

Public 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.

Introduction

This is a public consultation on the implementation of an EU system for traceability and security features for tobacco products, as required under Articles 15 and 16 of the Tobacco Products Directive 2014/40 /EU (TPD). The purpose of this consultation is to seek comments from the general public and interested parties, such as consumers, retailers of finished tobacco products, manufacturers of finished tobacco products, wholesalers and distributors of finished tobacco products, providers of solutions for operating traceability, security feature or data storage systems, and governmental and non-governmental organisations active in the area of tobacco control and the fight against illicit trade.

The basis for the consultation is the Commission's [Inception Impact Assessment](#). This document develops the main policy options currently under consideration for implementing the system for traceability and security features provided for under Articles 15 and 16 TPD. These policy options are outlined in Table 4 of the Inception Impact Assessment (page 8).

As the objective of this public consultation is, among others, to gain confirmation or otherwise of the assumptions made regarding the policy options mentioned above, **those participating are strongly advised to review the Inception Impact Assessment before responding**. The comments received in the course of this consultation will provide input for the ongoing implementation work on the future EU system.

Stakeholders are invited to submit their responses to this consultation via the survey form below until **4 November 2016**.

The survey form 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. Submissions

should - where possible - be in English.

In the case of corporate groups, one single reply should be prepared. For responses from governmental organisations not representing a national position, the reply should explain 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 see [here](#) for information on rules governing personal data protection and consult the [privacy statement](#) provided on the consultation webpage). In the case of submissions by corporate groups, respondents are asked not to upload personal data of individuals.

Please note that organisations falling under the following respondent groups should register in the [Transparency Register](#) before they begin to answer the questions:

- Manufacturers of tobacco products destined for consumers (finished tobacco products)
- Operators involved in the supply chain of finished tobacco products (excluding retail)
- Providers of solutions for operating traceability, security features or data storage
- Non-Governmental Organisations

The submissions of non-registered organisations will be published separately from those of registered ones and considered as the input of individuals.

The Commission reserves the right to contact you to request further explanation and/or justification of your calculations and/or the reasoning on which your responses rely. You may also be requested to provide further evidence for your detailed replies.

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

A. Respondent details

*A1. Please identify which respondent group you fall under:

- ☐ a) Consumer/member of the general public
- ☐ b) Retailer of finished tobacco products
- ☐ c) Manufacturer of tobacco products destined for consumers (finished tobacco products)
- ☒ d) Operator involved in the supply chain of finished tobacco products (excluding retail)
- ☐ e) Provider of solutions for traceability, security features or data storage
- ☐ f) Governmental organisation
- ☐ g) NGO
- ☐ h) Other organisation

If you fall under groups **b)**, **c)**, **d)** or **e)** above, please indicate if you are a small or medium sized enterprise as defined in [Commission Recommendation 2003/361/EC](#) (i.e. an enterprise which employs fewer than 250 persons and which has an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.)

- ☒ Yes
☐ No

If other, please specify

Text of 1 to 800 characters will be accepted

If other, please specify

Text of 1 to 800 characters will be accepted

A5. If you fall under respondent group **d)** above, please indicate your main area(s) of activity:

- ☒ Importer
☒ Distributor
☐ Wholesaler
☐ Warehouse operator
☐ Other

B. Respondant contact details

B2. In the case of organisations, please provide the organisation's name, address, email, telephone number and, 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

Hunters & Frankau Limited
16-20 Hurlingham Business Park, Sullivan Road, London SW6 3DU

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

B3. Please indicate if your organisation is registered in the [Transparency Register of the European Commission](#)* (unless you fall under respondent groups **a)**, **b)** or **f)** of Question 1A above):

*(*Please note that organisations falling under the relevant respondent groups should register in the Transparency Register before they begin to answer the questions. The submissions of non-registered organisations will be published separately from those of registered ones and considered as the input of individuals.)*

- ☒ Yes
☐ No

If you indicated yes, please enter your Transparency Register registration number:

Text of 1 to 20 characters will be accepted

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Where applicable please upload extract from the trade or other relevant registry confirming the activity indicated under Question A1 (English translation where possible)

* B4. Please state your preference with regard to the publication of your contribution

(Please note that regardless of the option chosen, your contribution may be subject to a request for access to documents under [Regulation 1049/2001](#). In such cases, the request will be assessed against the conditions set out in the Regulation and in accordance with applicable data protection rules.)

- ☒ My contribution may be published under the name indicated; I declare that none of it is subject to copyright restrictions that prevent publication
☐ My contribution may be published but should be kept anonymous; I declare that none of it is subject to copyright restrictions that prevent publication
☐ I do not agree that my contribution will be published at all.

C. Consultation questions

Please carefully read the [Inception Impact Assessment](#) document before answering the questionnaire

Questions on the governance model

- * C1. Out of the three governance models outlined in the Inception Impact Assessment for the traceability system for tobacco products, which one do you consider most suitable for operating the traceability system from your perspective:
- ☒ Option A1: industry operated solution
 - ☐ Option A2: third party operated solution
 - ☐ Option A3: mixed solution (industry and third party)
 - ☐ No opinion
- * C2. Do you agree that the industry operated model (option A1) will require, on the part of the public authorities, additional control measures to ensure traceability of tobacco products?
- ☐ Yes
 - ☒ No
 - ☐ No opinion
- * C3. Do you consider that traceability of tobacco products can only be achieved on condition that the supply chain is controlled by a third party independent from the tobacco industry?
- ☐ Yes
 - ☒ No
 - ☐ No opinion
- * C4. If options A1 and A2 are to be compared in terms of their overall impact on cost per pack of product (excluding potential additional costs for the public authorities related to monitoring and enforcement in option A1), do you consider*
- ☒ Option A1 to be cheaper than option A2
 - ☐ Both options to have the same cost impact
 - ☐ Option A1 to be more expensive than option A2
 - ☐ No opinion

**Subquestion a) to question C4: What is your estimate of the average likely increase in the cost of a pack of product that would be incurred in establishing and operating the traceability system under option A1 (in Euro, ex-factory level, before taxes. If relevant please indicate an exchange rate)? Please outline your justifications/reasoning for this estimate including a clear indication of your sources of information. If needed please indicate how your estimate may differ for different categories of products*

Text of 1 to 1500 characters will be accepted

As an importer and distributor of cigars Hunters & Frankau does not have access to any estimated costs at the manufacturing level. Furthermore it is hard to see how even a manufacturer could produce such figures at this stage without detailed knowledge of the traceability system that would be acceptable under option A1.

**Subquestion b) to question C4: What is your estimate of the average likely increase in the cost of a pack of product incurred in establishing and operating the traceability system under option A2 (in Euro, ex-factory level, before taxes. If relevant please indicate an exchange rate)? Please outline your justifications/reasoning for this estimate including a clear indication of your sources of information. If needed please indicate how your estimate may differ for different categories of products*

Text of 1 to 1500 characters will be accepted

Again Hunters & Frankau does not have access to the likely costs at a manufacturing level. Our responses are based on the fact that any involvement in the traceability system by a third party will increase the costs and have a negative impact on our business. So far as we can see, there is no requirement in the Directive to involve third parties in the operation of the traceability system so it is not clear to us why option A2 is under consideration.

*** C5.** Do you agree that a mixed model of governance, in which the choice of governance is separately made with respect to each distinct technological block/process (e.g. generation, printing/affixing and visual control of a unique identifier) can both provide for full traceability of tobacco products and mitigate the overall public-private cost of establishing and operating the system?

- ☐ Yes
- ☒ No
- ☐ No opinion

C6. Would you like to add any comments or suggestions on the choice of the governance model?

Text of 1 to 1500 characters will be accepted

As we understand it, options A1, A2 and A3 relate only to the development of the unique identifier that will be applied to tobacco packs. As the unique identifier's role is simply to act as an enabling device to allow for the extensive amount of traceability information stipulated in Article 15 of the Directive to be recorded and uploaded to an independent data storage operator, it is hard to see why its development and operation should demand the attention of an independent third party. The industry accepts the need for such devices and has already invested large sums in developing them along with systems that have been proved to work. The conditions of the Directive provide the necessary legal protection and by concentrating governance over this one aspect in the hands of the industry, the many pitfalls arising from a mixed model, which might compromise accountability for the accuracy of the data, can be avoided.

Hunters & Frankau urges the Commission to pursue option A1.

Questions on the data storage location

* C7. Out of the two data storage locations outlined in the Inception Impact Assessment, which option do you consider most suitable from your perspective:

- ☒ Option B1: centralised data storage
- ☐ Option B2: decentralised data storage
- ☐ No opinion

* C8. Do you agree with the assumption made in the Inception Impact Assessment (p. 12) that centralised data storage can provide for important economies of scale (construed as savings in costs gained by an increased level of centralisation), in particular given the related costs of interconnectivity and interoperability present in the option of decentralised data storage?*

- ☒ Yes
- ☐ No
- ☐ No opinion

**Subquestion to question C8: Please provide the reasoning for your response*

Text of 1 to 1500 characters will be accepted

Our concern is that the implementing and delegated acts will place further disproportionate and costly burdens on SMEs dealing in OTPs for which this legislation is not primarily intended. The economies of scale afforded by centralised data storage are obvious to Hunters & Frankau. To an SME, like us, such potential cost savings are absolutely vital.

*** C9. Which type of data storage represents higher risks in terms of time required to access data and/or potential downtimes?***

- ☒ Centralised data storage
- ☐ Decentralised data storage
- ☐ No opinion

**Subquestion to question C9: Please provide the reasoning for your response*

Text of 1 to 1500 characters will be accepted

Hunters & Frankau is concerned that the risks of centralised data storage are greater in terms of overall response times and vulnerability to breakdowns. In addition we envisage that problems may occur with the long-term storage of data on such a vast scale. Nevertheless, as an SME, we consider the cost saving benefits outweigh the potential disadvantages

*** C10. In the case of a decentralised data storage, how should data be split among individual data storages:**

- ☒ Geographic decentralisation with regional/national data storages
- ☐ Product decentralisation with all the data on a single product stored in one place
- ☐ Other option
- ☐ No opinion

* C11. If the option of geographic decentralisation of data storages is considered, the relevant data on a given product should be placed

- ☐ In the storage of the region/country of product origin
- ☒ In the storage of the region/country of intended retail market
- ☐ In all the regional/national data storages of a given product's presence, incl. transit countries
- ☐ No opinion

**Subquestion to question C11: Please provide the reasoning for your response*

Text of 1 to 1500 characters will be accepted

As the majority of Hunters & Frankau's business is conducted in the UK, we would prefer data storage to be by intended country of retail sale. This would also facilitate our ability to conclude a data storage contract as an importer.

C12. Would you like to add any comments or suggestions on the choice of the data storage location?

Text of 1 to 1500 characters will be accepted

At this point Hunters & Frankau does not understand how it might conclude a storage contract with an independent third party as required under Article 15.8 of the Directive, if that third party were responsible for the data storage for the movement of all tobacco products in the EU. Under such circumstances the position of small enterprises in such a vast undertaking would have to be protected.

Questions on the allowed data carriers

* C13. Out of the three options for data carriers outlined in the Inception Impact Assessment which one do you consider most suitable for operating the traceability system from your perspective

- ☐ Option C1: system with a single data carrier
- ☒ Option C2: system with a limited variety of data carriers
- ☐ Option C3: free system allowing any existing data carrier
- ☐ No opinion

* C14. Do you agree with the assumption made in the Inception Impact Assessment (p. 12) that a system with a single data carrier may offer insufficient flexibility in view of different requirements of various economic operators, including small and medium enterprises?

- ☒ Yes
☐ No
☐ No opinion

* C15. Do you agree with the assumption made in the Inception Impact Assessment (p. 12) that a free system (allowing any existing data carrier) introduces a risk that certain data carriers will not be readable by all the scanners installed in the system and that its functioning would require frequent updates of the scanners, which may not be technically feasible and/or economically viable?

- ☒ Yes
☐ No
☐ No opinion

**Subquestion to question C15: Please provide the reasoning for your response*

Text of 1 to 1500 characters will be accepted

Hunters & Frankau would like to see a narrow range of data carriers all of which adhere to widely used and accepted international standards. Our business is based on internationally-known cigar brands that are manufactured outside the EU and widely distributed within it. It is important to us and to the importers of these products in other Member States that data carriers can be found that will allow for effective scanning in all EU markets without incurring substantial costs for adaptation.

C16. Would you like to add any comments or suggestions on the choice of the allowed data carriers?

Text of 1 to 1500 characters will be accepted

Although mainstream tobacco products such as cigarettes are usually distributed in master cases to the last economic operator before retail sale, the position for cigars is different. A thriving sector exists for specialist cigars where distribution takes place in a large number of different packs made from a variety of different materials. Hunters & Frankau distributes 35 different brands of cigars in 653 different packaging options. It is important to the future of this sector that the data carriers allow for the wide variety of packs and materials to which they will be affixed.

Questions on the allowed delays in reporting events

* C17. Out of the three options for the allowed delays in reporting events outlined in the Inception Impact Assessment, which one do you consider most suitable for operating the traceability system from your perspective:

- ☐ Option D1: real-time (or limited delay – max. several minutes – reports)
- ☒ Option D2: once daily reports
- ☐ Option D3: once weekly reports
- ☐ No opinion

* C18. Do you agree with the assumption made in the Inception Impact Assessment (p. 12) that option D1, which envisages real-time reporting (or limited delays of maximum several minutes), would be particularly efficient to track products in transit as it would avoid duplicating scanning operations (e.g. by both a dispatcher/recipient and a transport operator)?

- ☐ Yes
- ☒ No
- ☐ No opinion

* C19. Do you agree with the assumption made in the Inception Impact Assessment (p. 12) that option D1 (real-time or limited delays of maximum several minutes) would support effective realtime risk analysis so that controls by competent authorities can be better targeted on illicit trade?

- ☐ Yes
- ☒ No
- ☐ No opinion

* C20. Do you agree with the assumption made in the Inception Impact Assessment (p. 13) that the once-daily frequency of data uploads provides for important cost savings for the economic operators as compared to the option of real-time reporting (or limited delays of maximum several minutes)?

- ☒ Yes
- ☐ No
- ☐ No opinion

**Subquestion a) to question C20: What is your estimate of the average likely increase in the cost of a pack of product that would be incurred in operating the traceability system with the option of real-time (or limited delay of maximum several minutes) reporting (in Euro, ex-factory level, before taxes. If relevant please indicate an exchange rate)?*

Please outline your justifications/reasoning for this estimate including a clear indication of your sources of information. If needed please indicate how your estimate may differ for different categories of products

Text of 1 to 1500 characters will be accepted

Hunters & Frankau does not have access to information that would allow us to calculate the increase in product costs that would be incurred under the option of real-time reporting. Suffice it to say that for an SME working within the distribution chain for low-volume, specialist products like cigars, real-time reporting would pose technological problems and have cost implications that we would be unlikely to be able to overcome.

**Subquestion b) to question C20: What is your estimate of the average likely increase in the cost of a pack of product that would be incurred in operating the traceability system with the option of once-daily reporting (in Euro, ex-factory level, before taxes. If relevant please indicate an exchange rate)?*

Please outline your justifications/reasoning for this estimate including a clear indication of your sources of information. If needed please indicate how your estimate may differ for different categories of products

Text of 1 to 1500 characters will be accepted

Again Hunters & Frankau does not have access to information that would allow us to calculate the increase in product costs that would be incurred under the option of once-daily reporting. However, it should be noted that our systems are geared to the daily dispatch of goods, so this frequency is the least likely to disrupt the normal work flows of our business.

*** C21. Do you agree with the assumption made in the Inception Impact Assessment (p. 13) that the once-weekly frequency of data uploads provides for important cost savings for the economic operators as compared to the option of once-daily reporting?**

- ☐ Yes
- ☒ No
- ☐ No opinion

*Subquestion to question C21: What is your estimate of the average likely increase in the cost of a pack of product that would be incurred in operating the traceability system with the option of once-weekly reporting (in Euro, ex-factory level, before taxes. If relevant please indicate an exchange rate.)?
Please outline your justifications/reasoning for this estimate including a clear indication of your sources of information. If needed please indicate how your estimate may differ for different categories of products

Text of 1 to 1500 characters will be accepted

Again Hunters & Frankau does not have access to information that would allow us to calculate the increase in product costs that would be incurred under the option of once-weekly reporting. Our concern under this regime would relate to the system required for storing data over several days assuming that all reporting had to occur on a weekly basis.

C22. Would you like to add any comments or suggestions on the choice of the allowed delays in reporting events?

Text of 1 to 1500 characters will be accepted

Hunters & Frankau believes that there are dangers involved in making the regulations on the frequency of reporting too prescriptive particularly for small businesses. Instead we would suggest that the regulations should state that reporting takes place within a reasonable period of time, not exceeding one week.

Questions on the method of adding a security feature

* C23. Out of the three options for the method of adding a security feature that are outlined in the Inception Impact Assessment which one do you consider most suitable for securing the product from your perspective?

- ☐ Option S1: affixing
- ☐ Option S2: printing or integrating through a different method
- ☒ Option S3: any method
- ☐ No opinion

* C24. Do you agree with the assumption made in the Inception Impact Assessment (p. 13) that by broadening the range of available methods, it will be easier for economic operators (including small and medium enterprises) to obtain the necessary level of security in a cost-efficient manner?

- ☒ Yes
- ☐ No
- ☐ No opinion

* C25. How do you rate the importance for consumers of having visible security features on unit packs of tobacco products?

- ☐ Important
- ☒ Rather important
- ☐ Neutral
- ☐ Rather unimportant
- ☐ Unimportant
- ☐ No opinion

* C26. Do you consider that enabling individual consumers to decode and verify a serialized unique identifier with mobile devices (e.g. smartphones) would bring added value to the effectiveness of the tracking and tracing system?

- ☐ Yes
- ☐ No
- ☒ No opinion

C27. Would you like to add any comments or suggestions on the choice of the method of adding a security feature?

Text of 1 to 1500 characters will be accepted

Affixing security features is essential for cigars. If all tobacco product packaging used cardboard, other security methods using printing or materials' integration could be considered. However cigars commonly use a variety of other materials for their packaging such as wood, plastic, metal and ceramics, or sometimes glass, which means that the only way to introduce the security feature is by the addition of stickers.

Although visible security features are of limited importance for many cigars, they have a long and important tradition where hand-made cigars are concerned. The first visible security features were put on boxes of cigars hand-made in Cuba in 1889, and they have appeared on every box exported from that country ever since. Today's Cuban Government Warranty seals contain most of the requirements demanded by Article 16. Hunters & Frankau would hope that their continued use could be permitted under the regulations.

Question C26, which refers to the function of the unique identifier in a section about the security feature, is confusing. If the idea is to reveal to consumers the data contained in the unique identifier, we would oppose it because much of the information is highly confidential. If the purpose is to provide a separate function, which happens to be embedded in the unique identifier, we would argue that the products, whose consumers might appreciate it, are so few that it would not be worthwhile.

C28. Please upload any additional comments on the subject of this consultation (max. 5 pages)

60ee7ebc-d934-4d30-a02a-ea10c234f1c9/Additional_comments_by_Hunters___Frankau.docx

Contact

SANTE-B2-TOBACCO-CONTROL@ec.europa.eu
