

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 (CHAFAEA) 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. 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 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

*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.d. Please specify:

- i) National government
- ii) Other

*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

HMRC / Department of Health

[REDACTED]

[REDACTED]

Ralli Quays | 3 Stanley Street | Manchester | M60 9HL

B. Options proposed in the Feasibility Study

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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*System integrity (e.g. low risk of manipulation)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Potential of reducing illicit trade	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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.1.5. Please upload any additional comments on the options referred to in question B.1 (max. 5 pages)

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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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
* Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
* Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Interoperability	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Ease of operation for users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Administrative/financial burden for economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
*Administrative/financial burden for public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

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C. Cost-benefit analysis

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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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)

• [b7a949f1-4bd8-4375-ab77-64e2be8de232/C1.1.docx](#)

D. Additional questions

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

We believe that one single standard would be most effective. It would provide consistency and also be most effective from an enforcement point of view rather than many different standards. It is our view that the generation of this number should be based on the agreed specification, as laid in the EU and Member State legislation.

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)

*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.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)

• **81a4baae-160f-4b8d-8963-4fceb5621f7/D5.docx**

*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)

• **6aa464e2-0df5-4962-bf8b-bffdf02a5c59/D7.docx**

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Scanning products upon dispatch from manufacturer's/importer's warehouse	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Scanning products upon receipt at distributor's/wholesaler's premises	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

*Scanning products upon dispatch from distributor's/wholesaler's premises	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
*Aggregation of products	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

We strongly believe that the generation of the unique serialisation number must be undertaken by a third party. This number should be unique so should come from one central provider, thus preventing the possibility of duplication of numbers. We do not believe this should be left to the manufacturer or importer to undertake as there must be complete confidence in the generation, allocation and audit trails of the numbers generated, supplied and used.

We think the most effective solution to who marks the product is the manufacturer. This would cause the least disruption to the manufacturing process, reduce administrative burdens on business and would prevent any issues with third party companies having access to production equipment and being on site to maintain equipment.

Additional comments to Questions D9 are covered in our response to D17 (additional comments).

***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

Further to the points made at B2.5, we strongly believe that the Security Feature should comprise of multiple elements, potentially both affixed and printed, not one or the other. We further believe that it should be the Member State who decides the type, format and content of the Security Feature, based on a specification provided by EU legislation.

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)

*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)

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*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.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)

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*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.b. If no, please explain your considerations

Text of 1 to 800 characters will be accepted

Whilst there are undoubted benefits in members of the public (as well as all economic operators) being able to authenticate the product they are purchasing, we think this should be by the most easily operated system possible. By using sophisticated systems requiring equipment (such as scanners or readers) it would discourage people from undertaking such checks (too expensive and too much effort to obtain and use the required kit). If it was possible to use smartphones apps, internet verification and/or mobile phone text messaging it would make this verification simple, inexpensive and available to the vast majority of the public. We do not believe such systems require access to the track and trace movement data and should be restricted to determining simply the authenticity of the product.

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

• **3a4d90be-4c3c-45d7-a7d9-653c16ca265c/D17.docx**

Contact

✉ SANTE-D4-SOHO-and-TOBACCO-CONTROL@ec.europa.eu

Attachment B.1.5

B1.5: Track and Trace

At this stage we believe there is too little specific detail to be able to fully comment on all the questions for each option. For example it is difficult to assess the administrative burden for economic operators until we know what the system entails, the scope of the system, the amount of scanning, the data requirements, etc. Similarly it is impossible to assess the ease of operation for users until we know how the system actually works.

We believe that whilst the introduction of a Track and Trace system will help reduce illicit trade, we do not consider there is any material difference between the four options in terms of how much they will reduce the illicit market.

We also believe that the impact on public authorities will also be similar for all four options but until we have further specific details we cannot assess if this impact will be significant or not.

We believe there is a higher possibility of system manipulation with an industry chosen and controlled system but this would depend on the controls in place and the level of the manufacturer's involvement in the operation, verification and assurance of the system. Further details on option 1 and the role of the industry is needed to make a more informed assessment.

Without specific technical detail on any proposed system, it is not clear that third party produced markings are more likely to be accurately recorded than those added by the tobacco manufacturer.

B2.5: Security Feature

We believe all four options are flawed as they all rely on a stamp as the carrier for the Security Feature. We believe the options should have included the possibility of other methods for carrying the feature, specifically the option for the feature to be multi layered in terms of different elements being present on different parts of the package (outer, as part of the pack, within the printing, as a stamp, etc). We believe that by placing all features on a stamp this is easier to counterfeit (as only one element, the stamp, needs to be counterfeited), it requires the need to introduce controls over the production, supply, storage and use of the stamps (particularly a high risk if we allow stamping of product at production facilities outside of the EU – how do we control these?) and most importantly it introduces a new risk regarding genuine stamps (stolen or fraudulently supplied) being used on counterfeit product and therefore legitimising them.

We believe that the security feature should be multi layered, for example semi-covert features could include taggant markers in the tear strip (as the UK currently uses at the moment, which we believe is very effective) or in the ink/other element of the marking, overt features such as a hologram or fluorescent inks and covert markings such as finger print technology (possibly as part of a fixed label). We do not accept that a feature in the outer of a package is removable. Everything, even complex stamps with tear cuts can be removed, evidence of it being removed is an indicator in itself that the pack is not genuine (any package with the tear strip removed or outer removed would automatically appear suspicious).

We believe it should be up to each Member State to choose the most appropriate solution, based on the risks in their illicit market. This should be governed by a specification set by the Commission.

Different solutions in different Member States would not cause any specific issues with interoperability as each manufacture already has to package their products for different markets and Member States already use different packaging, e.g. to accommodate differing language requirements and the use of varying fiscal and tax stamp regimes, and security features which manufacturers have to comply with.

At this stage we believe there is too little specific detail to be able to fully comment on all the questions for each option. For example it is difficult to assess the ease of operation for users until we know more details on the actual specification.

We believe that whilst the Security Feature will help reduce the illicit market, it will only affect particular risks for example it will not reduce cheap whites.

We believe that whichever option(s) is chosen, it should be simple to operate by enforcement staff. If the system is difficult to operate and complex, it could dissuade staff from using it.

We also believe that the impact on public authorities will be similar for all four options but until we have further specific details we cannot assess if this impact will be significant or not.

Attachment C.1.1

C1.1 Cost-benefit Analysis

The cost estimates are based on self-reporting and responding to the original survey. There is a built-in incentive to produce a low-ballpark estimate in such a situation, especially as there is no commitment to actually supplying the product. Therefore, there seems to be a risk of over counting in terms of the calculation of the benefit/cost ratio given the likelihood of the costs being underestimated.

Throughout the whole Feasibility Study, the main issue is the uncertainty of the benefits (most of them defined in very vague terms) and the almost certainty of the costs. This means that the benefit/cost calculation is likely to suffer from optimism bias. In addition, the benefits are calculated in such a way that the assumption is that there is a consistent structure of the non-duty-paid market across the Member States. In reality, this is very far from the truth, and it means that benefits will be significantly different in terms of tax revenues across different countries depending on the structure of the tax gap. The calculation used breaks the illicit market into 30% contraband, 50% counterfeit and 20% cheap whites. This is not representative of the UK illicit market where the largest (and increasingly growing) risk is cheap whites followed by counterfeit goods. Consequently this means the potential impact and benefits calculated do not reflect the potential impact for the UK – we believe the benefits are there likely to be overestimated.

The assumptions regarding behavioural responses are quite different, and much more optimistic, than the ones HM Revenue & Customs uses for costing measures in the tobacco space. The report assumes a price elasticity of -0.4, and therefore only a small impact on overall consumption, meaning that this measure is very effective in bringing smokers into the duty-paid market. This assumption looks far too optimistic, especially considering that there is such a large price differential between duty-paid and non-duty-paid tobacco. Recent measures certified by the Office for Budget Responsibility (OBR) assumed a much larger behavioural response (between -0.5 and 1.19).

HM Revenue & Customs costing's always account for displacement, which is something we observe time and time again. When smuggled tobacco is seized, other suppliers quickly move in to take advantage of the profits, and the same supplier will also try to smuggle tobacco again. This means that the actual impact on any intervention will be much smaller than it looks at first because there is a supply response that needs to be considered. Nowhere in the report is displacement even mentioned, let alone included in the calculations.

The costing's do not appear to calculate the cost of integrating the system with the companies accounting package to provide the further details such as the invoice, order number and payment records of all purchasers from manufacturing to the first retail outlet.

As part of the benefit analysis, it is calculated that introduction of Track and Trace and Security Feature will result in a 10% reduction in cheap whites. We do not see how cheap whites will reduce by an EU wide Track and Trace system as production of cheap whites is outside the EU and therefore movements would not be subject to the Track and Trace system. Furthermore the Security Feature will not help identify cheap whites, they are already identifiable because of their nature, brands and non-compliance with existing legislative requirements (for example Fiscal Mark). Due to the potential displacement of risk, it is entirely probable that the risk relating to illicit whites will actually increase as we put pressure on counterfeit products.

It is our view that the code should comprise both an overt element (that can be read by enforcement agencies, economic operators and the public) and a covert element (that is machine readable). The overt element itself provides a level of security, for example comparing codes across identical brands (a simple sight test would identify if a counterfeit code has been used on multiple packs – most counterfeiters will use a recycled code which will be placed on all counterfeit packages). This simple check is not possible with a machine readable code only.

D7

We consider printing on the pack before filling/assembly would add an additional risk in relation to packs that do not go through the full production process. There is the possibility of packs (containing legitimate codes) being diverted (with or without the knowledge of the manufacturer) which could then be used to produce counterfeit product (which would contain legitimate codes). There is also a collateral issue regarding wastage of packs, which is much higher before final assembly than after, and the consequent number of “wasted” codes which would create a significant break in the audit trail (a large number of codes that are allocated, printed, but never hit the supply chain).

Printing before assembly also extends the scope of the risk. Most manufacturers buy packs where the majority of the markings/graphics are already printed. By allowing addition of the serialisation code prior to assembly you could take away control over the printing of the serial number from the manufacturer to an uncontrolled and unsupervised printing/package company. We would need to build in additional checks and controls to ensure that the codes generated are all used on legitimate packaging and there are no losses between printing the package and that packaging product being supplied to the manufacturer.

D13

We believe that a single data storage provider would be the most effective method of receiving, storing and providing access to the data.

- We believe it will be simpler to coordinate uploading of data if it is to one repository
- It would prevent any potential issues regarding inconsistency of data (formats, structure, etc)
- It would be easier to co-ordinate access to the data, both query functions and extraction of historical data, if it is from one central point
- It should speed up access to data if it is in one central place rather than having to go to each Member State
- It should be easier and more efficient to combine and aggregate data to provide intelligence, trends, risk analysis, if the data is in one location
- There will be less risk of data loss if it is in one location with adequate back up, recovery and security provisions.

There are a number of issues where we think further clarification is necessary in terms of one data storage provider.

- Who selects the data storage provider?
- How is access to data (both the query function and historical data) controlled? We think there should be immediate and unrestricted access to all data from all Member States without having to go through a coordination unit. Access needs to be immediate.
- What supervision is carried out on the data storage provider to check integrity, accuracy and completeness of the data and who carries these out?
- How long would the contract with the data storage provider be operational? Would it be open-ended or subject to renegotiation? We would prefer a set time which would allow us to change providers should a more effective, efficient and technologically superior provider be available or to allow a change of provider should there be compliance/operational issues that negatively impact on the work of the authority/Member State.

D15

We have no firm opinion one way or another on this question. The main issues of concern to us are:

- The effectiveness of the query function
- The speed and ease of access
- The security of the data and recovery/back up processes
- The effectiveness of any interrogation, extraction and trend analysis functions
- The ability to modify any reporting tools to adapt to changing needs or reporting requirements.

We believe that provided the above functions are incorporated into the tools, it is not as important who undertakes this function.

As with question D13, we would welcome clarification on who would choose the provider of the query/reporting tools and who is responsible for agreeing any contracts, assuring governance, etc.

D17

Continued from D9

We believe that verification of the marking of product is crucial to the integrity of any Track and Trace system and this should not be undertaken by the industry. This could be carried out by either a third party or the relevant authority. Our preferred option would be a third party, with access to the audit records made available to the relevant authority. This would provide assurance that the manufacturer is undertaking appropriate governance and due diligence on the marking of product and provide an independent record of any instances where the requirements are not being complied with. Whilst verification checks could be undertaken by the MS competent authority, this should only be required on the basis of a risk based programme as part of our wider assurance checks of the manufacturer, but it would add an additional cost to the authority, which is currently unfunded.

We believe that scanning of product into and out of distributors and aggregation, should be verified by a third party. This would provide independent assurance, which should be made available to the relevant authority and would also be the least costly method to implement (we have limited resource to allocate to distribution sites, particularly those that are not approved for example non duty suspended warehouses). Member States would have access to any audits and should be able to conduct any of their own, based on a risk based assessment/programme, informed, in part, by the data from the track and trace system reports.

Clarification would be welcome in terms of who appoints the independent third party. This should not be the industry themselves but either the competent authority or possibly selection from an accredited list of potential third parties that the industry can choose from, accredited and approved by the authority.

It is our view that all verification of scanning and marking of product should be paid for by the industry and not by the authority or Member State.

A third party solution could potentially lead to cost and inconvenience. For example, if the code marker fails to put on a readable code (it may have smudged) the product would need to be repacked to allow the code to be printed again. A question then arises regarding whether the manufacturer or third party will bear the cost of this repacking?

Additional Comments

Whilst there are undoubted benefits in members of the public (as well as all economic operators) being able to authenticate the product they are purchasing, we think this should be by the most easily operated system possible. By using sophisticated systems requiring equipment (such as scanners or readers) it would discourage people from undertaking such checks (too expensive and too much effort to obtain and use the required kit). If it was possible to use smartphones apps, internet verification and/or mobile phone text messaging it would make this verification simple, inexpensive and available to the vast majority of the public. We do not believe such systems require access to the track and trace movement data and should be restricted to determining simply the authenticity of the product.

Decision Making Process

- We would welcome clarification on the decision making process regarding which option(s) will be chosen – who will choose, how will the decision making process operate and any indication when this may be.
- We would also welcome any further information on the accreditation process. What are the organisations being accredited to, what would be the relevant standards, who would undertake any analysis and evaluations?
- Who would decide who is and isn't accredited?
- If Member States decide for their territory is their decision binding for other Member States?

Sanctions

The effectiveness of the chosen Track and Trace and Security Feature systems will be demonstrated by the compliance with the requirements by all parts of the supply chain. To ensure compliance, effective sanctions need to be available to ensure that all requirements, for example scanning of product, takes place. It is not yet clear what sanctions will be available and whether they will be solely down to Member States to develop and implement or if direction will be given from the Commission. If it is left solely to Member States to develop and implement, there is the possibility of a lack of consistency across territories. This will lead to an ineffective solution with potential incomplete and inaccurate data and may lead to legal challenges regarding equity of treatment.

Overseas Marking

In the case of product imported from non EU countries, is it the Commission's intention to allow marking of product (for Track and Trace and Security Feature) in the country of manufacture? If this is the case, what assurance process will be in place to ensure only legitimate product intended for shipment to the EU is marked, that the marking is in line with the legal conditions and requirements and that legitimate codes/security markings are not fraudulently cloned/diverted/counterfeited?

Other Tobacco Products

The nature of the other tobacco products (chewing tobacco, pipe tobacco and cigars) and their associated supply chains are quite different to those for cigarettes and hand-rolling tobacco (RYO). It is therefore vital that the systems chosen for Track and Trace and Security Feature are compatible with these other products. For example we need to recognise that marking at production for cigars, most of which is predominantly outside the EU, where the intended destination market is rarely known, needs to be flexible enough to accept that some supply chain data may need to be linked to the serialisation and not necessarily part of what is printed on the packaging.

The benefits associated with other tobacco products need to be clearly defined. In the UK, the illicit market is almost entirely based on cigarettes and HRT with very few risks for cigars, pipe tobacco and chewing tobacco. Introduction of a Track and Trace system and Security Feature will have little effect on this illicit market so we need to be able to articulate why we are introducing this for a very small part of the overall tobacco market and to address a very small risk.