the data storage contracts by the Commission, some Member States suggested that, if necessary, they could assist the Commission.

As to the retention period, some Member States indicated they would be in favour of 10 years, while one Member State noted that this may be too long.

e) Security features

Under this point DG SANTE explained that a system would be proposed according to which Member States would establish a list of compliant authentication elements that they would permit for forming a security feature for tobacco products to be placed on their market. This approach was considered to strike the necessary balance between providing flexibility and ensuring certainty both on the side of Member States and economic operators. In order to guarantee independence, it was explained that at least one security feature element should be provided by and independent third party

It was clarified that the use of tax stamps as a security feature would be allowed provided that they are compliant with Art. 16 TPD and the rules to be laid down in the implementing act. In all other cases tax stamps should be regarded as authentication elements of the security feature, to be complemented by other elements in order to form a compliant security feature. In relation to rotation schemes, DG SANTE clarified that those would remain voluntary, unless a Member State would have reason to believe that the integrity of its security feature in use would be compromised. Lastly, tamper evident construction mechanisms would have to be in place during the application process.

Annex I

List of participants

Austria	(Federal Ministry of Health and Women´s Affairs; Ministry of Finance – Tax and Customs Administration)
Belgium	(Algemene Administratie van de Douane en Accijnzen; Permanent Representation of Belgium to the EU)
Bulgaria	(Ministry of Finance - National Customs Agency)
Croatia	(Customs Administration of the Republic of Croatia)
Cyprus	(Department of Customs and Excise)
Czech Republic	(Ministry of Agriculture; Ministry of Finance)
Denmark	(Ministry of Health; Ministry of Taxation; Danish Safety Technology Authority)
Estonia	(Estonian Tax and Customs Board)
France	(French Customs)
Germany	(Federal Ministry of Food and Agriculture; Federal Ministry of Finance)
Greece	(Permanent Representation of Greece to the EU)
Hungary	(National Tax and Customs Administration; Ministry for National Economy)
Ireland	(Department of Health; Revenue Commissioners)
Italy	(Ministry of Health; Agency of Customs and Monopolies)
Latvia	(The State Revenue Service of the Republic of Latvia)
Lithuania	(Drug, Tobacco and Alcohol Control Department; State Tax Inspectorate)
Luxembourg	(Customs and Excise Administration; Permanent Representation of Luxembourg to the EU)
Malta	(Customs Department)
Poland	(Ministry of Finance; Permanent Representation of Poland to the EU)
Portugal	(Taxation and Customs General Directory; INCM – National Mint and Printing Office)
Romania	(National Agency for Fiscal Administration - General Directorate of Customs)
Slovakia	(Ministry of Finance of the Slovak Republic; Permanent Representation to the EU)
Slovenia	(Financial administration of the Republic of Slovenia)
Spain	(Agencia Estatal de Administracion Tributaria (AEAT), Customs and Excise Department; Permanent Representation of Spain to the EU)
Sweden	(Public Health Agency of Sweden)
The Netherlands	(Dutch Customs; Netherlands Food and Consumer Product Safety Authority)
United Kingdom	(HM Revenue & Customs)

Observers

Norway	(Norwegian Ministry of Health and Care Services; Directorate of Norwegian Customs)
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