

## Targeted stakeholder consultation on the implementation of an EU system for traceability and security features pursuant to Articles 15 and 16 of the Tobacco Products Directive 2014/40/EU

Fields marked with \* are mandatory.

This is a targeted stakeholder consultation. The purpose of this consultation is to seek comments from stakeholders:

- directly affected by the upcoming implementation of an EU system for traceability and security features pursuant to Articles 15 and 16 of the new Tobacco Products Directive (Directive 2014/40/EU), or
- considering to have special expertise in the relevant areas.

In the Commission's assessment, the following stakeholders, including their respective associations, are expected to be directly affected:

1. manufacturers of finished tobacco products,
2. wholesalers and distributors of finished tobacco products,
3. providers of solutions for operating traceability and security features systems,
4. governmental and non-governmental organisations active in the area of tobacco control and fight against illicit trade.

Not directly affected are retailers and upstream suppliers of tobacco manufacturers (except the solution providers mentioned in point 3 above).

The basis for the consultation is the Final Report to the European Commission's Consumers, Health and Food Executive Agency (CHAFFEA) in response to tender n° EAHC/2013/Health/11 concerning the provision of an analysis and feasibility assessment regarding EU systems for tracking and tracing of tobacco products and for security features (hereafter the Feasibility Study). The Feasibility Study was published on 7 May 2015 and is available at [http://ec.europa.eu/health/tobacco/docs/2015\\_tpd\\_tracking\\_tracing\\_frep\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/2015_tpd_tracking_tracing_frep_en.pdf). The interested stakeholders are advised to review the Feasibility Study before responding to this consultation.

The comments received in the course of this consultation will be an input to the further implementation work on a future EU system for traceability and security features. In particular, the comments will be taken into account in a follow-up study.

Stakeholders are invited to submit their comments on this consultation at the following web-address <https://ec.europa.eu/eusurvey/runner/trace> until 31 July 2015. The web-based survey consists of closed and open questions. For open questions stakeholders will be asked to provide comments up to the limit of characters indicated in the question or to upload (a) separate document(s) in PDF format up to the limit of total number of standard A4 pages (an average of 400 words per page) indicated in the question. Submissions should be - where possible - in English. For a corporate group one single reply should be prepared. For responses from governmental organisations, which are not representing a national position, it should be explained why the responding body is directly affected by the envisaged measures.

The information received will be treated in accordance with Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community (please consult the [privacy statement](#)). Participants in the consultation are asked not to upload personal data of individuals.

The replies to the consultation will be published on the Commission's website. In this light no confidential information should be provided. If there is a need to provide certain information on a confidential basis, contact should be made with the Commission at the following email address: [SANTE-D4-SOHO-and-TOBACCO-CONTROL@ec.europa.eu](mailto:SANTE-D4-SOHO-and-TOBACCO-CONTROL@ec.europa.eu) with a reference in the email title: "Confidential information concerning targeted stakeholder consultation on the implementation of an EU system for traceability and security features". A meaningful non-confidential version of the confidential information should be submitted at the web-address.

Answers that do not comply with the specifications cannot be considered.

## A. Respondent details

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### \*A.1. Stakeholder's main activity:

- a) Manufacturer of tobacco products destined for consumers (finished tobacco products)
- b) Operator involved in the supply chain of finished tobacco products (excluding retail)
- c) Provider of solutions
- d) Governmental organisation
- e) NGO
- f) Other

\*A.1.a. Please specify:

- i) Cigarettes
- ii) RYO
- iii) Cigarillos
- iv) Cigars
- v) Pipe tobacco
- vi) Water pipe tobacco
- vii) Smokeless tobacco including chewing, oral and nasal tobacco
- viii) Other

\*A.1.a.viii. If other, please specify

*Text of 1 to 800 characters will be accepted*

E-Cigarettes

\*A.2. Contact details (organisation's name, address, email, telephone number, if applicable name of the ultimate parent company or organisation) - if possible, please do not include personal data

*Text of 1 to 800 characters will be accepted*

Japan Tobacco International S.A., rue de la Gabelle 1, 1211 Genève 26,  
Switzerland.  
Please contact us through our web site [www.jti.com](http://www.jti.com)

\*A.3. Please indicate if your organisation is registered in the Transparency Register of the European Commission (unless 1d):

- Yes  No

\*A.3.1. Please enter your registration number in the Transparency Register

71175716023-03 (JTI BV on behalf of JTI S.A.)

\*A.4. Extract from the trade or other relevant registry confirming the activity listed under 1 and where necessary an English translation thereof.

- **8791e271-38ab-484f-ad1d-39ceddee488d/JTIH Trade Register Excerpt, dated May 19, 2015 (ENG).pdf**

## B. Options proposed in the Feasibility Study

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B.1. Please rate the appropriateness of each option for tracking and tracing system set out in the Feasibility Study in terms of the criteria listed in the tables below

B.1.1. Option 1: an industry-operated solution, with direct marking on the production lines carried out by tobacco manufacturers (for further details on this option, please consult section 8.2 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Administrative/financial burden for public authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

B.1.2. Option 2: a third party operated solution, with direct marking on the production lines carried out by a solution or service provider (for further details on this option, please consult section 8.3 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

B.1.3. Option 3: each Member State decides between Option 1 and 2 as to an entity responsible for direct marking (manufacture or third party) (for further details on this option, please consult section 8.4 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

B.1.4. Option 4: a unique identifier is integrated into the security feature and affixed in the same production process (for further details on this option, please consult section 8.5 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>



B.1.5. Please upload any additional comments on the options referred to in question B.1 (max. 5 pages)

- **84bc150c-4e5f-47dd-9e7b-463f29edc6ba/Final Response to EU Consultation Question B-1-5.pdf**

B.2. Please rate the appropriateness of each option for security features set out in the Feasibility Study in terms of the criteria listed in the tables below

B.2.1. Option 1: a security feature using authentication technologies similar to a modern tax stamp  
 (for further details on this option, please consult section 9.2 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

B.2.2. Option 2: reduced semi-covert elements as compared to Option 1 (for further details on this option, please consult section 9.3 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

B.2.3. Option 3: the fingerprinting technology is used for the semi-covert and covert levels of protection (for further details on this option, please consult section 9.4 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
* Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

B.2.4. Option 4: security feature is integrated with unique identifier (see Option 4 for traceability)  
 (for further details on this option, please consult section 9.5 of the Feasibility Study)

	Appropriate	Somewhat appropriate	Neutral	Somewhat inappropriate	Inappropriate	No opinion
*Technical feasibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

B.2.5. Please upload any additional comments on the options referred to in question B.2 (max. 5 pages)

- [4a276c26-83ad-45f2-addc-7304eddf5b50/Final Response to EU Consultation Question B-2-5.pdf](#)

## C. Cost-benefit analysis

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C.1. Do you agree with?

	Agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Disagree	No opinion
*The benefit analysis presented in section 11.3.1 of the Feasibility Study	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
*The cost analysis presented in section 11.3.2 of the Feasibility Study	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

\*C.1.1. If you selected option "Disagree" or "Somewhat disagree" in the previous question, please upload your main reasons for disagreement (max. 5 pages)

• 3523cb94-cac6-4021-930c-896724376fae/Final Response to EU Consultation Question C-1-1.pdf

## D. Additional questions

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The questions in this section relate to different possible building blocks and modalities of the envisaged system (questions D.1, D.3, D.4, D.6, D.8, D.10, D.12, D.14 and D.16). When replying please take into account the overall appropriateness of individual solutions in terms of the criteria of technical feasibility, interoperability, ease of operation, system integrity, potential of reducing illicit trade, administrative/financial burden for economic stakeholders and administrative/financial burden for public authorities.

\*D.1. Regarding the generation of a serialized unique identifier (for definition of a unique identifier, see Glossary in the Feasibility Study), which of the following solutions do you consider as appropriate (multiple answers possible)?

- a) A single standard provided by a relevant standardization body
- b) A public accreditation or similar system based on the minimum technical and interoperability requirements that allow for the parallel use of several standards;
- c) Another solution
- d) No opinion

\*D.1.a. Please indicate your preferred standardization body

*Text of 1 to 400 characters will be accepted*

GS1 using GTIN + serial number as the unique code for the lower packaging levels such as pack. Upper levels should use either SGTIN or SSCC.

D.2. Please upload any additional comments relating to the rules for generation of a serialized unique identifier referred to in question D.1. above (max. 2 pages)

• 8ba61f62-e9da-45cf-813d-3dce9faaad3e/Final Response to EU Consultation Question D-02.pdf



\*D.3. Regarding (a) data carrier(s) for a serialized unique identifier, which of the following solutions do you consider as appropriate (multiple answers possible)?

- a) Solution based on a single data carrier (e.g. 1D or 2D data carriers)
- b) Solution based on the minimum technical requirements that allow for the use of multiple data carriers;
- c) Another solution;
- d) No opinion

\*D.3.a. Please indicate your preferred data carrier and explain why

*Text of 1 to 400 characters will be accepted*

Different packaging types need different types of data carriers:

- High speed production minimum space availability AIM Dot code, slower speed and larger packaging types GS1 2d matrix codes
- Other Tobacco Products (OTP) larger packaging types i.e. buckets, large bags 2d matrix codes.

Larger shipping cases and Pallets GS1 128 bar code with the option of 2d matrix

\*D.4. Regarding (a) data carrier(s) for a serialized unique identifier, which of the following solutions do you consider as appropriate (multiple answers possible)?

- a) System only operating with machine readable codes;
- b) System operating both with machine and human readable codes;
- c) No opinion

D.5. Please upload any additional comments relating to the options for (a) data carrier(s) for a serialized unique identifier referred to in questions D.3 and D.4 above (max. 2 pages)

• **7211fcfd-b1f5-4e44-95c8-b7dbd5b4f90d/Final Response to EU Consultation Question D-05.pdf**

\*D.6. Regarding the physical placement of a serialized unique identifier, when should it happen (multiple answers possible)?











- a) Before a pack/tin/pouch/item is folded/assembled and filled with products;
- b) After a pack/tin/pouch/item is folded/assembled and filled with products;
- c) No opinion

D.7. Please upload any additional comments relating to the placement of a serialized unique identifier referred to in question D.6. above (max. 2 pages)

• **2b1b54a9-4c06-45f7-99da-f3a48c328986/Final Response to EU Consultation Question D-07.pdf**

D.8. Which entity should be responsible for?

	Economic operator involved in the tobacco trade without specific supervision	Economic operator involved in the tobacco trade supervised by the third party auditor	Economic operator involved in the tobacco trade supervised by the authorities	Independent third party	No opinion
*Generating serialized unique identifiers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Marking products with serialized unique identifiers on the production line	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Verifying if products are properly marked on the production line	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Scanning products upon dispatch from manufacturer's/importer's warehouse	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Scanning products upon receipt at distributor's/wholesaler's premises	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Scanning products upon dispatch from distributor's/wholesaler's premises					
*Aggregation of products					

D.9. In relation to question D.8. above, please specify any other measures that your organisation considers relevant

*Text of 1 to 1200 characters will be accepted*

The EU signed a series of Cooperation Agreements with the four largest international tobacco manufacturers making a number of promises and covenants that the manufacturers relied on. In reliance on these promises and covenants, JTI made major investments to develop a state of the art track and trace system. This track and trace system is now working very well throughout the EU and worldwide. The Member States pay nothing for this system and receive all of the benefits of it. Because JTI has already proved that it can run a well-regarded and effective track and trace system without supervision, and because there is no such requirement for supervision in Article 15, other than the of monitoring of the independent third party data storage providers, JTI would respectfully submit that the economic operators involved in the tobacco trade should be responsible for each of the processes listed in D.8.

\*D.10. Regarding the method of putting the security feature on the pack/tin/pouch/item, which of the following solutions do you consider as appropriate (multiple answers possible)?

- a) A security feature is affixed;
- b) A security feature is affixed and integrated with the tax stamps or national identification marks;
- c) A security feature is printed;
- d) A security feature is put on the pack/tin/pouch/item through a different method;
- e) No opinion

\*D.10.d. Please explain your other method

*Text of 1 to 800 characters will be accepted*

- The security feature should be an intrinsic part of the packaging and this does not necessarily mean printing. There are many security features available on the market which are suitable such as taggants and finger printing which do not need a label.
- Random secure serialization is also a feature which has been used over many years with success.
- Fingerprinting technology as an intrinsic part of the packaging.

D.11. Please upload any additional comments relating to the method of putting the security feature on the pack referred to in question D.10 above (max. 2 pages)

• 5658a83f-5304-43a9-b92f-ca68051e6c9c/Final Response to EU Consultation Question D-11.pdf

\*D.12. Regarding the independent data storage as envisaged in Article 15(8) of the TPD, which of the following solutions do you consider as appropriate (multiple answers possible)?

- a) A single centralised storage for all operators;
- b) An accreditation or similar system for multiple interoperable storages (e.g. organised per manufacturer or territory);
- c) Another solution
- d) No opinion

D.13. Please upload any additional comments relating to the independent data storage referred to in question D.12. above (max. 2 pages)

• [7a5ee09a-eea8-4ba3-b443-51960730fb6f/Final Response to EU Consultation Question D-13.pdf](#)

\*D.14. In your opinion which entity(ies) is/are well placed to develop reporting and query tools (multiple answers possible)?

- a) Provider of solutions to collect the data from the manufacturing and distribution chain;
- b) Provider of data storage services;
- c) Another entity
- d) No opinion

\*D.14.c. Please explain

*Text of 1 to 800 characters will be accepted*

The manufacturers who have the experience in track and trace solutions could develop reporting and query tools.

D.15. Please upload any additional comments relating to the development of reporting and query tools referred to in question D.14. above (max. 2 pages)

• [d3c4da48-5649-4fb8-b97f-71acb8584df8/Final Response to EU Consultation Question D-15.pdf](#)

\*D.16. Do you consider that the overall integrity of a system for tracking and tracing would be improved if individual consumers were empowered to decode and verify a serialized unique identifier with mobile devices (e.g. smartphones)?

- a) Yes
- b) No
- c) No opinion

**D.16.a. If yes, please explain your considerations**

*Text of 1 to 800 characters will be accepted*

The more persons validating the authenticity of products the more likely that the system will have some effect.

**D.17. Please upload any additional comments on the subject of this consultation (max. 10 pages)**

• **0af67a26-1c5b-413b-bb67-19984d9dfe5f/Final Response to EU Consultation Question D-17.pdf**

**Contact**

✉ [SANTE-D4-SOHO-and-TOBACCO-CONTROL@ec.europa.eu](mailto:SANTE-D4-SOHO-and-TOBACCO-CONTROL@ec.europa.eu)

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# The Netherlands Chamber of Commerce Commercial Register extract

Attachment A4

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



# The Netherlands Chamber of Commerce Commercial Register extract

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





# The Netherlands Chamber of Commerce Commercial Register extract

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



## JTI'S VIEWS ON THE FOUR TRACK AND TRACE OPTIONS PROPOSED IN THE SBS FEASIBILITY STUDY REPORT - QUESTION B.1.5

### **Introduction:**

The Eurogroup Consulting and Sovereign Border Solutions' (collectively "SBS") report (the "SBS Report") has detailed four options for the MS to consider when defining the technical standards for meeting the conditions of Article 15 of the TPD 2014/40/EU – Traceability of Tobacco Products. In JTI's opinion, option 1 is the only acceptable and legal solution that meets the requirements of the Directive. Options 2, 3 and 4 pose either legal questions relating to, but not limited to, the powers conferred upon the Commission under Articles 5 and 290 TFEU, or they go against the plain language of the Directive and contradict its objectives.

JTI's views on each option are detailed below:

### **Option 1:**

This option proposes "an industry operated traceability solution in which the EU Commission prescribes the standards and the tobacco manufacturers operate the solution (with the exception of data storage, which is done by an independent Data Management Provider)."

This option is fully compliant with the Directive and the general principles of EU law. The four major tobacco manufacturers are currently responsible for the operation of a track and trace solution. Indeed, this solution has been in operation for the last 10 years and has been endorsed by authorities across the EU. This solution is based on internationally recognized standards (i.e., GS1), which encourages open competition to any provider of suitable technology. Importantly, this option presents the lowest administrative and cost burden for the EU and the Member States. If necessary, full control of the generation of the Unique Identifier could be carried out by the Member States and the tracking and tracing database could be hosted and managed by independent third party companies.

SBS has incorrectly interpreted Article 15(8) in applying an "amber" rating on the critical success factor relating to independent data storage. SBS speculates that there is an issue with tobacco companies having access to their own traceability data. However, Article 15(8) is concerned with ensuring full transparency of the data in order for the tobacco companies to effectively manage their own supply chain. As more fully set forth in JTI's response to Question D.13, JTI's view is that the manufacturers' access to track and trace data is essential for an effective system that will support JTI's zero tolerance policy regarding the illegal trade of tobacco. Additionally, under the General Product Safety Directive, JTI must be able to enact a product recall if deemed necessary, which would be all but impossible without access to this data.

## **Option 2:**

This option proposes “a single tobacco traceability solution as a standard, harmonized EU Community system which may be operated by one or more solution providers that are independent of the tobacco industry.” This option suggests a single EU data repository rather than data storage agreements concluded by manufacturers as required in the Directive.

To start with, this option is not compliant with Article 15 and clearly goes beyond what the Commission is responsible for. Moreover, this option would infringe Article 290 TFEU and the principle of conferred powers. Under Article 15.11 of the Directive, the Commission is empowered to adopt Implementing Acts to determine technical standards in relation to track and trace systems and to ensure that they are interoperable and compatible with each other. Adopting a single tobacco traceability system would be contrary to these principles, and could potentially run afoul of competition law.

Such a solution envisaged under Option 2 that meets all the requirements of the Directive does not yet exist and it would take years to develop, test and implement through all of the economic operators within the EU. Given the Directive’s timeframe, this would be impossible. Additionally, this option presents the EU with an unnecessary financial burden.

Having multiple solution providers under Option 2 would also be extremely impractical from a manufacturing and operational point of view. The report states that the solution provider “implements systems and equipment on the production lines” and traceability data would be created and managed by the solution provider. In order to ensure continuous production, minimize production down-time and the creation of data, the solution provider would have to be present in each and every factory during its operating hours (usually 24 hours per day). This would present an enormous cost and operational burden on all manufacturers down to the smallest producers. This also means that the manufacturer would no longer be liable for the quality of the traceability data.

## **Option 3:**

This option considers that the EU Commission mandates minimum standards for interoperability and gives each MS the possibility to establish their own solution requirements that is implemented by either the industry (option 3a), or a service provider (option 3b).

Firstly, under Article 15.11 of the Directive, the Commission is empowered to adopt implementing acts to determine technical standards in relation to track and trace systems and to ensure that they are interoperable and compatible with each other across the EU. Therefore, the Commission has no authority to give the Member States the power to appoint a solution provider to implement a track and trace system and a database provider. Article 15.8 prescribes that tobacco manufacturers conclude contracts for data storage. Additionally, Option 3b contradicts the objectives of the TPD by obliging manufacturers to comply with potentially 28 different track and trace systems.

JTI believes that Option 3 would unnecessarily increase the costs of data storage and would present manufacturers with an unmanageable production environment that

could potentially require multiple solutions installed on a single production line, with each solution operated by a different solution provider. This further exacerbates the situation already mentioned under Option 2, whereby there would potentially be a need for several service providers being present in the same factory in order to maintain their different systems.

System interfacing, interoperability and data integrity would be impossible to guarantee under these conditions.

**Option 4:**

This option considers combining the traceability solution with security features by adding a unique identifier to the security feature. The MS establish solution components and standards for recording the unique identifier operated and serviced by a provider independent of the tobacco industry. All data is to be submitted to an independent data management provider. This option requires a label (or tax stamp) with a pre-printed unique code, to be glued to the pack.

Clearly, this option does not meet the requirements of the Directive as some key information, such as date and time of manufacture, required under article 15.2, will be impossible to include in a pre-printed label.

To JTI's knowledge, a full track and trace solution based around tax stamps does not yet exist within any industry, let alone the high speed production environment of the tobacco industry. Option 4 would require enormous development efforts in order to make this even potentially feasible on high-speed, highly automated production lines. Moreover, based on JTI's years of track and trace experience, JTI can say that this option would be unlikely to work on many of JTI's high speed production lines.

Additionally, given the inherent unsecure nature of tax stamps and banderoles (by the ease in which they can be copied or stolen), and as mentioned elsewhere in JTI's responses to this Consultation, glued security features do not provide evidential proof that the product to which they have been glued is genuine.

As already stated in JTI's response to Options 2 and 3, the same arguments against option 4 apply. JTI believes that Option 4 unnecessarily increases the costs of track and trace and would present manufacturers with an unmanageable manufacturing environment, potentially requiring several solutions installed on a single production line, each solution operated by a different solution provider. Of course, requiring several service providers to be present in the same factory in order to maintain their various systems would be an unnecessary cost and operational burden for all manufacturers. As set forth above, system interfacing, interoperability and data integrity would be impossible to guarantee under these conditions.

31<sup>st</sup> July 2015



## JTI'S VIEWS ON THE FOUR SECURITY FEATURE OPTIONS PROPOSED IN THE SBS FEASIBILITY STUDY REPORT - QUESTION B.2.5

### **I. Introduction**

JTI disagrees with the findings of the SBS Report related to the Article 16 requirement for a Security Feature. In particular, JTI is concerned at how this section of the SBS Report appears to cater to a “very limited” number of SBS’ so-called “trusted providers.”

Despite the rapid developments that have been made in digital security in recent years, the SBS Report tries to cement an outdated technology (stamps) and erect barriers to innovation by favoring only one solution: security features that are glued to the pack. This limitation is justified neither by the Directive nor by the FCTC Protocol. The SBS Report even goes as far as suggesting that one EU-wide solution provider for security features should be considered, again, contrary to the Directive. Of course, awarding all of this work to a single (or even a “very limited” number of “trusted providers”) could create an anti-competitive monopoly, an incentive to charge higher prices and a limited incentive for innovation.

When compared to glued security features, the SBS Report appears to only gloss over other technological developments. For example, the SBS Report simply dismisses commercial printing techniques in section 9.1.1.6 for some “weakness,” without a sufficient explanation of what these weaknesses are. Indeed, the limited explanation for commercial printing weaknesses would appear to be the exact same weaknesses that are present in glued security features such as tax stamps. However, for some reason, these criticisms are notably omitted in the glued security feature section.

### **II. Discussion**

Instead of glued security features (e.g., tax stamps or banderols), JTI believes that the implementation of Article 16 of the TPD must allow Member States the right to use innovative technologies that will comply with the security feature requirements, including a fraud-proof security feature providing for unequivocal authentication of each unit packet based on its intrinsic properties (for example, fingerprinting or taggant technology). Moreover, JTI believes that manufacturers must remain liable for authenticating their products, just like in any other industry.

For many reasons, glued security features such as tax stamps have failed to provide a strong deterrent to illegal trade. Some of these reasons include: (1) the fact that a glued security feature can only authenticate the security feature itself, not the product it is supposed to secure (e.g., “if a glued cigarette tax stamp is stuck on a boat, does that make the boat a pack of cigarettes? No!”); (2) glued tax stamps are often found to be removed, reused, counterfeited and stolen; and (3) because of the above, glued security features cannot be admissible in court to authenticate the product it is supposed to secure. In order to authenticate a product, a court will require the brand

owner's forensic analysis of the product at issue. In contrast, fingerprint or other intrinsic security features technology could assist authentication in court and could be verified by the governmental authorities themselves.

For these reasons, JTI respectfully requests that the Commission only define general technical standards for the visible and invisible security elements, allowing Member States the maximum flexibility to adopt their preferred solution. Without such flexibility, Member States may be forced into using an antiquated system that does not meet their needs. In particular, the Commission should avoid a less secure "one size fits all" EU approach which could limit the adoption of the latest technologies or prevent Member States from rapidly changing their security features when faced with new counterfeit threats.

### **III. Review of Options**

In addition to the above, and in response to the specific four options set forth in the SBS Report, JTI responds as follows:

#### Option 1:

The technical feasibility of Option 1 highly depends on the stamp's base material and specifications. It is also dependent on the type of application method. For example, frangible paper on high speed production lines has never been tested. Moreover, interoperability is dependent on the stamp sizing, ensuring that all market stamps will be compatible with existing machinery.

It is well known that even the glued security features referred to as "modern stamps" can be easily counterfeited or at least copied. These so-called modern stamps give a false sense of security to both consumers and law enforcement who do not have the specialized tools to differentiate between genuine and counterfeit glued security features.

As set forth above, glued security features such as tax stamps only authenticate the security feature itself. Therefore, tax stamps cannot be used in court to authenticate the product they are supposed to secure.

#### Option 2:

In addition to the arguments set forth above in JTI's response to Option 1 (which are hereby restated here in Option 2), the use of a glued security feature in Option 2 would provide absolutely no additional security when the serialization that is printed on a pack is accompanied by a hidden feature that is an intrinsic part of the packaging. The glued security feature would become redundant and would, as always, have limited effectiveness.

Moreover, assuming the serialization was part of a track and trace system, the volume reporting from the track and trace system would be sufficient to verify tax declarations without the need for a tax stamp or banderole.

#### Option 3:

Again, in addition to the arguments set forth in Option 1 (which are hereby restated in JTI's response for Option 3), adding a glued security feature to finger printing technology would provide absolutely no additional security and would remain a duplicative and unhelpful addition to a truly modern and secure digital technology (i.e., finger print technology itself).

#### Option 4:

Option 4 appears to be catering to a "very limited" number of so-called "trusted" security providers. First, adding a unique code (presumably for track and trace purposes) to a glued security feature is an entirely unproven technology. Moreover, the serialization on these glued security features could be different from market to market and pre-printed numbers cannot have any inherent product information within the unique identifier. Additionally, the application of these unique codes to glued security features during manufacturing will be very sensitive to high speed production and will need to be placed in such a position to enable accurate and reliable readings so that they can be linked to the higher packaging level (i.e., aggregation).

Lastly, as some Member States do not use glued security features, this option would not remove the need for printing codes on packs in several Member States unless the EU made these glued security features mandatory in each Member State. If they did become mandatory, each Member State would have to have the same specifications for all glued security features, making counterfeiting easier than it already is.

#### **IV. Conclusion**

For the reasons set forth above, JTI respectfully requests that the Commission disregard the SBS Report findings in relation to Article 16 because, among other things, the SBS Report failed to provide a true market overview of the technological developments related to security features. JTI further requests that the Commission only define general technical standards for the visible and invisible security elements, allowing Member States the maximum flexibility to adopt their preferred solution. The Commission should avoid a less secure "one size fits all" EU approach which could limit competition, limit the adoption of the latest technologies and/or prevent Member States from rapidly changing their security feature when faced with new counterfeit threats.

31<sup>st</sup> July 2015

## JTI'S VIEWS ON THE COST/BENEFIT ANALYSIS FROM THE SBS FEASIBILITY STUDY REPORT QUESTION C.1.1

In JTI's view, the SBS Report cost/benefit analysis provides little guidance to the Commission and should be disregarded. Nevertheless, JTI will respond to this cost/benefit analysis by analyzing the true cost issues in terms of: (1) the costs of these articles to manufacturers and distribution chain operators; and (2) the costs of these articles to the Member States.

### **I. Costs to Manufacturers and Distribution Chain Operators**

#### **A. Manufacturers' Massive Investments in Successful Track and Trace Systems**

The four major tobacco manufacturers have spent hundreds of millions of Euros to develop state-of-the-art track and trace systems in reliance on the promises and covenants made by the European Union, the European Commission and the Participating Member States in their Cooperation Agreements with these manufacturers. Indeed, these track and trace systems are working very well throughout the EU and worldwide. JTI is extensively using this system in its close work with law enforcement officials across the EU to help fight the illegal trade of tobacco in Europe.

For this reason, it is quite surprising that the SBS Report does not take these investments into account when it analyzes the costs of the only viable option in the SBS Report – Option 1 for track and trace. It is hard to imagine how a credible report would not see these massive investments as the preeminent issue when making a calculation based on cost/benefit.

It is also surprising that when dealing with costs to the manufacturers and distribution chain operators, the SBS Report cites to potential "economies of scale," yet fails to cite to the most obvious of all, the fact that the above-mentioned investments have resulted in the development of low-cost and highly successful tracking and tracing systems that can be used by other tobacco manufacturers and distribution chain operators at a fraction of the costs that it took for the major manufacturers to develop these technologies in the first place.

#### **B. Potential Monopolistic Proprietary Systems**

In drafting the Implementing and Delegated Acts, it is crucial that the Commission does not draft language that would forbid the use of these proven and successful track and trace and security feature systems, provided that they comply with the technical standards the Commission has to issue to comply with the Directive. To do so would create an unprecedented example of bureaucratic waste by the EU and would mandate unnecessary costs for everyone involved in the tobacco supply chain, including the EU, the Member States, the manufacturers, the distribution chain operators, the retailers and the consumers.

Moreover, choosing a monopolistic and proprietary third party system for track and trace or security features (as suggested in some of the SBS Report options) would likely breach the above-mentioned promises and covenants by the EU, the Commission and the Member



States, and could otherwise be found illegal under EU law. Therefore, the costs of these breaches, including the legal fees stemming from the inevitable litigations and the additional damages and penalties that would have to be paid by the EU, the Commission and the Member States, would have to be added into any cost/benefit analysis.

The cost for a monopolistic proprietary system has also been highly underestimated. For example, manufacturers would need one of the so-called “trusted providers” representatives to be on-site at the manufacturing facility 24 hours-a-day in order to maintain high production efficiencies. Of course, there is no “trusted provider” in the market who has the quantity of technicians or technical expertise to implement and maintain their system in 230+ tobacco enterprises, on 745+ production lines and 2,450+ wholesalers. Additionally, there will be massive operating expenses that would be required to run these unfamiliar systems in manufacturing facilities and the idea of putting stamps as a track and trace solution would require massive capital expenditures since stamps are currently not in an optimum position for aggregation purposes. In fact, costs for a “modern stamp” with a unique identifier have recently been quoted to a Member State at \$2 USD per 1,000 cigarettes. If this cost is extrapolated to the EU market, the cost would be over €1.0 billion EUR.

### C. Trust in Existing Track & Trace Programs

Inexplicably, the SBS Report speculates that there is an unknown distrust by law enforcement of the manufacturers’ existing track and trace systems. In response to this speculation, the SBS Report has added a significant number of additional costs to verify each manufacturer’s track and trace system under Option 1.

Contrary to this erroneous speculation, and based on the real life experience in fighting the illegal trade of tobacco products, JTI can unequivocally state that no such distrust exists between law enforcement and JTI. Moreover, no such concern about verification is mentioned in the text of Article 15. Of course, there are provisions for an independent data storage carrier in the legislation; however, this provision must be read for what it is – insurance that the data generator cannot subsequently manipulate the data. Of course, this would apply to any data generator, including the SBS “trusted providers.” For this reason, JTI would respectfully submit that all of the costs in the SBS Report regarding verification should be disregarded or, if considered at all, should be applied evenly for any solution proposed in any of the SBS Report options.

## II. Costs to Member States

As set forth above, the current track and trace systems run by JTI is up and running successfully throughout the EU and in many countries worldwide. The Member States pay nothing for this system and receive all of the benefits of it. Moreover, these current track and trace systems can be expanded further down the supply chain to include distribution chain operators, Member States, pack tracking, etc., at little to no costs to the Member States. For independent verification of these facts, JTI would again respectfully refer the Commission to the law enforcement officials of the Member States and OLAF.

## III. Utilization and Operation of System by Member States

Under the current track and trace system, following a seizure of illegal product, law enforcement contact JTI in order to understand two major points: (1) the authenticity of the product; and (2) to whom the product was sold. JTI is always able to identify whether the product is authentic through its forensics teams and is able to disclose the purchaser of the product to law enforcement when the product is tracked and traced. This system has an

excellent reputation and requires no resources, funding, research or time from law enforcement.

In contrast to the reality mentioned above, the SBS Report discusses the costs for a different use of track and trace/security features by suggesting that, following implementation of Article 15 and 16, Member States' law enforcement will eagerly take on all of the responsibilities of private industry with respect to tracking and tracing and the authentication of cigarette seizures. In contrast, JTI strongly believes that these track and trace/security feature systems will not be used in the way that the SBS Report suggests.

The SBS Report presupposes that Member States' law enforcement can add to their busy schedules the tasks of searching for track and trace codes, scanning codes, querying databases, matching sales records, matching invoices to sales and seizures, searching for security features, ensuring these security features are up-to-date and accurate and ensuring that the products that were seized are not counterfeit. Moreover, it could be suggested that under some of the SBS Report options, law enforcement authorities would be responsible for testifying in court as to the authentication of tobacco products – something that has always been exclusively reserved for the brand owners of seized products (e.g., counterfeit watches, purses, pharmaceuticals, alcohol, etc.). There is absolutely no reason why law enforcement would want to change this standard modus operandi for tobacco products when compared to any other seized products.

Today, all of the above-mentioned work is completed by private enterprise. The idea that law enforcement will soon find the budget, resources, time or interest to take over all of this work is unrealistic. For these reasons, JTI once again strongly encourages the Commission to meet with the individual Member States' law enforcement officials and gather their views on how this new system will work.

Lastly, the SBS Report also fails to disclose the costs of a monopolistic proprietary system if there are significant development or implementation problems with the monopolistic system. As tobacco is often shipped with other consumer products, would a shipment of goods be halted if there were problems with the tobacco track and trace scanning? Would the Member States have to reach out to a single so-called "trusted provider" to fix the problem? How long would it take and would the products go stale while the Member State waited for a "trusted provider's" technician to arrive? All of these hypotheticals demonstrate why the EU must pass Implementing and Delegated Acts that allow for the use of existing, successful, tried and tested track and trace solutions/security features. Given all of the above, it is almost farcical that the SBS Report listed the Member States impact on a labour force for Option 1 as "High," while listing the Member States' impact on a labour force for Option 4 as "Low."

#### **IV. Conclusion**

The Member States' responsibilities and costs for track and trace/security features should start and end with the Implementing and Delegated Acts. These Acts should set open standards allowing for the use of existing and successful track and trace/security feature systems and full communication between all different systems. Many of the SBS Report options go way beyond SBS' remit – and the TPD legislation – and attempt to convince the Commission that EU law enforcement officials should now take on vast amounts of costs, responsibility, time and resources by adopting untested systems that are incompatible with the massive investments that have already been made to develop these state-of-the-art technologies. There can be little doubt that the costs associated with such a government takeover would be huge for each of the Member States, while the benefit would be limited to creating a duplicative system to one that already works. The only other benefit that could be

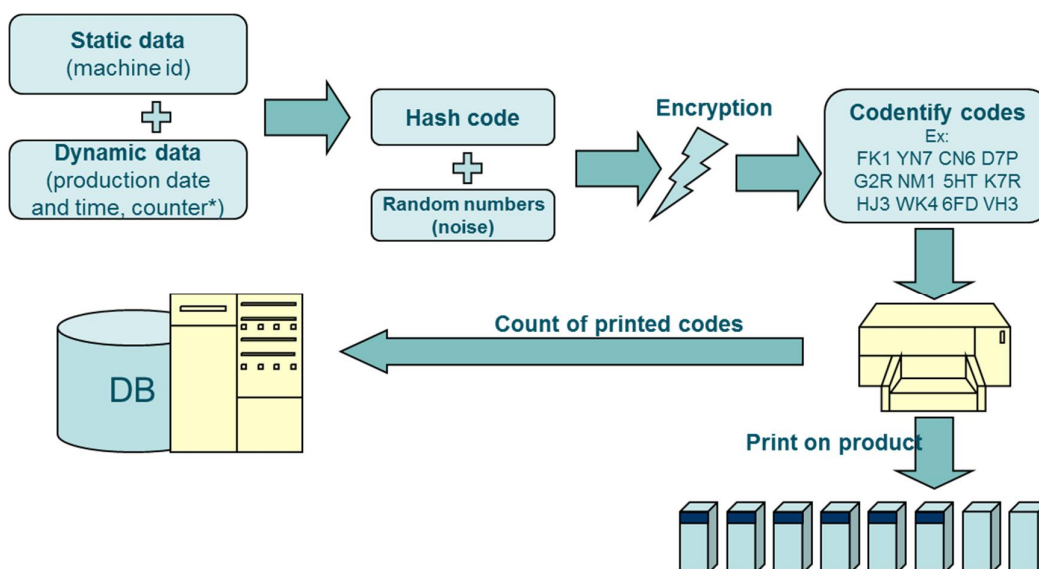
foreseen by some of the options in the SBS Report would to serve the commercial interests of whichever private enterprise would be the lucky “trusted provider” chosen. For all of the above-mentioned reasons, the SBS Report section on costs/benefit provides little added value to the analysis of these important issues and may, in fact, lead to an improper analysis of these issues. For these reasons, this cost/benefit section should be largely ignored by the Commission.

31<sup>st</sup> July 2015

## JTI'S VIEWS ON THE RULES FOR GENERATION OF A SERIALIZED UNIQUE IDENTIFIER IN THE SBS FEASIBILITY STUDY REPORT QUESTION D.2

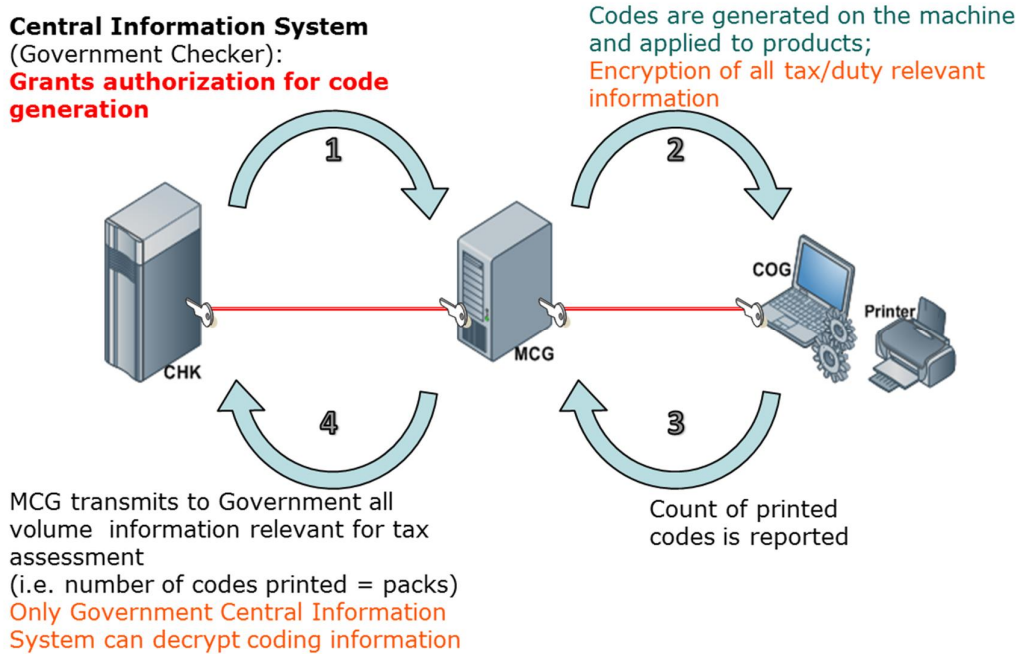
The Commission is obligated to ensure that two different Unique Identifiers (UI) used by the tobacco industry will never conflict with each other, thereby causing confusion for either the authorities or the industry.

The technology currently used by JTI allows JTI to place a software module on every production line that is producing for the EU market. This software module could be linked to a government or EU centralized system, giving real-time information regarding the production of all tobacco products (see graphic below):



The Code Generator (CoG) used to produce the code in Codentify and combines both static data, such as the factory and producing machine, as well as dynamic data, like the production date and time (to the minute) and as well as a code counter. The CoG has a unique number which can be registered (or licensed) in a Central Information System (CIS) that can be controlled by the government or a third party. In this scenario, the generation of codes should only be possible once approval has been granted by the controlling entity in the CIS. The CIS holds all the production records as well as all registered CoGs producing for a particular market, and validating the code is only possible through digital connection to the CIS that enables decryption.

Both encryption and decryption is highly secure through the use of “keys” (see graphic below):



For the aggregated packaging level, our preferred standardization body is GS1 using GTIN + serial number as the unique code for the lower packaging levels such as a pack. Upper levels such as carton and master case should use either SGTIN or SSCC.

Under the terms of Article 15.2 of the Directive, the unique identifier (UI) shall allow the following to be determined: (a) The date and place of manufacture; (b) The manufacturing facility; (c) The machine used to manufacture the tobacco products; (d) The production shift or time of manufacture; (e) The product description; (f) The intended market of retail sale; (g) The intended shipment route; (h) Where applicable, the importer into the Union; (i) The actual shipment route from manufacturing to the first retail outlet, including all warehouses used as well as the shipment date, shipment destination, point of departure and consignee; (j) The identity of all purchasers from manufacturing to the first retail outlet; and (k) The invoice, order number and payment records of all purchasers from manufacturing to the first retail outlet.

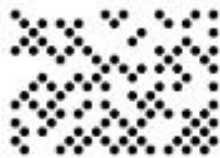
Only points (a) to (h) should form part of the unique identifier, although even the SBS Report cites to the the potential technical constraints in fitting the required data in the unique identifier. Indeed, sub-section (g) would not even be known at time of manufacture and could therefore only be declared at the time of the first shipment. Within the SBS Report, it is suggested that the UI can be printed either at the time of manufacture or pre-printed onto a label or tax stamp prior to delivery at the manufacturing facility. However, in JTI’s view, in order to capture key information such as date and time of manufacture within the UI itself, the code can only be created at the time of production.

31<sup>st</sup> July 2015

## JTI'S VIEWS ON THE DATA CARRIERS FOR A SERIALIZED UNIQUE IDENTIFIER MENTIONED IN THE SBS FEASIBILITY STUDY REPORT QUESTION D.5

JTI strongly endorses the use of existing, open standards for the data carriers used for the unique identifier (UI) such as those approved by GS1. Existing systems used by the tobacco industry over many years include the AIM DotCode as well as a human readable 12-digit alphanumeric code printed directly onto the pack. When technically and economically feasible, the GS1 data matrix code may also be used on the unit packs.

In JTI's experience, the AIM DotCode is the only code that can be printed directly onto the packs at the required speed of today's high-tech machines (see AIM DotCode image below).



DotCode symbols encoding  
(17)070620(10)ABC123456

For the bundle or cartons of 10 packs, the GS1 standard data matrix is used.

For packaging levels larger than bundles or cartons, any GS1 compliant standard format should be used. The flexibility here needs to be assured in order for economic operators within the supply chain to be able to guarantee scanning integration into their own systems. GS1 128 bar, GS1 data matrix or GS1 SSCC 128 codes would all be suitable.

Flexibility in the choice of data carrier ensures a minimum disruption when implementing serialization technology and, indeed, most machines producing tobacco products are already equipped with coding printers that can be used for serialization while also operating at the required speeds.

The use of GS1 standards as the data carrier will also facilitate consistency with other industry sectors who deploy track and trace technology and will minimize the impact on their supply chains because tobacco products can and do move with totally different products on the same supply chain.

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## JTI'S VIEWS ON THE PLACEMENT OF A SERIALIZED UNIQUE IDENTIFIER MENTIONED IN THE SBS FEASIBILITY STUDY REPORT QUESTION D.7

In JTI's view, and from long established practice, the serialized unique identifier (UI) should be directly printed onto the product as close as possible to its final production process. This enables accurate production date and time as well as the machine's identity to be captured within the UI itself.

Regarding the physical location of the UI on the pack, legislation should be flexible enough to allow the manufacturers to position the UI on the pack so as not to hinder the optical/vision systems required to guarantee proper aggregation of the unit packs. This is critical to enable the link between the pack UI with that of the carton and the master case. In JTI's case, this is on the bottom on the pack. In this position, we do not believe that it will interfere with any other elements on the pack as may be required by the legislation.

31<sup>st</sup> July 2015





## JTI'S VIEWS ON THE METHOD OF PUTTING THE SECURITY FEATURE ON THE PACK MENTIONED IN THE SBS FEASIBILITY STUDY REPORT - QUESTION D.11

While JTI strongly believes that it is the brand owners' prerogative to ensure the security, and therefore, the authenticity of the product through whatever means the brand owner sees fit, the intention of the security feature as written in the Directive is well understood. The SBS report details five possibilities for a security feature:

- a) A feature embedded within the commercial packaging itself, applied through the printing process
- b) A feature included in elements of the packaging materials such as the tear tape or clear wrap
- c) A feature that is directly printed onto the pack
- d) A feature that is a label or stamp
- e) A feature that includes "fingerprinting" of the packaging

JTI's views are that any feature should be an intrinsic part of the packaging (pack/tin/pouch) in that it should either be directly printed, included as an integral part of the packaging at the time of production or include fingerprint elements of the pack itself.

While JTI's preferred method is the direct printing of a secure code of the pack, JTI has also been using taggant tear tape with great success for many years as a secure method of authentication in certain countries. While the tear tape is designed to be removed by the consumer, up to this point, if the tear tape has been removed or replaced, then the product has clearly been tampered with.

As set forth above, JTI's core view is that the existing system and method of printing a secure code on the pack and using the aggregation of pack to carton and carton to shipping case gives irrefutable proof of a product's authenticity, without the need of a further invisible feature. The code generated is completely random and is unique to each specific pack, carton or shipping case, and the codes are all linked. This process of aggregation makes them impossible to copy or predict. Furthermore, no special equipment or scanning devices are required by either law enforcement or the consumer to verify the product's authenticity – an authenticity check can be achieved using a simple smartphone app. If a further forensic and truly invisible element is needed, then JTI believes that the "fingerprint" of the pack board fibers themselves should be used to verify a pack's authenticity.

A label or a stamp that holds the security feature merely confirms the authenticity of that label or stamp. It does not authenticate the product to which it is glued.

Paper stamps can be stolen, removed and reused and of course counterfeited. They are no longer state of the art security features in today's modern digital age.

31<sup>st</sup> July 2015

## JTI'S VIEWS ON INDEPENDENT DATA STORAGE QUESTION D.13

### **I. Competition for Data Storage Providers is Necessary**

JTI is currently using an independent third party for the purpose of hosting JTI's relevant data and disagrees with the SBS Report that the "[s]election of a single data storage and processing provider would appear to be the easiest to implement, while also being the easiest to administer and the most cost effective." Instead, as mentioned throughout JTI's submission, JTI would prefer to allow the EU's open market to function and for fair competition to be established from multiple data storage operators.

This fair competition (together with the monitoring set forth in Article 15) will ensure that only accredited and professional data storage operations will succeed, while at the same time will allow for the creation of innovative and interoperable solutions that derive from competition. Moreover, as with track and trace being based on open standards, allowing for multiple entities to become accredited data storage providers will ensure that the solutions available throughout the EU will be both affordable and adaptable to fit the many different economic operators across the EU, regardless of their size, IT structure or resources.

For the above reasons, JTI would request that the Commission work closely with the technical experts of the manufacturers and other economic operators across the EU to better understand what expertise will be required from these data storage operators and what key elements of a contract will need to be referenced in the Delegated Acts.

### **II. Manufacturers' Access to Database is Essential**

As more fully set forth in JTI's response to question C.1.1 of this Consultation, JTI has – and must continue to have – full access to a copy of the data that is generated from the track and trace system that relates to JTI's product. This is absolutely necessary for a number of reasons, including the fact that law enforcement authorities across the EU currently rely on JTI whenever there is a seizure of products bearing JTI trademarks. If genuine, these law enforcement authorities expect JTI to provide them with certain information, including to whom the product was sold. Indeed, this is required by law in some Member States.

Again, as more fully set forth in JTI's response to C.1.1., it is JTI's strong belief that the above-mentioned process will continue well beyond 2019, because it is unrealistic to require law enforcement to search for track and trace codes, scan the codes, query the database, match seizures with sales records, match invoices to sales and seizures, search for security features, ensuring that these security features are up-to-date and accurate and ensure that the products that were seized are not counterfeit. JTI believes that this work should remain the responsibility of the manufacturers, just as it is for any other illicit product brought into the EU (e.g., counterfeit watches, purses,

pharmaceuticals, alcohol, etc.). For these reasons, it is essential that the manufacturers continue to have access to a copy of whatever data is generated regarding the manufacturer's products.

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## JTI'S VIEWS ON THE DEVELOPMENT OF REPORTING AND QUERY TOOLS QUESTION D.15

There are many experienced software houses in the market who could develop reporting and query tools. Of course, they would need to gain an understanding of the industry's processes and the structure of its databases.

JTI recommends that the Commission specifically require that the track and trace databases be GS1 EPCIS (Electronic Product Code Information Services) Standard compliant. This will allow the queries to be built with an EPCIS format, minimizing the need to have such a deep knowledge of every track and trace database and process while ensuring the proper level of security and confidentiality.

EPCIS defines a standard set of messages for both data capture and data exchange. It caters to event related information with location and time attributes. Data exchange standards must have a vocabulary and a schema that governs B2B (Business to Business) transactions for EPC information, similar to other messaging standards. The standard does not represent a specific database, data storage or any other form of data structure. Therefore this standard gives greater flexibility in the selection of a provider.

Data is captured and stored by existing mechanisms which can utilize the EPCIS infrastructure to share information. Further information can be found on the GS1 web site <http://www.gs1.org>.

31<sup>st</sup> July 2015

## JTI'S VIEWS ON THE SUBJECT OF THIS CONSULTATION - QUESTION D.17

### **I. Introduction**

JTI believes that the purpose of this consultation is to assist the Commission in drafting Implementing and Delegated Acts as set forth in Article 15 and Article 16. As requested, JTI has made submissions on specific aspects of the SBS Report and has raised a number of questions and concerns regarding the findings of this report. Nevertheless, for purposes of responding to question D.17, JTI would like to address the entire Article 15 and 16 implementation process, and the effect that these Articles will have on the Member States, the manufacturers, the distribution chain operators, the retailers and the consumers.

### **II. General Concerns with the Article 15 and 16 Process and the Delegation of Duty**

The issues surrounding Article 15 and Article 16 are clearly law enforcement issues. Tracking and tracing and security features are designed to help law enforcement authorities identify smugglers of illegal tobacco and to protect consumers from counterfeit products. Because this issue is so fundamentally placed with law enforcement, JTI believes that law enforcement should be the ones who have the most input on the guidance, rules and implementation of these Articles.

These crucial law enforcement obligations cannot – and must not – be delegated to interest groups or commercial interests. These issues are too important to the safety and the security of EU citizens to abdicate such a responsibility to those who have no experience and no expertise in these fundamental issues or to those who could have vested interests to promote. For these reasons, the Commission must concentrate its focus on the feedback it receives from law enforcement authorities throughout the EU.

### **III. The EU's Legal Obligations, Promises and Covenants**

#### **A. The EU-Manufacturers Cooperation Agreements**

From 2004 until 2010, the EU, the Commission and the Member States signed a series of Cooperation Agreements with the four largest international tobacco manufacturers. In these Agreements, the EU, the Commission and the Member States made a series of promises and covenants that these manufacturers relied on. Moreover, based on this reliance, each of these manufacturers made major investments to develop state-of-the-art track and trace systems. Indeed, these track and trace systems are working very well throughout the EU and worldwide. Indeed, JTI is extensively using its track and trace system in its close work with law enforcement officials across the EU to help fight the illegal trade of tobacco by identifying the point of diversion of contraband products in the supply chain.

Despite this reality, there have been suggestions by some that the manufacturers should not be able to use these successful, tested and proven systems to comply with Article 15 and 16. As set forth in JTI's response to the cost/benefit section in the Consultation, JTI believes that Implementing or Delegated Acts that would not allow manufacturers to use their system of choice to comply with the Directive (provided it complies with the specifications) would be illegal and would breach the above-mentioned agreements.

#### B. Potential Monopolistic Third Party Provider

The awarding of a single contract for the track and trace/security feature requirements would go well beyond the competence and powers granted in the legislation. Accordingly, to the extent that the Implementing and Delegated Acts exceed the powers conferred, such Acts would infringe Article 5 TEU, Article 290 and 291 TFEU and the principle of conferred powers. Moreover, the legislative history of the Directive clearly demonstrates that a single track and trace system was rejected; accordingly, reintroducing this option through the Implementing or Delegated Acts would be a violation of the legislation.

For the above reasons and more, it is clear that any attempt to nominate a single or small group of so-called "trusted providers" to run an illegal EU-wide track and trace/security feature system would result in years of litigation and potentially significant costs and damages owed to the manufacturers, the distribution chain operators, the retailers and the consumers.

#### IV. Law Enforcement and the Use of Track and Trace/Security Features

As more fully set forth in JTI's response to the cost/benefit section in this Consultation, JTI does not believe that the track and trace and security feature systems will be used in the manner that is described in the SBS Report.

Under the current successful track and trace system, following a seizure of illegal product, law enforcement authorities contact JTI in order to understand two major facts: (1) is the product authentic; and (2) to whom the product was sold. Of course, JTI is always able to identify whether the product is authentic through its forensics teams and is also able to disclose the purchaser of the product to law enforcement when the product is manufactured with track and trace. JTI's track and trace system (Codentify) has an excellent reputation and requires no resources, funding, research or time from governments.

Surprisingly, the SBS Report suggests that following the implementation of Articles 15 and 16 in 2019, Member States' law enforcement will take on all of the responsibilities of private industry with respect to tracking and tracing and the authentication of cigarette seizures. As more fully set forth in JTI's response to the cost/benefit analysis question in C.1.1, JTI believes that law enforcement will not want to add to their busy schedules the tasks of searching for track and trace codes, scanning codes, querying databases, matching sales records, matching invoices to sales and seizures, searching for security features, ensuring these security features are up-to-date and accurate and ensuring that the products that were seized are not counterfeit. Moreover, law enforcement authorities will not want to testify in court on the authentication of these products, which has always been a domain exclusively reserved for brand owners of seized products. Just as with counterfeit watches, purses, pharmaceuticals, alcohol, etc., there is absolutely no reason why law

enforcement would want to change the standard modus operandi for authentication of tobacco when compared to any other seized products.

Today, all of the above-mentioned work is completed by private enterprise and JTI anticipates that this work will continue to be completed by private enterprises long after Articles 15 and 16 is in full force and effect. The idea that law enforcement will soon have the budget, resources, time or interest to take over all of this work is unrealistic. For these reasons, JTI again strongly encourages the Commission to meet with the individual Member States' law enforcement officials and gather their views on how this new system will work.

## **V. Open Standards**

The Implementing and Delegated Acts must allow for open standards that allow each economic operator to use track and trace/security feature systems that are the most compatible and convenient for each economic operator. To impose a single or complicated system that may not work for various economic operators can cause massive problems throughout the EU and the supply chain of goods well beyond tobacco. Indeed, in some Member States, tobacco is transported by wholesalers with many other consumer goods. Therefore, problems with a single track and trace system could cause a wider problem for commerce all over the EU.

However, contrary to a monopolistic system that every single commercial operator would have to acquire and adapt their infrastructure to, open standards will allow all of these operators to choose from a variety of interoperable options based on each operator's current IT networks, infrastructure and operating needs. Open standards will also promote innovation and competition for low cost solutions allowing for a number of interoperable systems to work together despite differences in each economic operator's size, resources or IT structure. Just like our mobile phones today, interoperable solutions will allow the economic operators to choose a solution that best fits their needs. In stark contrast, a single track and trace/security feature system would stifle competition, innovation and investment (and, as set forth above, would be illegal), in addition to creating havoc in the supply chain of consumer goods throughout Europe.

Importantly, open standards would also reduce the burden on the EU and the Member States by setting rules that require specific information to be shared with an EU-wide database, and nothing more. It should not be the role of the EU, the Commission or the Member States to constantly police the track and trace/security feature systems that are used by all of these different economic operators. Such a program would result in an unworkable and unenforceable bureaucratic nightmare. Instead, the EU should, as prescribed by the Directive, simply set the standards that are required from the operators and it should then become the operators' responsibility to ensure that their data is gathered and inputted into the central database. Again, there will be massive commercial incentives for many companies to innovate interoperable solutions for different sized companies to be able to meet these requirements. Only through this innovation, development and competition will the EU be able to address the needs of large and small economic operators alike.



## **VI. Conflict of Interests**

While JTI may disagree with the conclusions found in the SBS Report, in particular, with the the option that the Commission or Member States could choose a single so-called “trusted operator(s)” to run an EU or nationwide system, JTI has absolutely no reason to believe that SBS has conducted their research or drafted their report in an unethical manner, and JTI does not suggest so here. Nevertheless, for purposes of completeness, JTI does cite to the multiple media reports questioning whether the selection of SBS for this project was appropriate given SBS’ historical business affiliations with competitors of JTI’s track and trace system (see Yves Kengen Fraude sur une operation “mains propres”, Luxemburger Wort, 8 July 2014; Frédéric Soumois Anti-contrebande tabac: des soupçons de collusion, Le Soir, 10 juillet 2014; Frédéric Soumois Doyle nous avait quittés avant l’expertise Le Soir, 10 juillet 2014; Anti-contrebande tabac: des soupçons de collusion Le Vif L’Express, 10 juillet 2014; Anti-contrebande tabac: des soupçons de collusion, rtbf info, 10 juillet 2014).

## **VII. Conclusion**

In short, JTI believes that the role of the Commission is clear in drafting Article 15 and 16 Implementing and Delegated Acts. The Commission should work with technical experts, tobacco manufacturers and the Member States’ law enforcement authorities in order to establish open standards. These open standards will promote innovation and competition for low cost solutions allowing for a number of interoperable systems to work together, despite differences in size, resources or IT structure of the various economic operators throughout the EU.

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