

AmCham EU position on implementing and delegated acts linked to Article 15 (Traceability) and Article 16 (Security Feature) of the EU Tobacco Products Directive (2014/40/EU)

Executive summary

The formulation of delegated and implementing acts for the Tobacco Product Directive's (2014/40/EU) Articles 15 (Traceability) and 16 (Security Feature) will have a decisive and lasting impact on the traceability and authentication of tobacco products in the future. The consideration and inclusion of input from the widest possible body of stakeholders is, in AmCham EU's view, pivotal in order to achieve an optimal solution. It avoids increased costs and administrative burdens upon both supply chain members and Member States. Consultation with all those affected by these two Articles will also ensure the EU can capitalize on the most effective and technologically advanced supply chain control solutions, maximising impact of the EU's fight against the illicit trade in tobacco products.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.

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Introduction

The American Chamber of Commerce to the European Union (AmCham EU) has been following the revision of the Tobacco Products Directive and wishes to offer its views on implementation of this important legislation.

Article 15 - Traceability

1. *Implementing acts should enable the use of proven, existing track and trace systems. If not already in place, economic operators should be allowed to select the system most appropriate to their business needs.*

Many of our member companies, including small- and medium-sized distributors, wholesalers and importers, have already implemented track and trace systems across their supply chains in over 50 countries as part of legally binding agreements with the Commission. These systems provide strong controls over the supply chain for tobacco products and have been regarded as a success by OLAF, the EU anti-fraud office. **Preventing the use of existing systems would set back progress by many years, undermine the significant investments already made and threaten thousands of jobs at European companies who design and implement these systems.**

Enabling economic operators to choose the track and trace systems most appropriate to their needs is common among other industries, including pharmaceuticals and food. **This approach has also been endorsed by GS1¹, the standards organisation, and is recommended in a WHO expert report².** It ensures a competitive marketplace for providers, adoption of the latest technologies and reasonable compliance costs.

Limiting choice or excluding certain suppliers would be inconsistent with the principle of non-discrimination under EU law.

2. *Implementing acts should ensure that internationally recognised technical standards are used for establishing and operating a track and trace system.*

A significant amount of information must be collected, stored and exchanged by different stakeholders across international supply chains in order to properly track tobacco products, and ultimately, to enable law enforcement to easily inspect products during investigations or seizures.

Internationally recognised technical standards, such as those promoted by GS1 (the supply chain standards-setting organisation), **enable interoperability across operators, systems and borders**, reduce compliance costs, enable use of existing equipment in warehouses and factories, reduce barriers to entry for solution providers and enable law enforcement to easily inspect product using a single device.

Article 16 – Security Feature

¹ *Track and Trace: Approaches in Tobacco, KPGM and GS1, 2014*

² *Expert review of the feasibility of an international track and trace regime for tobacco products*, World Health Organisation, FCTC/COP/INB-IT/3/INF.DOC./5, 2010

- 1. Implementing acts should ensure the security feature is an intrinsic part of the packaging (rather than be material-based and affixed onto a pack) and linked to the track and trace system, so as to create an irremovable and tamper-proof pack authentication mechanism.*

Material-based security features which are affixed/glued onto a pack are not in themselves an intrinsic part of the packaging and can be removed and re-used. Their supposedly 'secure' features, such as colour-shifting inks, fluorescent elements and holograms, can and have been easily copied, despite their regular rotation and variation in design. As such, **material-based security features are vulnerable to counterfeit and can ultimately only ever verify the authenticity of the security feature itself, rather than the pack. This risks creating a false sense of security.**

The most effective approach to creating a highly secure and tamper-proof security feature is to combine:

- ➔ **Forensic-level technology** which provides a unique fingerprint of the fibre structure of the cardboard used to make the pack. This picture of the pack's 'DNA' is completely unique, impossible to copy and can be verified using low-cost non-proprietary inspection equipment, such as a smart phone. Because it relies on the inherent qualities of the pack, it is also a cost-effective and easy to implement solution for all manufacturers;
- ➔ **Taggant ink technology embedded in the tear-tape** of the pack's wrapper, the removal of which is an immediate sign that the pack's integrity has been tampered with. The taggant's microscopic ink particles embedded within the tear-tape, which display unique characteristics when scanned with a low-cost inspection device and cannot be tampered with, confirms the authenticity of the tear tape; and
- ➔ **The highly secure, unique and encrypted serialisation number used for tracking and tracing each pack.** When combined, this provides two robust mechanisms for easily verifying the authenticity of the pack. Firstly, because the codes are unique, any duplicate code is an immediate sign that the product onto which it is applied is counterfeit. Secondly, when combined with the 'event' data captured by the track and trace system which shows each pack's journey history through the supply chain, this creates **a totally unique, tamper-proof picture of the authenticity and provenance of a pack.**

In order to enable as many people as possible to make use of the security feature, including law enforcement, consumers and the trade, **it should be possible to use non-proprietary equipment such as a mobile phone, the internet or a very low cost inspection device, to verify its authenticity.**