Dear [Name],

I would like to thank you for your congratulations on the occasion of my appointment as European Commissioner for Health and Food Safety.

Thank you also for your letter in which you raise the issue of exports of tobacco products from the European Union to the Russian Federation and the need for double marking, that is the concurrent application of tobacco traceability requirements adopted by both trading partners.

Allow me to address the main points raised in your letter.

Firstly, the requirement to mark all unit packets of tobacco products manufactured in, or imported into, the Union stems from Article 15 of the Tobacco Products Directive (hereinafter ‘TPD’) 2014/40/EU. The establishment of the traceability system gives due regard to Article 8 Protocol to Eliminate Illicit Trade in Tobacco Products (hereinafter ‘FCTC Protocol’). Given the existing legal framework, it is not possible to exclude tobacco products manufactured in the EU and intended for export from the traceability system.

Secondly, the EU tobacco traceability system does not require any reporting activities to take place outside the Union and hence cannot conflict with Article 25 of the FCTC Protocol. The requirement to mark tobacco products intended for export stems from Article 8 of the FCTC Protocol and is fully consistent with its objectives.

Thirdly, the suggestion that only cigarettes are subject to illicit trade is unfortunately not the case. The 2018 WCO Illicit Trade Report clearly illustrates this in its findings that a broad range of tobacco products are regularly seized by customs administrations.¹

Lastly, the secondary legislation developed for the purpose of establishing the EU tobacco traceability system was subject to a series of extensive public consultations, in which

representatives of the tobacco sector, including ESTA, actively participated. During the preparation of the relevant legal acts, the Commission’s services also visited production sites. Several adaptations were made to the proposed draft acts to help smaller operators adopt the system. However, those adaptations were possible only insofar as they did not undermine the system’s overall objective of fighting illicit trade in tobacco.

In an effort to address the issue of double marking in trade relations with third countries, several technical meetings have taken place between Commission services and their Russian counterparts. Despite these efforts, it has not yet been possible to find a solution that would fully respect the legal requirements of the European Union and those adopted by the Russian Federation.

As you are aware, Article 15 of the TPD among others specifies the information content of the unique identifiers used in the EU tobacco traceability system. Therefore, I regret to inform you that your suggestion that the EU tobacco traceability system should automatically accept third-country traceability markings does not seem to present a workable solution at this point in time.

In the light of the above, I can reassure you that my services give careful consideration to the issue of double marking, concerning the Russian Federation in particular, and are endeavouring to solve it, while respecting the applicable rules and observing the overall objective of the legislation.

Yours sincerely,

European Smoking Tobacco Association

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2 For overview, please see: https://ec.europa.eu/health/tobacco/consultations_en