



MEETING OF THE SUBGROUP ON TRACEABILITY AND SECURITY FEATURES SUMMARY RECORD

Date: December 16 2016

Place: VLM

1. Welcome and Introduction

DG SANTE welcomed the participants and the agenda was adopted without changes. It was explained that the contractor responsible for the Implementation Study relating to the establishment of the traceability and security features system provided for under Articles 15 and 16 TPD – Everis – would join the subgroup meeting to present the work it has carried out to date (under Work Package 2) and gather Member State feedback. Some Member States referred to the limited time available for a more detailed analysis of the document (Work Package 2). DG SANTE took note of this and said it endeavours to circulate documents in as timely a manner as possible, taking into account that this is a work in progress and that the timetable set out in TPD is very ambitious and tight.

2. Update from the Commission on the outcomes from the Public Consultation

The group was informed about the results and main comments received via the public consultation carried out from July to November this year. The consultation was based on the Inception Impact Assessment published in June.¹ The results of the public consultation, as well as a summary report, will be published shortly.

3. Implementation study

a) Presentation by the contractor

The external contractor– Everis – began its presentation by outlining the methodology it has adopted in its evaluations to date, as well as the main conclusions of the interviews carried out by it with key contact persons from the national competent authorities.

Following this introduction, the contractor presented the main policy options currently under consideration by it. These are based on the five key decision points, as elaborated in the Inception Impact Assessment: choice of governance model; data storage model; allowed data carriers; allowed delays in reporting events; method of adding a security feature.

¹ http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_sante_694_695_696_ia_da_tpd_en.pdf

Choice of governance model

The contractor presented the three policy options under evaluation in this decision point: an industry-operated solution, a third party solution and a mixed solution. Various implications of each were also outlined. Before opening the floor for Member State comments, DG SANTE confirmed that, in drafting the implementing and delegated acts foreseen under Articles 15 and 16 TPD, it intends to comply with its legal obligations, including giving due regard to the legal requirements established under the FCTC Protocol and in this regard also clarified that it believes the provisions of the TPD to be fully compatible with the FCTC Protocol.

The discussion indicated that a key point for national administrators is to ensure control of the system. Some concerns were raised on the compliance of the industry operated option (A1) with the legal obligations of control and independence, including the feasibility of extensive control mechanisms requiring an almost permanent physical presence by the competent authority at the manufacturing site. Also the extent of control suggested under option A2 was brought up. Queries regarding the term '3rd party', template contracts and how option A3 would work in practice were raised.

DG SANTE clarified the process for the generation of the Unique Identifier (UI), highlighting that some of the elements listed in Article 15 TPD can be included in the UI only at the moment of the production.

Following a debate on the governance model it was concluded that Option A3 could represent a compromise between Options A1 and A2, which could ensure effective control, while respecting legal obligations.

Choice of data carriers

The external contractor presented the policy options in relation to the Data Carrier, more particularly two options with single data carriers (C1 and C2), two options with multiple but pre-defined data carriers (C3 and C4), and a free system of data carriers (C5). In this respect, DG SANTE explained that the options with single and multiple data carriers were each available as a solution with (C2 and C4) and without (C1 and C3) additional optional data carriers at the aggregation level. It further noted that whilst optional data carriers at aggregation level were possible, at least one carrier from the pre-defined list of carriers had to be chosen under option C1 and C3.

During the discussion, most of the participants who took the floor argued against a single mandatory data carrier and spoke in favour of a more flexible, although controlled, option which would ensure that future technological developments could be included. The remark was also made that it was difficult for Member States to make a full assessment of which solution could be the most beneficial for them before reviewing the contractor's findings under Work Package 3 of the Implementation Study.

The Chair concluded from the debate that participants identified C4 as the most suitable option, also to address challenges faced in particular by distributors/wholesalers.

b) Session 2: data storage, allowed delays, security features

Choice of security features

The external contractor presented the three policy options; a security feature that is affixed (S1) or printed/integrated (S2), as well as a mixed solution (S3).

In respect to solution S3, SANTE clarified that this solution would allow Member States to implement a security feature according to option S1 or option S2 or options S1/S2 in combination.

Some participants explained that tax stamps were not used in their country and therefore any solution being solely based on tax stamps would not be supported. Other participants, on the contrary, were strongly in favour of continued use of tax stamps. SANTE reminded in this regard that not all tax stamps currently used may meet the strict legal requirements set out in TPD (i.e. being irremovable and containing visible and invisible elements). Thus, certain adjustments to existing tax stamps by concerned Member States would in any case be required if option S1 or S3 was selected. SANTE also stressed that TPD does not prevent Member States from changing their tax stamp provided that they comply with the requirements for security features under Article 16 and its related implementing act. One Member State also raised the size of the security feature and it was concluded that sufficient space on tobacco packages must be reserved for this.

Following some discussion on the different options, the Chair concluded that based on the different views expressed solution S3 might be the most suitable solution given the range of flexibility that it provides. Furthermore, there seemed to be an agreement in the group that costs should be transferred to industry, in accordance with the FCTC Protocol.

Choice of data storage

The external contractor presented the four different policy options which included a centralised data storage option (B1), two decentralised data storage options (B2 and B3) and a combined model (B4). A further option B5 was presented by Everis, but was not retained in the discussion.

Some participants agreed that a centralised data storage model would make the exchange of and access to data easier. Also, it was viewed as a potentially better solution for SMEs and smaller Member States. However, others acknowledged the advantages of a decentralised model. One participant strongly expressed preference for the decentralised model per Member State, due to the possibility to link this solution with existing national databases.

Many participants pointed out that response time should be considered as a priority in designing the system and for that reason agreed on the necessity of a centralised component. It was also mentioned that the central component in this solution should preferably contain a virtual separation (clusters) per Member State.

Some participants mentioned the question of data retention and suggested a discussion on this in the future as divergent national views may exist. For example, one Member State

noted that it prescribed a retention period of 10 years whilst in other Member States this period was shorter. Member States further explained that sharing of data amongst each other already took place in some instances and on a case-by-case basis. Therefore, a system that facilitates central access to data was seen as having a clear advantage by some participants.

The Chair ended the discussion by summarising that some participants expressed preference for a centralised system (B1) while others spoke in favour of a decentralised system. In light of this, the Chair suggested that option B4 could represent a good compromise, as this largely combined the general advantages of a centralised and decentralised architecture.

Allowed delay in reporting

The external contractor presented the three different policy options; near real-time (D1), once daily reports (D2), and once weekly reports (D3).

During the discussion, participants indicated that D1 and D2 would be the only reasonable solutions whilst D3 would defeat the objective of tracking and tracing. Also, there was agreement that the shorter the timespan the more effective the ability of enforcement bodies to react to possible anomalies. The importance of following consignments in real time given the cross-border context of the tracking and tracing system was also underlined.

Some Member States stressed that, if D1 were chosen, particular regard would have to be given to the needs of SMEs. However, one participant highlighted the considerable impact that SMEs can have, whether in contributing to or hampering the fight against illicit trade, and said that this should also be taken into account.

Following the discussion, the Chair concluded that on the whole participants seemed to prefer a reporting time that was real-time or at least as much as possible near real-time, as envisaged under D1.

4. Closing remarks

The Chair noted that all comments concerning the discussion and on Draft Interim Report 2 should be submitted by 23 December COB. The draft report would then be reviewed in light of these comments by the contractor. The report's findings, together with the comments received from Member States and stakeholders, will provide important input to the drafting of the Commission's Impact Assessment. The next round of discussions will take place in the second quarter of 2017 and further details will be sent out at the beginning of 2017.

The Chair thanked all participants for their valuable input and closed the meeting.

Annex I

List of participants

Austria	(Ministry of Finance, Tax and Customs Administration)
Belgium	(Algemene Administratie van de Douane en Accijnzen; Federal Public Service - Public Health)
Bulgaria	(Ministry of Finance - National Customs Agency)
Croatia	(Central Office - Sector for Customs Controls)
Cyprus	(Department of Customs and Excise, Ministry of Finance)
Czech Republic	(Ministry of Agriculture; Ministry of Finance)
Denmark	(Ministry of Health, Ministry of Taxation)
Estonia	(Estonian Tax and Customs Board)
Finland	(Finnish Customs - Crime Intelligence Unit,)
France	(French Customs)
Germany	(Federal Ministry of Food and Agriculture; Federal Ministry of Finance)
Greece	(Ministry of Finance)
Hungary	(National Tax and Customs Administration)
Ireland	(Indirect Taxes Policy & Legislation Division, revenue; Department of Health)
Italy	(Italian Custom Agency; Ministry of Health)
Latvia	(The State Revenue Service of the Republic of Latvia)
Lithuania	(Drug, Tobacco and Alcohol Control Department; State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania)
Luxembourg	(Ministère de la Santé)
Malta	(Customs Department)
Poland	(Ministry of Finance)
Portugal	(Finance Ministry – Customs; Imprensa Nacional - Casa de Moeda)
Romania	(National Agency for Fiscal Administration - General Directorate of Customs)
Slovakia	(Financial Directorate of the Slovak Republic)
Slovenia	(Financial administration of the Republic of Slovenia)
Spain	(Agencia Estatal de Administración Tributaria (AEAT), Customs and Excise Department)
Sweden	(Swedish Customs; Public Health Agency of Sweden)
The Netherlands	(Dutch Customs)
United Kingdom	(UK Representation to the EU)

External Contractor

Everis

Commission:

DG SANTE B2

Anna-Eva Ampélas (chair)
Filip Borkowski
Marta Legnaioli
Patricia Murray