European Commission adopts rules clarifying requirements for traceability and security systems for tobacco products

On 15 December 2017, the European Commission adopted secondary legislation clarifying the requirements for EU-wide tracking and security systems for tobacco products, the implementation of which is presumed by Articles 15 and 16 of the new Tobacco Products Directive.

The Tobacco Products Directive

One of the main goals of the Tobacco Products Directive No. 2014/40/EU ("TPD"), applicable as of 20 May 2016, was to ensure better health protection for European consumers. Articles 15 and 16 of the TPD require the adoption of an EU-wide system for traceability and security of tobacco products through secondary implementing legislation. This will contribute to fostering compliance of tobacco products with the TPD and to reducing the volume of cheap illegal tobacco products being placed on the EU market.

The implementing acts

The two systems of traceability and security features are currently based on the following legislative acts of the Commission, yet to be published in the Official Journal:

- Commission Implementing Regulation on technical standards for the establishment and operation of a traceability system for tobacco products;
- Annexes 1 and 2 to the Commission Implementing Regulation on traceability system for tobacco products;
- Commission Implementing Decision on technical standards for security features applied to tobacco products;
- Annex to the Commission Implementing Decision on security features for tobacco products;

The implementing legal framework will apply as of 20 May 2019 for cigarettes and roll-your-own tobacco products or 24 May 2024 for other tobacco products such as cigars, smokeless tobacco products, etc. It is presumed that further guidance documents will be issued by the Commission or appointed advisory bodies.

The tracking and traceability system

The traceability system introduces a set of new obligations that aim at ensuring that all unit packets of tobacco products (i) produced in, (ii) destined for, or (iii) placed on the EU market bear a unique identifier. Any movement of
The handling and storage of the tracking data will be performed by fully independent appointed data storage providers, and subsequently will be disclosed to competent authorities of Member States and the Commission for tracing purposes (detecting the illicit points of sales).

Under the system each Member State will be required to appoint an "ID Issuer" responsible for generating unique identifiers (codes) to be affixed to unit packets. Member States may either delegate the task of issuing unique identifiers to its competent authorities, or may appoint a third party, while ensuring that it meets strict independence criteria, specifically that it has no links to the tobacco industry.

The security features system

Besides the traceability system, all unit packets of tobacco products placed on the EU market will have to be marked with security features comprising at least five types of authentication elements. At least one of the elements must be visible to the naked eye, and at least one of the elements must be invisible and only detectable with tailor-made professional tools or laboratory equipment. One of the five features must also be provided by an independent third-party provider.

The security features system is designed to enable both consumers and authorities to verify the authenticity of tobacco products. Member States will have to ensure that they possess all necessary equipment in order to verify the authenticity of the security features. Manufacturers and importers of tobacco products located in a particular Member State must be prepared to meet the Member State’s request to provide samples of tobacco products currently placed on the market for verification purposes.

In addition, the Commission’s Regulation allows Member States to lay down formal guidelines or requirements on the security of production and distribution procedures to minimise the risks of theft or forgery.

Final remarks

Producers and importers of tobacco products should henceforth continuously monitor the activities of the Commission and the local national authorities (in Member States relevant for their business activities) in order to follow up on any additional guidelines and further implementation processes in relation to the tracking and security feature systems.

In case of cigarettes and roll-your-own tobacco products, manufacturers and importers will now have just over a year to prepare for and implement all the new requirements and to conclude the respective mandatory contracts (e.g. with data storage providers). Member States, on the other hand, must ensure that they have all processes and equipment in place to run and actively enforce the systems.

Essential insights into 2018’s key topic privacy. Order here the brand new roadmap18.