



## MEETING OF THE SUBGROUP ON TRACEABILITY AND SECURITY FEATURES FINAL SUMMARY RECORD

**Date: 28 September 2017**

**Place: Brussels**

### **1. Welcome and Introduction**

DG SANTE welcomed the participants and thanked them for the written comments that had been submitted. It said these had been closely reviewed and that based on this revised versions of the acts would be prepared and circulated. It confirmed that these would then be discussed in further meetings in October (Expert Group and Tobacco Products Committee) and November (Tobacco Products Committee). It further confirmed that no vote would be held in October but said it remained hopeful that it would be possible to adopt the acts on schedule by the end of the year. It added that bilateral meetings with individual Member States could be facilitated where needed to further discuss issues.

In terms of general remarks, DG SANTE said it remains firmly of the view that export products fall under the scope of Article 15 and therefore of the draft Implementing Regulation. It recalled that Article 23 TPD places responsibility on Member States to define rules relating to sanctions to be imposed in the case of non-compliance. It also confirmed that it had received informal feedback from a standards organisation that the provisions set out in the draft would be capable of fully complying with international open standards. It confirmed that it remained of the opinion that the measures proposed are proportionate, given the technical and legal complexity of the subject, and added that it was ready to listen to the day's discussion and to make improvements to the texts where possible.

Several Member States said that they support the establishment of effective systems of traceability and security features that meet all legal requirements, but stressed the need for proportionality of the measures. Some Member States requested additional justification for the inclusion of products for export in the scope of the traceability system, while others called on the proposed criteria for independence to be significantly strengthened.

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

The provisions relating to the following main sections of the draft Implementing Regulation were then discussed: *ID issuers; unique identifier (UI) at unit packet and aggregated packaging levels; identifier codes for economic operators, facilities and*

*machines; repositories system; recording and transmission of data and key messages; final provisions.*

In relation to ID issuers, several Member States requested that the time allocated to Member States to appoint ID issuers at national level be extended and queried how the process should take place. Then Commission said it would look into extending the timeframe but that procedural decisions regarding the appointment process would have to be taken at national level. It suggested that one option would be to follow a concession procedure. Member States also suggested that the decision on the mode of delivery for UIs should not be left to ID issuers. The Commission agreed to modify this. Opinions were divided on the question of competent ID issuers, but there was a general consensus that clarity for economic operators as to which ID issuer is competent for the generation of their UIs is needed. The Commission also agreed to add a clarification that public entities assuming the role of ID issuer shall not run the risk of breaching the independence criteria. Certain Member States raised the possibility of having either one central ID issuer, or multiple per Member State. The Commission cautioned against these options for several reasons, including to ensure that in the future it remains possible for Member States who wish to do so to require (on an individual basis) unique identifiers to be combined with national tax stamps.

In relation to UIs at unit packet and aggregated packaging levels, the Commission first of all clarified that these are separate to the identifier codes foreseen under Articles 14-19 which are required to identify the following: economic operators, operators of first retail outlets, facilities and machines. It further clarified that vending machines should be regarded as first retail outlets (though certain flexibility for vending machine distributors has been provided for in Annex II regarding the messages that they should transmit). It agreed that further clarification of the provision on anti-tampering devices should be provided and that consideration to granting greater flexibility for non-automated processes would be considered here. It said that it had listened to the concerns of Member States regarding the requirement to mark aggregated packaging levels with UIs but explained that if this requirement is to be deleted it will nevertheless be necessary to find a means of ensuring that the identifiers used at aggregated level remain unique.

Regarding the repositories system, Member States underlined the need to tighten rules in relation to subcontracting in order to ensure that it is not possible in this way to breach the criteria on independence. They also suggested reducing the data retention period to 5 years, and stressed the need for ensuring access for authorities also to the primary repositories. In relation to the latter, the Commission confirmed that this was the intention, but pointed out that the secondary repository will be the only means by which to gain an overview of all product movements. The Commission confirmed that the intention is for the system to allow for multiple administrators at national level who would be capable of viewing the stored data. Member States also stressed that there were different needs among Member States as to what information stored in the repository system they would need to access for enforcement purposes, including individual rules for data analysis. The Commission confirmed that the technical requirements laid down for the secondary repository system took this into account.

On the recording and transmission of data and key messages, the Commission outlined a number of fields that it proposed to remove from Annex II in order to reduce messaging burden for economic operators, in line with Member State requests. It highlighted that the transmission of transactional information will only need to be carried out following the occurrence of the event (i.e. following the issuing of the invoice), within the relevant timeframe, and that minimal disruption to business practice is therefore foreseen. In this context one Member State requested the derogation for SMEs to be extended to include businesses that will handle less than 120 million UIs annually. DG SANTE said it would reflect on this. Following a question from Member States DG SANTE also confirmed that the intention is to allow Member States to define their own alerts depending on their enforcement needs.

In relation to the final provisions of the draft act, several Member States called on the independence criteria (Article 35) to be strengthened. The Commission said it could agree to this and that it would welcome suggestions in this regard. In relation to the assessment of financial independence, it suggested that Member States could request recent financial reports of given entities or require declarations of honour to be provided. Certain Member States suggested the financial threshold should be lower before the provision of services under the traceability system and higher thereafter. The Commission said it would reflect on how this could be incorporated. It confirmed that in all cases, public authorities, or undertakings governed by public law along with their subcontractors (e.g. entities contracted to provide national tax stamps), should be considered independent from the tobacco industry and said that this would be clarified in the text.

### **3. Draft Commission Implementing Decision on technical standards for security features applied to tobacco products**

In relation to the independence criteria set out in the draft act on technical standards for security features, the Commission explained that these were introduced in order to better reflect the standards set out in ISO 12931:2012 ('Performance criteria for authentication solutions used to combat counterfeiting of material goods'). It confirmed that authentication elements other than those listed in the Annex, but capable of meeting the requirements of the TPD and of the draft act, could be permitted by Member States for use in their security features. In relation to this, the Commission also noted that ISO 12931:2012 further differentiated within the classifications of authentication elements based on the sophistication of equipment necessary for the verification of their authenticity. Some Member States suggested certain modifications to the Annex, which the Commission said it would review. In relation to Article 7(3), the Commission said the intention is not to oblige Member States to share all information on the exact combinations of authentication elements they will require, but to mutually cooperate with one another in the verification process by sharing product packaging samples.

### **4. Conclusions**

The Commission thanked participants for their input and confirmed that revised versions of the acts were being prepared, based on the comments received to date. It said these

would be circulated in advance of the Tobacco Products Committee of 16 October during which they would be discussed.

## 5. Annex I

### List of participants

Austria	(Federal Ministry of Health and Women´s Affairs; 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	(Customs Administration of the Republic of Croatia)
Cyprus	(Permanent Representation to the EU)
Czech Republic	(Ministry of Agriculture; Ministry of Finance)
Denmark	(Ministry of Health; Ministry of Taxation; Danish Safety Technology Authority)
Estonia	(Ministry of Social Affairs)
Finland	(Ministry of Social Affairs and Health)
France	(French Customs; Permanent Representation to the EU)
Germany	(Federal Ministry of Food and Agriculture)
Greece	(Permanent Representation to the EU)
Hungary	(National Tax and Customs Administration; Ministry for National Economy; Permanent Representation to the EU)
Ireland	(Department of Health; Revenue Commissioners)
Italy	(Italian Customs Agency)
Latvia	(The State Revenue Service of the Republic of Latvia)
Lithuania	(State Tax Inspectorate)
Luxembourg	(Ministère de la Santé; Customs and Excise Administration)
Malta	(Customs Department)
Poland	(Ministry of Finance)
Portugal	(INCM – National Mint and Printing Office; Taxation and Customs General Directory)
Romania	(CN Imprimeria Nationala SA; National Agency for Fiscal Administration – General Directorate of Customs)
Slovakia	(Permanent Representation to the EU)
Slovenia	(Financial administration of the Republic of Slovenia; Ministry of Health of the Republic of Slovenia)
Spain	(Permanent Representation to the EU)
Sweden	(Public Health Agency of Sweden)
The Netherlands	(Dutch Customs; Netherlands Food and Consumer Product Safety Authority)
United Kingdom	(HM Revenue & Customs)
<b>Observers</b>	
Norway	(Norwegian Ministry of Health and Care Services)

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