

Q&A: EU systems for traceability and security features of tobacco products

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This document contains views of the Commission on the operation and requirements of EU systems providing for the traceability of tobacco products and for the application of security features to such products. Please note, however, that only the Court of Justice of the European Union is competent to interpret Union law with final binding authority.

The views expressed in this document are without prejudice to Union legislation, including the provisions of the Union Customs Code.

All references to the legal acts are made to the current versions of these acts.

Q1: Does the traceability system cover tobacco products that (a) are manufactured in the EU but destined to third countries and (b) products manufactured in third countries and destined for the EU?

A: Yes. The traceability system applies to all the products manufactured in the Union including where they are destined for export. In addition, it applies to products manufactured outside the Union but destined to be placed on the Union market.

Q2: My business involves the import of tobacco products into the EU. When should the imported tobacco products be marked with unique identifiers?

A: Article 6(2) of the Implementing Regulation specifies that the unique identifiers are to be applied on the unit packet before the tobacco product is imported into the Union.

However, Article 2(38) of the Tobacco Products Directive (TPD) specifies that products placed under a customs suspensive procedure or arrangement are not considered to be imported until their release from such a procedure or arrangement.

Q3: My business involves the transport of tobacco products, but does not handle tobacco products in any other way. Are transport companies like mine subject to the EU traceability system?

A: The traceability system applies to all stages of the supply chain and to all economic operators involved in tobacco trade from the manufacturer to the last economic operator before the first retail outlet.

However, transport operators will only be required to report incidences of trans-loading, that is, the transfer of tobacco products between vehicles during which tobacco products do not enter and exit a facility. Other logistical operations, in particular dispatches and arrivals, are to be reported by the operators of facilities from which the tobacco products are dispatched or to which they arrive.

Q4: I am in the retail business. Are there any requirements for retailers of tobacco products under the EU traceability system?

A: If your business is not involved in any other form of tobacco trade than the operation of a retail outlet, i.e. the facility where the tobacco products are made available to consumers, it will only be necessary to obtain economic operator and facility identifier codes. Those identifiers will be required to ensure you can receive deliveries to your retail outlet from other economic operators.

Articles 14(3) and 16(3) of the Implementing Regulation specify that, subject to your consent, the above identifiers can be obtained for you by any other registered economic operator.

See also the responses to questions 7.

Q5: Could short-term storage be regarded as a part of trans-loading (when such storage occurs for the purpose of a transfer of products between vehicles)?

A: No, regardless of its duration, storage has to be differentiated from trans-loading.

According to Article 2(19) of the Implementing Regulation, trans-loading is defined as *'the transfer of tobacco products from one vehicle to another during which tobacco products do not enter and exit a facility.'*

By contrast, where tobacco products are being stored (which may be the case, for example, when they are left in a warehouse without being handled and no vehicle is present) economic operators will be required to report the arrival of the tobacco products at the relevant storage facility (see *'arrival of tobacco products at a facility'* message, Section 3.4 of Annex II to the Implementation Regulation).

Q6: What is the “first retail outlet” referred to in EU tobacco legislation and how can it be distinguished from retailers in general?

A: Article 2(3) of the Implementing Regulation defines the first retail outlet as the facility where products are placed on the market for the first time, including vending machines used for the sale of tobacco products.

It is important to note that the term “retail outlet” does not refer to an entity but rather a physical location where the product is placed on the market, i.e. made available to consumers.

Q7: How can an operator of a retail outlet arrange to have another economic operator register on its behalf?

A: Article 14(3) of the Implementing Regulation establishes a mechanism by which the operator of a retail outlet can arrange to have its registration with the competent ID issuer carried out by another economic operator.

The economic operator willing to assist the operators of retail outlets must itself be registered with the competent ID issuer. Having obtained the consent of the retail outlet, the economic operator is required to communicate to the ID issuer the information set out in Chapter 2, Section 1 of Annex 2 to the Implementing Regulation. The economic operator that carried out the registration will have to transmit all details received from the ID issuer to the operators of retail outlets in respect of which the registration was completed.

Q8: I operate a retail outlet. Is it necessary to report the transfer or sale of tobacco products to another retail outlet?

A: Pursuant to Article 15(5) of the Tobacco Products Directive, reporting obligations arise in respect of the movement of tobacco products through the supply chain from the manufacturer all the way to the first retail outlet. It follows that, in principle, the movement of tobacco products from the first retail outlet to second (or subsequent) retail outlets are not subject to a reporting obligation.

However, it is important to note that the notion of “retail” implies the sale of goods to the public for use or consumption rather than for resale – i.e. 'placing on the market' (see Article 2(40) of the TPD). Consequently, where the transfer of products has the character of trade between economic operators or arises from the internal distribution of products along the supply chain, then such movements fall outside the scope of “retail” and remains subject to a reporting obligation.

An example of a potential scenario in which transfer of tobacco products between retail outlets may take place without giving rise to a reporting obligation is the transfer of products from a first retail – in which they have already been put on sale – to another retail outlet, e.g. because of a shortage of tobacco products in the latter.

Q9: I operate a facility that, amongst other things, sells tobacco products to individual consumers. Does it mean that my facility has the status of a “first retail outlet” that is exempt from the requirement to report data to the EU traceability system?

A: If the sales at the facility in question are made only to individual consumers then indeed there will be no need to report any information to the EU traceability system concerning the products delivered to this facility.

However, the existence of sales to individual consumers at a given facility does not automatically mean that all the operations at that facility are excluded from the reporting obligations. In particular, if the facility is involved in the onward distribution of tobacco products, the related product movements and financial transactions will have to be reported to the EU traceability system.

Q10: I am an economic operator involved in the trade of tobacco products. Do I need to scan all unit packets of tobacco products for the purposes of the traceability system?

A: Article 15(5) of the TPD requires that all economic operators, from the manufacturer to the last economic operator before the first retail outlet, record the entry of all unit packets into their possession, as well as all intermediate movements and the final exit of the unit packets from their possession.

However, Article 15(5) of the TPD also allows for marking and recording at aggregated packaging level, provided the tracking and tracing of all unit packets remains possible. For example, if 500 packs have been aggregated into 50 cartons, which in turn have been aggregated into a single master case, and if all of these aggregations have been properly marked in accordance with the Implementing Regulation, it will be enough to scan the unique identifier of the master case (instead of the 50 cartons or the 500 packs contained therein) in order to report the movement of all the 500 packs.

Q11: A part of a stock of products was stolen. Is it necessary to report this fact?

A: Cases of stolen products are considered as an exit of the products from the economic operator’s possession. They must therefore be reported under Article 15(5) of the TPD.

In the event of theft, the economic operator should introduce a request for the deactivation of unique identifiers (UIs) (see message 2.3 in Annex 2 to the Implementing Regulation).

If the economic operator is unable to establish the UIs of the stolen products (at least at their aggregated level), it should turn to the competent authorities with a request for access to the relevant data stored in the repositories system. Article 15(8) of the TPD provides for such a possibility.

Q12: How should distributors report the delivery of tobacco products when carried out by a vending van?

A: The delivery of tobacco products by means of a vending van should generally be reported by transmitting the following sequence of messages (as specified in Annex 2 to the Implementing Regulation) to the repositories system: (i) message 3.3 on dispatch of tobacco products from a facility with value ‘4’ to be indicated in the field ‘Destination_ID1’; (ii) for each retail outlet, message 3.7 on the actual deliveries carried out with a vending van; and (iii) for any remaining products, message 3.4 on arrival of tobacco products at a facility with value ‘1’ indicated in the field ‘Product_Return’.

Apart from the requirement for the above messages to be transmitted in the order of their occurrence, the messages on dispatch and arrival must be communicated within the time-frame for transmission of required information set out in Article 34 of the Implementing Regulation.

Q13: What is the difference between delivery vans and vending vans?

A: The term ‘vending van’ is defined in Article 2(20) of the Implementing Regulation as a vehicle used for the delivery of tobacco products to multiple retail outlets in quantities that have not been predetermined in advance of the delivery. For deliveries carried out with a vending van, the combination of messages 3.3, 3.4 and 3.7 (as specified in Annex 2 of the Implementing Regulation) will be usually required to complete the reporting obligations.

The term ‘delivery van’ is not defined under the Implementing Regulation. Deliveries by road transport to retail outlets, for which quantities are known before the dispatch, will normally require the transmission of a single message 3.3 for each retail outlet.

Q14: I am an economic operator involved in tobacco trade. What is required for me to report activities under the EU traceability system?

A: The requirement depends on the nature of your involvement.

If you are a manufacturer or importer, then first of all, you will be required, pursuant to Article 15(8) of the TPD to conclude data storage contracts with independent third parties. The Delegated Regulation sets out the key elements of these contracts, while Part A of Annex 1 to the Implementing Regulation sets out the procedure applicable to the selection of an independent third party operator. Manufacturers and importers can only start reporting their activities when their contracted data storage facility is operational and integrated within the repositories system.

All economic operators are required to obtain identifier codes which will subsequently be used for communications with the EU traceability system. Depending on the scope of operations, the following identifiers may be required: economic operator identifier codes, facility identifier codes and machine identifier codes. The requested identifier codes will be issued by the relevant competent ID issuers. The specific provisions relating to identifier codes can be found in Articles 14 to 19 of the Implementing Regulation.

Q15: Is it necessary to issue a separate invoice for every individual transport of tobacco products dispatched?

A: No, there is no such a requirement. Message 4.1 in Annex 2 to the Implementing Regulation links the invoice to the UIs of the products covered by the invoice, and not to any specific logistics operation.

In line with Article 34(2) of the Implementing Regulation the time frame for transmission of the relevant information starts to run when the relevant unit packets can be linked to a specific invoice, which, under one possible scenario, may happen at the moment of the dispatch of tobacco products.

Q16: My business is required to obtain economic operator and facility identifier codes. From where can these identifiers be acquired? How much do they cost?

A: The ID issuers are tasked with issuing the necessary identifier codes for the purpose of the EU traceability system. In all cases it will be necessary to ensure requests are made to the correct, or 'competent' ID issuer (please see Articles 14(1), 16(1) and 18(1) of the Implementing Regulation for information on this). Economic operators should use the messages set out in Chapter 2, Section 1 of Annex 2 to the Implementing Regulation in order to request these identifier codes from the ID Issuers.

The identifier codes (economic operator, facility and machine identifier codes) will be issued free of charge. ID issuers will be required to finance their operations via the fees collected for issuing UIs to be applied to tobacco packaging.

Q17: My business trades in cigarettes, roll-your-own tobacco and other tobacco products. Other tobacco products will become subject to the traceability system on 20 May 2024. Does it mean that until then they should be separated from cigarettes and roll-your-own tobacco for the purpose of logistic operations and financial transactions?

A: No, all these products can be handled together. However, for the first five years of the system's operations, only cigarettes and roll-your-own tobacco will be subject to traceability. Other tobacco products can continue to be manufactured and stored in the same facilities, be a part of the same shipments and appear on the same invoices as cigarettes and roll-your-own tobacco products.

Q18: What is a difference between a unique identifier and a data carrier?

A: The unique identifier is an actual code, i.e. a unique sequence of alpha-numeric characters. The data carrier is the form through which the code is expressed in a device-readable format.

Article 21 of the Implementing Regulation lists the types of data carriers permitted for use under the EU traceability system, at both unit packet and aggregated packaging level.

Q19: Does the introduction of a unique identifier encoded in one of the prescribed data carriers mean that it is no longer possible to use other data carriers, e.g. barcodes with encoded stock keeping units such as EAN-13?

A: The Implementing Regulation does not contain any provisions that would preclude the placement of other data carriers on unit packets or aggregated packaging. Furthermore, Article 21(6) of the Implementing Regulation permits economic operators to distinguish the traceability data carrier from any other data carriers they may use by adding the marking 'TTT' next to it.

Q20: Does the EU traceability system meet the requirements of the FCTC Protocol or will it need to be amended once the FCTC Protocol enters into force?

A: The EU traceability system, as provided for under Article 15 of the TPD and complemented by the Implementing and Delegated Regulation, fully complies with the requirements of Article 8 of the FCTC Protocol. Therefore, when the FCTC Protocol enters into force, the EU traceability system will not require further adjustments.

Q21: Does a vending machine fall within the definition of a first retail outlet?

A: Yes, Article 2(3) of the Implementing Regulation specifically mentions vending machines as examples of first retail outlets. The vending machine is considered to be an outlet where tobacco products are placed on the market and made available to consumers.

Q22: When are service providers for the systems of traceability and security features required to be independent from the tobacco industry?

A: Under the Implementing Acts the independence requirement applies to four categories of service provider. These are: entities appointed as ID Issuers, providers of data storage, providers of anti-tampering devices and providers of at least one authentication element per security feature. The first three entities are of relevance for the operations of the EU traceability system (see the Implementing Regulation), while the last one is of relevance for the EU system of security features (see the Implementing Decision).

Q23: I am a provider of authentication elements that may form part of a security feature to be placed on tobacco products. My type of authentication element does not appear in the Annex to the Implementing Decision. Does it exclude me from supplying authentication elements?

A: No, the Annex to the Implementing Decision only sets out examples of the types of authentication elements that Member States may include in the combination(s) of authentication elements that are to be used in the security features applied to tobacco products placed on their markets.

Whether a given authentication element will be used in the security features or not is left to the discretion of Member States.

Q24: What is actually meant by the requirement for the security feature to be irremovable? Can a wrap film meet this requirement?

A: Article 15(1) of the TPD specifies that all unit packets of tobacco products must carry a tamper proof security feature that must be irremovably printed or affixed, indelible and not hidden or interrupted in any form. These requirements are cumulative.

If a security feature or its element, e.g. a wrap film, can be removed from the packet without leaving any traces of tampering on the packet, such a security feature will have to be considered incompatible with the above regulatory requirements.