



Lausanne, 4th of May 2017

Mr. Jean-Claude Juncker
President of the European Commission
European Commission
Directorate General for Health and Food Safety
Rue de la loi 200
B - 1049 Brussels
Belgium

[\[REDACTED\]@ec.europa.eu](mailto: [REDACTED]@ec.europa.eu)

**Subject: World Health Organization Protocol to eliminate illicit trade in tobacco products
Tobacco Products Directive and derived regulation being drafted by DG SANTE**

Dear Sir,

SICPA looks forward to participating in the forthcoming stakeholder consultation in preparation for the implementation of articles 15 and 16 of Directive 2014/40/EU (the Tobacco Products Directive) organized by DG Health and Food Safety. We are confident that our expertise in providing technologies to support the fight against illicit trade and our experience in deploying country-wide track and trace systems will be useful to the European institutions.

In view of the way the legal framework covering tobacco track and trace evolved (article 15) and the resulting differences between the provisions of the Directive and those of the World Health Organization regulation (Framework Convention for Tobacco Control and its first Protocol to Eliminate Illicit Trade in Tobacco Products), SICPA decided to request a legal opinion to clarify the applicability of the Protocol in Union law and its relationship with the Tobacco Products Directive.

The conclusions of Mr Pierre d'Argent, Professor at the Law Faculty of the University of Louvain and Associate Member of the Institute of International law, can be found in the attached legal opinion.

In short, d'Argent considers that whilst the Tobacco Products Directive may appear to allow Member States to entrust the tobacco industry with the tracking and tracing of tobacco products, a correct interpretation is that it is prohibited to adopt transposition measures allowing them to do so. As set out in the opinion, this reasoning also applies to implementing and delegated acts.

Furthermore the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products by the Union on 24 June 2016, following the European Parliament vote on 7 June 2016 of the legislative resolutions on the draft Council decision, has the consequence that Union law should take full account of this source of international law (the Protocol).

We note that two of the options presented by Everis to the European Commission DG SANTE at the stakeholder workshop on 12 December directly involve the tobacco industry in provision of the track and track system, in contradiction with the Protocol. Taking account of views expressed at that workshop, we deduce that all or part of these options may still be under consideration. On the basis of d'Argent's legal opinion we believe this would contravene the Union's legal obligations. We believe it is important to clarify this matter as soon as possible in order to ensure full legality and to enable the timely implementation of the provisions of the Directive by the stipulated date of May 2019.

We remain at your disposal should you require any further detail,

Yours faithfully



SICPA SA
Richard Frey
Group General Counsel

Attachment: Legal Opinion of [REDACTED] from Université Catholique de Louvain

cc:

Vytenis Andriukaitis, Commissioner for Health and Food Safety
Martin Seychell, Deputy Director at DG Health and Food Safety
[REDACTED]

Antonio Tajani, President of the European Parliament
Manfred Weber, President of the European People's Party at the European Parliament
Gianni Pitella, President of the Progressive Alliance of Socialists and Democrats at the European Parliament
Syed Kamall, Chairman of the European Conservatives and Reformists group at the European Parliament
Guy Verhofstadt, President of the European Liberals and Democrats group at the European Parliament
Gabrielle Zimmer, President of the Confederal Group of the European United Left / Nordic Green Left
Ska Keller and Philippe Lamberts, Co-Presidents of the greens – European Free Alliance group at the European Parliament

Doctor Francisco Rodriguez Lozano, President of the European Network for Smoking Prevention
Florence Berteletti, Director of Smokefree partnership