

**From:** [REDACTED]  
**Sent:** mardi 23 avril 2019 16:06  
**To:** BUCHER Anne (SANTE)  
**Cc:** [REDACTED] (SANTE); SELMAYR Martin (SG); [REDACTED]  
**Subject:** EU traceability system for tobacco products  
**Attachments:** [REDACTED].pdf; BAT letter to DG SANTE 11 04 2019.pdf; Email from Ms [REDACTED] to BAT dated 9 April 2019.pdf; Annex - 23 April 2019 - Letter to Director General SANTE Ms Bucher.pdf

**Importance:** High

Dear Ms Bucher,

We are writing to you in relation to an urgent matter regarding the EU traceability system for tobacco products.

We are fully committed to do everything within our power to implement a functioning traceability system as soon as possible. Indeed, our internal traceability solution has been tested and is fully operational. However, due to the nature of the system and the supply chain, the EU-wide traceability system will not work without operational ID Issuers in all Member States and a functioning Secondary Repository.

Under the scheme established by Article 15 of the Tobacco Products Directive 2014/40/EU (the "TPD"), together with Commission Implementing Regulation (EU) 2018/574 of December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products (the "IR"), it is clear that the Commission is responsible for ultimately ensuring the establishment of the traceability system by 20 May 2019.

Due to a series of issues (some of which are set out in the Annex to this letter), it is becoming increasingly likely that the system will not be operational on time. As such, it is possible that British American Tobacco ("BAT") and other manufacturers could be prevented from placing their products on the market on the basis that they do not comply with a traceability system – despite the fact that such a system is not yet in place, due to factors that are outside of our control. This would have a severe and detrimental impact on BAT and the tobacco supply chain as a whole, as well as Member States' revenue streams. It is also likely to increase opportunities for illicit trade, which the traceability system was intended to counter. Some background information that you may find useful on the inter-dependencies of the various parts of the traceability system and the issues that have contributed to the delay, is set out in the Annex.

We have raised these practical issues in our previous correspondence with DG SANTE, copies of which are enclosed for your information. However, [REDACTED] response of 9 April 2019 does not offer a practical solution. In particular, [REDACTED] advised that BAT should make use of the transitional provisions of Article 37(1) of the IR, which provide a one-year grace period for non-compliant products manufactured or imported before 20 May 2019. As explained in our response of 11 April 2019, this is not practically or operationally possible. Further, even if it were possible, building up stock in this way, to mitigate issues that are outside of our control, not only places a disproportionate burden on manufacturers with significant financial implications, it also does not resolve the underlying issues in any way.

We continue to be fully committed to do everything we can to implement a functioning traceability system as soon as possible. However, the traceability system requires a functioning Secondary Repository and operational ID Issuers in all Member States, neither of which we are likely to have in time for the 20 May 2019 deadline.

Given that the deadline is less than a month away, quick and decisive action from the Commission provides the only possible solution. We urgently and respectfully request that the Commission either: (i) amends Article 37(1) of the IR and extend the transitional provision to apply to cigarettes imported or manufactured before the date when the traceability system becomes fully functional; or

(ii) issues interpretative guidance to the Member States confirming that, until the traceability system becomes fully operational, there can be no legal obligation for economic operators to comply with the requirements of a traceability system.

We would like to bring to your attention that, unless the Commission takes appropriate action as a matter of urgency, we will face significant losses. We hope that the Commission will appreciate the seriousness of the issue and take the necessary steps to remedy the situation as soon as possible. We request a meeting with you to discuss the problems and possible solutions at your earliest convenience.

Yours sincerely,

[REDACTED]  
[REDACTED]

Encs.

- (1) Letter from BAT to [REDACTED] dated 5 March 2019
- (2) Email from [REDACTED] to BAT dated 9 April 2019
- (3) Letter from BAT to [REDACTED] dated 11 April 2019

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