



MEETING OF THE SUBGROUP ON TRACEABILITY AND SECURITY FEATURES FINAL SUMMARY RECORD

Date: 06 September 2017

Place: Brussels

1. Welcome and Introduction

DG SANTE welcomed the participants. It said that the objective of the meeting was to present and hold an initial discussion on the three draft acts circulated to Member States relating to the establishment of systems of traceability and security features provided for under Articles 15 and 16 TPD. It stressed that Member States would have further opportunities to express formal positions over coming weeks, including via several rounds of comments and further meetings of the subgroup, Expert Group and Tobacco Products Committee. DG SANTE also informed Member States that the draft acts had been published on the Europa website and would be subject to public feedback for a 4 week period (until 2 October), in line with the Commission's Better Regulation agenda.

Member States stressed the need for adequate time to consider the drafts before the formal vote and requested an additional meeting of the subgroup. Some Member States expressed concerns regarding the complexity of the provisions proposed. DG SANTE said it would do its utmost to explain the provisions over the course of the meeting and that Member States would have the opportunity to submit written comments following the meeting.

2. Presentation and initial discussion of **draft Commission Implementing Regulation on technical standards for the establishment and operation of a traceability system for tobacco products**

It was explained that this act draft act aims to fulfil the Commission's obligations under Article 15(11) TPD and that its intended scope covers all tobacco products produced in, as well as imported into the EU. It was further noted that the draft takes the form of a Regulation, whose provisions will be directly applicable to economic operators once it enters into force.

The provisions under the following main sections of the draft act were then explained: *unique identifier at unit packet and aggregated packaging level* (Chapter II, Arts.3-13); *identifier codes for economic operators, facilities and machines* (Chapter III, Arts. 14-20); *data carriers* (Chapter IV, Arts. 21-23); *repositories system and selection procedure for independent third party providers* (Chapter V, Arts. 24-31; Annex I); *recording and*

transmitting of data and key messages to be sent by the economic operators (Chapter VI, Arts. 32-34; Annex II); *final provisions* (Chapter VII, Arts. 35-38).

Following each section a general discussion was held. Member States expressed concerns in relation to the 6 month timeline for the appointment of ID issuers at national level. DG SANTE said it understood and would reflect further on a more suitable period. One Member State referred to previous comments made which have not been taken up in the text and questioned in particular the need to give primary information at the time of the request (Art. 9 (2)), the need of the requirements foreseen for the labelling of aggregated packs (Art. 10), the need to refer the information in a timeframe of 3 hours (Art. 34) as well as the extent of the information (Annex II) that has to be notified and stored. On the generation by ID issuers of unique identifiers at aggregated packaging levels, DG SANTE noted the reservations of some Member States and explained that the information necessary for economic operators (including wholesalers/distributors) to supply in advance is limited and of a general nature (i.e. it will not be necessary to inform of future dispatch routes at the time of order). It also pointed out that codes issued for unique identifiers at aggregated packaging levels will be valid for up to 6 months, meaning that it will be possible to place larger batch-orders in advance.

In relation to SMEs, DG SANTE confirmed that reducing the burden on these operators is one of its clear objectives and explained that, where provisions had been judged likely to pose heavy burden, derogations had been provided for. In relation to concerns that the definition of SMEs included in the draft may lead to the exclusion of certain smaller businesses from the category, DG SANTE said it would reflect on how this may be addressed but stressed that any proposal should be based on sound justification.

In response to queries DG SANTE confirmed that none of the draft's provisions should prevent Member States in the future from requiring (on an individual basis) unique identifiers to be combined with national tax stamps, though it had to be ensured that the rules of Art. 15 TPD are fully respected.

In relation to the obligation for operators of retail outlets to apply for identifier/facility codes, DG SANTE confirmed that this was judged to be the most efficient way to allow the 'actual shipment route' and identity of all purchasers to be determined, as required under the TPD. It was further clarified that other economic operators (i.e. the distributor/wholesaler who supplies the retail outlet) may carry out the application for codes on the retail outlet's behalf.

In relation to the user interfaces provided for in the draft to enable authorities to access and view the stored data, DG SANTE confirmed that Member States would be in a position to configure their own alerts as well as to request information to be downloaded. Finally, it was confirmed that the same primary repository provider could be chosen by more than one manufacturer/importer, provided that the criteria relating to independence could still be met. In relation to the rules set out on financial independence from the tobacco industry for entities providing services under the traceability system (20% annual turnover ceiling), DG SANTE clarified that this should apply cumulatively to all services

that may be provided by each entity, but agreed that additional clarification on this point should be added to the text.

3. Presentation and initial discussion of **draft Commission Delegated Regulation on key elements of data storage contracts to be concluded as part of a traceability system for tobacco products**

This draft act aims to fulfil the Commission's obligations under Article 15(12) TPD by laying down the key aspects to be included in the contracts signed by each manufacturer/importer and the primary repository provider that it contracts. (These contracts will subsequently be subject to approval by the Commission, as provided for under Art. 15(8) TPD.)

DG SANTE explained that the draft Delegated Regulation is therefore of a technical nature and largely reflects the requirements contained in Chapter V of the Implementing Regulation. Among other aspects, the Delegated Regulation sets out rules on the declarations to be supplied by primary repository providers (relating to technical expertise as well as legal and financial independence from the tobacco industry), sub-contracting, system security management, contract duration, communications with other parties, suspension of services and data portability.

No specific questions were raised by the group on this draft act.

4. Presentation and initial discussion of **draft Commission Implementing Decision on technical standards for security features applied to tobacco products**

This draft act aims to fulfil the Commission's obligations under Art. 16(2) TPD by supplementing the general security feature requirements set out in Art. 16(1) TPD.

The provisions under the following main sections of the draft act were then explained: *security feature* (Art. 3), *use of tax stamps as security feature* (Art. 4), *application of security features* (Art. 5), *integrity of security features* (Art. 6), *verification of authenticity of tobacco products* (Art. 7), *independence of authentication element providers* (Art. 8).

Following the presentation, a general discussion took place. Some Member States inquired whether the list of permitted authentication elements could be extended by national authorities. In this respect, one national representative also pointed out that the current draft list in Annex 1 should undergo some possible amendments to contain elements that are more commonly used. DG SANTE confirmed that the draft legislation foresees the possibility of extension by each Member State as long as the final national list meets all relevant legal requirements. DG SANTE further welcomed suggestions on the proposed list in Annex 1. Another Member State wondered why a minimum of five authentication elements was required. DG SANTE explained that this threshold would ensure a minimum level of security by complicating the task of falsifiers. As such, this minimum number was also recommended by independent experts. Lastly, some Member States inquired who would be the actors that have to bear the costs related to the security features. DG SANTE noted that Art. 16(1) TPD requires security features to be applied to each unit packet of tobacco products. Even though not explicitly mentioned in the act,

it would follow from this that the costs would lie with manufacturers and importers of tobacco products, a principle which bears analogy to the case of combined health warnings. The way how these costs would be directed by Member States to manufacturers and importers would most likely differ between those that will use tax stamps as the security feature and those that will not.

5. Conclusions

The Commission invited further comments in writing and announced that the discussions would continue on the basis of the comments received in the next Subgroup.

6. 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; Federal Public Service Public Health)
Bulgaria	(Ministry of Finance - National Customs Agency)
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; Ministry of Social Affairs)
Finland	(Finnish Customs - Crime Intelligence Unit)
France	(French Customs)
Germany	(Federal Ministry of Food and Agriculture)
Greece	(Ministry of Finance)
Hungary	(National Tax and Customs Administration; Ministry for National Economy)
Ireland	(Department of Health; Revenue Commissioners)
Italy	(Permanent Representation to the EU; Italian Customs Agency)
Latvia	(The State Revenue Service of the Republic of Latvia)
Lithuania	(Drug, Tobacco and Alcohol Control Department; State Tax Inspectorate)
Luxembourg	(Ministère de la Santé)
Malta	(Customs Department)
Poland	(Ministry of Finance)
Portugal	(INCM – National Mint and Printing Office)
Romania	(CN Imprimeria Nationala SA)
Slovakia	(Permanent Representation to the EU)
Slovenia	(Financial administration of the Republic of Slovenia)
Spain	(Agencia Estatal de Administracion Tributaria (AEAT), Customs and Excise Department)
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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