



MEETING OF THE TOBACCO PRODUCTS COMMITTEE FINAL SUMMARY RECORD

Date: 16 October 2017

Place: Brussels

1. Welcome and Introduction

DG SANTE welcomed the participants. It thanked them for the written comments that had been submitted from Member States in the context of the last meeting of the Subgroup on Traceability and Security Features, which were closely reviewed. The Chair further announced that a second Committee meeting was scheduled for 8 November.

A number of Committee members took the floor to make general remarks on the importance of interoperability, independence, and the system's impact on small and medium-sized enterprises (SMEs).

2. Report on the public feedback received on the draft secondary legislation relating to Articles 15 and 16 of the Tobacco Products Directive

DG SANTE reported to the Committee on the comments received in the context of the four week public feedback exercise relating to the draft acts, following their publication on the European Commission website in early September. It said that a large number of comments had been received for all of the acts, with the most for the draft Implementing Regulation on technical standards for the traceability system. It informed participants that all of the responses are published and available for consultation on the European Commission website.¹ The main respondents were manufacturers (large and SME, as well as representatives of third country producers), solution providers and retailers, as well as a number of NGOs. In addition some responses from the general public were received. Comments on the whole focused more on the technical details of the acts. The most common topics raised included the number of ID issuers per Member State, the structure of the unique identifier (UI), requirements relating to the reporting of transactional events, the inclusion of products for export in the scope of the traceability system, the provisions relating to tobacco products other than cigarettes and roll-your-own, the provisions relating to independence, the number of authentication elements required to form security features and the implementation timeline.

¹ https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4305467_en;
https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4305537_en;
https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-4305574_en

DG SANTE then outlined a list of amendments to the draft acts that it had proposed to introduce based on these comments. These included amendments relating to the mode of delivery for UIs, the possibility for economic operators to generate aggregated level UIs themselves, amendments to better accommodate fully manual production processes, extension of certain derogations to companies handling less than 120 million unit level UIs per year, as well as addition and extension of 'exhaustion of stock' provision.

3. Draft Commission Implementing Regulation on technical standards for the establishment and operation of a traceability system for tobacco products

The Commission then presented the draft Implementing Regulation on technical standards for the traceability system and outlined a number of changes that it proposed to introduce, following the comments that had been received by Member States, as well as in the public feedback exercise. In addition to the changes outlined in the section above, these related in particular to a proposed prohibition of sub-contracting by the appointed ID issuers, a proposal that the ID issuer of the Member State of destination of tobacco products should act as competent ID issuer, clarifications in relation to identifier codes and a strengthening of the criteria on independence.

In relation to the definitions set out in the draft act, Member States suggested certain amendments (e.g. to better clarify 'first retail outlet'; 'working day' etc.). Several Member States expressed concern that the proposed prohibition on sub-contracting by ID issuers would be restrictive in the case of public authorities, who may already follow established practices in this respect or be required to do so. The Commission noted this point and said it would reflect upon it. The Commission confirmed that the intention is that more than one Member State may opt to appoint the same ID issuer. In relation to the question of whether the Commission could prepare a list of ID issuers from which Member States could choose, DG SANTE said that it would have a preference for collaboration on this subject in the context of the Expert Group/Subgroup, where it would be possible to discuss key technical requirements to be taken into account for this choice. While some Member States welcomed the changes proposed on the competent ID issuers, others expressed concern that this would reduce flexibility for economic operators. In relation to the provisions on identifier codes, Member States suggested certain additional amendments, including linking withdrawal of facilitator identifier codes and withdrawal of economic identifier codes. One Member State stressed the importance of covering product movements to, from and between bonded warehouses, which presented heightened risk from the point of view of illicit activity, while another pointed out that sales via vending vans (i.e. where vendors may not know the identity of their buyers in advance) should be provided for. It was further agreed that the provisions on independence should refer also to 'groups of undertakings', so as to take account of subsidiaries (corporate structures with parent-daughter company relationships). In relation to the proposed thresholds for determining financial independence of entities before and after assuming their functions under the traceability system, the Commission explained it had drawn on internal rules previously used in the context of tobacco control projects and adapted these based on the comments received from Member States. It confirmed that it would add further clarification on the calendar year on which assessments should be based. Some Member States also requested the addition of

provisions on penalties. The Commission said it would reflect on this but that it believed that Article 23 of the TPD was sufficiently clear in that the responsibility for enforcement lies with Member States. During the course of the discussion, the Commission also re-confirmed that it remained of the view that tobacco products for export fall within the scope of Article 15(1) TPD, and that this rationale mirrored the EU's obligation under Article 8(2) of the FCTC Protocol.

4. Draft Commission Implementing Decision on technical standards for security features applied to tobacco products

The Commission presented the draft Implementing Decision on Security Features as well as the list of amendments it proposed to introduce, based on the comments that had been received in the context of the last subgroup and those received during the public feedback exercise. These related in particular to alignments of the definitions with relevant ISO standard 12931:2012 (as proposed by several Member States), the interdiction of a deadline for information on required authentication elements to be communicated to manufacturers and importers, reinforcement of the criteria on independence, the addition of an 'exhaustion of stock' provision and amendments to the Annex on types of authentication elements.

Member States suggested certain additional amendments to the draft implementing Decision and its Annex. These mainly related to the independence clause, clarifications on the applicable requirements where Member States use their tax stamp as the security feature, and the types of authentication elements listed in Annex I. DG SANTE said it would reflect on these. One Member State also asked a question related to the communication deadline and DG SANTE confirmed that the communication deadline also applied in the case of Member States making use of their national tax stamps to form part of/to form the security feature and that this would be clarified in the draft.

5. Conclusions

The Commission thanked participants for their input and said that additional comments in writing would be welcome until 24 October. Based on these and the day's discussion it said it would prepare another revised version of the acts, which should be circulated among Member States in advance of the next meeting of the Tobacco Products Committee.

The Chair closed the meeting.

6. Annex I

List of participants

Austria	(Federal Ministry of Health and Women´s Affairs)
Belgium	(Federal Public Service Public Health)
Bulgaria	(Permanent Representation to the EU)
Cyprus	(Department of Customs and Excise)
Czech Republic	(Ministry of Agriculture; Ministry of Finance)
Denmark	(Ministry of Health; Danish Safety Technology Authority; Danish Ministry of Taxation)
Estonia	(Ministry of Social Affairs)
Finland	(Permanent Representation to the EU)
France	(Ministry of Social Affairs and Health)
Germany	(Federal Ministry of Food and Agriculture)
Greece	(Directorate of Specific Consumer Tax & Value Added Tax)
Hungary	(Ministry of Human Capacities, Focal Point on Tobacco Control; Permanent Representation to the EU)
Ireland	(Department of Health; Revenue Commissioners)
Italy	(Permanent Representation to the EU)
Lithuania	(Ministry of Health)
Luxembourg	(Ministry of Health; Customs and Excise Administration)
Malta	(Ministry for Energy and Health)
Poland	(Ministry of Finance)
Portugal	(General Directorate of Health)
Romania	(Ministry of Health)
Slovakia	(Financial Directorate of the Slovak Republic; Permanent Representation to the EU)
Slovenia	(Ministry of Health)
Spain	(Agencia Estatal de Administracion Tributaria (AEAT), Permanent Representation to the EU)
Sweden	(Public Health Agency of Sweden)
The Netherlands	(Ministry of Health, Welfare and Sport)
United Kingdom	(HM Revenue & Customs)

Observers

Norway	(Norwegian Ministry of Health and Care Services; Directorate of Norwegian Customs)
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External Contractor

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