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European Commission  
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European Smoking Tobacco Association  
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CC: Mr Claes Bengtsson  
Ms Ditte Juul-Jørgensen

By email and post

Brussels, 29 June 2018,

Subject: Implementation of the Articles 15 and 16 of the European Tobacco Products Directive – 2014/40/EU (Track & Trace)

Dear Commissioner,

The European Smoking Tobacco Association (ESTA) would like to draw your attention to the issues that mid-sized and smaller European manufacturers of tobacco products are experiencing since the rushed adoption of the European tracking and tracing system by the European Commission (DG SANTE).

On 16 April 2018, just a year before the implementation deadline, the European Commission (DG SANTE) published in the Official Journal of the European Union the Implementing and Delegated Acts establishing a tracking and tracing system for tobacco products. Not only are these Acts late, they are also far from complete and leave many questions unanswered. Smaller European tobacco companies are now obliged to make significant financial investments in a tight timetable with too many elements still unknown. To make matters worse DG SANTE continues to argue that all products manufactured in the EU, even those not placed on the market, fall within the scope of the 2014 Tobacco Products Directive.

ESTA repeatedly stated and raised with you in our letter of 28 September 2017 that including export products within the scope of this European tracking and tracing system oversteps the mandate given to the Commission. It establishes barriers to trade whilst undermining the competitiveness of smaller European manufacturers.

Before the adoption of the Acts, DG SANTE was fully aware that the European Unique Identifier would not be compatible with existing packaging regulation in other jurisdictions (e.g. Australia), and will therefore introduce an export ban on EU-made products. The European Commission acknowledged this issue and committed to Member States to address it in due course, but still adopted the regulations regardless and without presenting any workable solution to the European companies.

ESTA now understands that several other countries (e.g. UAE, Russia, Turkey) are introducing a national tracking and tracing system with its own codes, with which the European Unique Identifier will not be compatible. In practical terms, this means that EU-made products, carrying the EU code, can no longer be exported towards these third countries, thereby establishing another ban on EU-made products.
It is now crucial for the European Commission to understand that European smaller companies and family-owned businesses are rooted in their locality of origin and export their traditional Western European products (e.g. fine-cut tobacco, pipe tobacco, traditional nasal snuff, cigars and cigarillos) to the rest of the world. Unlike the biggest tobacco multinationals, these companies cannot relocate (part of) their manufacturing outside the EU to avoid the self-imposed barriers to trade and continue exporting tobacco products. This de facto ban on EU-products raises significant internal EU competition issues as well as external ones. The EU legislation actually benefits non-EU companies producing in or exporting towards those jurisdictions.

Despite our numerous attempts to flag these obvious irregularities, DG SANTE still claims to have properly assessed the impacts on European companies’ competitiveness. On the contrary, Track & Trace disregards European smaller, mid-sized and family-owned companies and leaves manufacturers and Member States with the responsibility to implement an incredibly complex system with insufficient standards, too little harmonisation, inadequate support, and not enough time. Whilst the Impact Assessment indicates an overall and annualised cost of 0,005216 EUR per packaging unit, an estimate which was solely based on the cigarette production speed and volume of the largest companies, it is now clear from the little information that is available that this system will cost at least 10 to 15 times more for smaller companies manufacturing fine-cut tobacco.

The 2014 Tobacco Products Directive aims to harmonise national tobacco regulations. However, Track & Trace will roll back this “approximation” by allowing national systems over a European solution with 28 national ID issuers and security features disallowing mutual recognition. The above-mentioned self-imposed export ban on EU-products is another example of insensitivity towards European smaller companies and their employees.

For the above reasons, ESTA requests your assistance in upholding EU competition standards and principles with your colleagues in DG SANTE, ensuring the legitimate interest of European mid-sized, small and family-owned companies, and calls on the Commission to:

1. Keep its promise to appropriately and timely ensure that EU products can still be exported without unintended consequences of the Implementing Act on Track and Trace;

2. Consider derogations allowing European companies exporting EU-made tobacco products towards those third countries where incompatibility is demonstrated.

Yours sincerely,

Peter van der Mark,
Secretary-General ESTA