



Aarlenstraat 80 Rue d'Arlon
B-1040 Brussels
Belgium

Tel +32(0)2/627 88 80
Fax +32(0)2/627 88 81



[REDACTED]
Cross Border Healthcare and Tobacco Control
Directorate-General for Health and Food Safety (DG SANTE)
European Commission

Brussels, 11th April 2019

Dear [REDACTED],

Thank you for your email dated 9 April responding to our letter of 5 March concerning the lack of national appointments of ID issuers required under the EU traceability system for tobacco products.

Unfortunately, in the meantime, the situation has become more serious and it is now clear that the traceability system will not be operational on time since:

- a. Numerous Member States have not yet appointed their ID issuer and it may be that certain Member States will fail to appoint a fully operational ID issuer by the deadline of 6 May;
- b. Although many Member States may have technically selected their ID issuer by 6 May, this will not in itself result in a functioning system (or true "appointment" as required by Commission Implementing Regulation 2018/547 ("IR")). The tracking and tracing regime can only function from 20 May if all ID issuers are fully operational and manufacturers have had sufficient lead-in time to ensure that their systems can interface with those of the ID issuers (a process that takes approximately two months);
- c. It has not been possible for the provider operating the secondary repository to communicate the final specifications for the data exchange and the common data dictionary within the deadline provided for by Article 28 IR (21 February). Subsequent updates to the secondary repository's specifications were made available on 8 March and 28 March. As such, the repository system was not available for testing purposes by 20 March, as required by Article 31 IR;

British American Tobacco Representation Brussels

Invoice Details: British American Tobacco Co-ordination Centre V.O.F./S.N.C. - Rue de Koninckstraat 38, B-1080 Brussels, Belgium
RPR Brussel/RPM Bruxelles BTW/TVA BE 0440.785.123
Account: 10465097 - IBAN: GB41 CITI 1850 0810 4650 97 - SWIFT: CITIGB2L
A member of the British American Tobacco Group

- d. The subsequent updates to the secondary repository's specifications introduced a number of additional uncertainties. Please note that certain ambiguities still exist today and that they could result in varying interpretations and approaches by different operators which could, in turn, undermine the integrity and effectiveness of the system; and
- e. ID issuers will need time to ensure that their systems can interface with the secondary repository, once this becomes available for testing.

Due to its nature, manufacturers cannot comply with the requirements of a traceability system that is not fully functioning across all Member States. The fact that the wording of applicable EU and Member State law nevertheless requires compliance from 20 May raises a range of significant practical and legal difficulties for all involved, including the Commission, Member States, manufacturers and the numerous other economic operators in the distribution chain.

In your email dated 9 April, you suggest that we make use of the transitional provision of Article 37(1) IR, providing a one-year grace period for non-compliant product manufactured or imported before 20 May 2019.

Like any other efficient producer of fast-moving consumer goods, BAT does not have the spare manufacturing capacity to produce both its normal volumes and the volumes it would sell between 20 May 2019 and the time that the traceability system becomes operational across the EU. Further, even if BAT did have spare manufacturing capacity, the rotating health warnings required by Article 10(2) of the Tobacco Products Directive (2014/40) make it impossible to produce stock so far in advance. Many Member State authorities choose the rotating health warnings only a few weeks before these must appear on the packs. Indeed, manufacturers cannot produce future stock in advance, without the information on the health warning requirements from the Member States. Finally, BAT always took the view that building up an unusual volume of stock with the aim of exploiting the transitional provision of Article 37 would undermine the effectiveness of the traceability system that was legally required to be fully functional from 20 May 2019 onwards.



In order to avoid the serious disruptions to the supply chain and the legal problems that may arise, it is now essential that the Commission provides guidance on how to proceed with the implementation of the EU traceability system.

BAT cannot ensure compliance on its own since the functioning of the traceability system is the result of many different public and private actors working together. BAT remains committed to do everything within its power to implement a functioning traceability system as soon as possible. That said, we require a minimum level of legal certainty for the coming months.

In light of your response from yesterday, we would like to discuss the issues with you as a matter of urgency.

Yours faithfully,

A large black rectangular redaction box covering the signature area.

A small black rectangular redaction box.

A small black rectangular redaction box.