

ITSA's Perspective on TPD Traceability and Security Feature Workshop

Progress towards implementing the traceability and security feature provisions of the EU Tobacco Products Directive (TPD) continued in December with a one-day stakeholder workshop, hosted and chaired by the European Commission's Directorate General for Health and Food Safety (DG SANTE) in Brussels, Belgium.

Present at the workshop were a broad range of organisations likely to be impacted by the TPD provisions. These included the four major tobacco manufacturers, smaller manufacturers, and wholesaler associations. Also present were various EU chambers of commerce, anti-illicit trade and anti-tobacco groups, and suppliers of traceability and security solutions.

The International Tax Stamp Association (ITSA) was also there with two attendees. The workshop gave ITSA an excellent, face-to-face opportunity to put forward the case for using tax stamps as potential carriers of the unique identifier and security features required under the TPD.

In all, 84 people – comprising a balance of supporters and opponents of each of the options under discussion – were physically present at the workshop, with more joining via web stream. Not in attendance, however, were EU member states, since they were to have their own, separate meeting a few days later.

The discussions were based on DG SANTE's *Inception Impact Assessment*, published last July, together with a first stage report by consulting company Everis (the consortium of Everis and PwC was contracted by DG SANTE in June to conduct an implementation study on the traceability and security feature provisions of the TPD).

Five questions

The workshop centred around five questions which are key to finalising the next stage in the implementation process (that of the high-level design of an optimum system for traceability and security). The questions were:

1. What is the most suitable governance model for operating the traceability system: industry operated, third party operated, or a mix of both?
2. What about the data storage location: centralised, decentralised, or a combination of both?
3. What is the most suitable data carrier option for the traceability system: a single carrier, a limited variety of carriers, or a free system allowing any approved carrier?

4. What would be an acceptable delay in reporting events within the traceability system: near real-time, once daily, or once weekly?
5. What would be the most suitable method of adding a security feature to the product: affixing, printing or integrating through a different method, or any method?

Each organisation was given two minutes to comment on each of the questions raised. Although there was no guarantee that every organisation would be able to speak at every opportunity, ITSA was happy to report that it was in general able to have its say.

Industry or third party operated?

With regard to the first question – that of the choice of governance model for the traceability system – it came as no surprise that tobacco industry stakeholders at the workshop voiced their support for an industry-operated solution (such as the *Codentify*[®] system now owned by Inexto of the Impala Group). Under this solution, manufacturers and importers would be responsible for generating, applying, scanning and verifying the unique identifier on the product, albeit under the extensive control of competent authorities.

However, what did come as a slight surprise was that the chambers of commerce in Poland, Latvia and the Czech Republic, as well as Union des Fabricants (Unifab) in France (a brand owners' association which defends intellectual property rights) also voiced their support for this option. This being said, these trade bodies do usually count tobacco companies among their members (the 'big four' manufacturers are all members of Unifab), and this may have influenced their position with regard to TPD matters.

As for the third party operated option – where independent parties generate, apply, scan and verify the identifier – it again came as no surprise that this option was the one generally favoured by anti-tobacco groups and suppliers of traceability solutions.

On the matter of the governance model, ITSA commented:

'From a legal standpoint, the only acceptable solution is a third party operated solution, independent of the tobacco industry, because an industry solution does not comply with the provisions of the WHO *FCTC Protocol to Eliminate Illicit Trade in Tobacco Products*. Indeed, a number of third party solutions for production monitoring and traceability already exist on tobacco product manufacturing lines worldwide.

'The Protocol was ratified by the EU in June this year, and its adoption was unanimous. International law is a source of European law, and the principle of legitimate expectation in EU law requires the Protocol to be respected even before its entry into force.

'The Protocol sets out clear rules to ensure the independence of the traceability system from the commercial interests of the tobacco industry. It requires the industry to be involved only to the extent *strictly necessary*. This precludes the adoption and implementation of systems owned or controlled by the industry, where effective alternatives are available.

'These provisions were again underlined at the FCTC party conference in November, where parties were urged not to consider any proposal or assistance related to tracking and tracing from the tobacco industry. This also applies to solutions that have been developed by the industry but subsequently sold to a third party, as such a move could be construed as a ploy to make those solutions acceptable to world regulatory authorities.

'In ITSA's opinion, it is crucial to the effectiveness of the traceability system that it be completely independent, which essentially means three things:

1. The system is designed from the start to meet the specific needs of the national public authority;
2. It is sovereign and does not rely on an external third party outside its contractual control to generate, apply and decipher the codes;
3. It is not just a data storage centre, but a complete set of measures that allow a public authority to access reliable information on the manufacture of the product and its full circulation through the supply chain, and to use its own data tools to create lead intelligence.'

Centralised or decentralised data storage?

As for the second question, pertaining to data storage, the tobacco industry was naturally inclined towards a decentralised model where each storage system hosted data exclusive to a certain manufacturer or importer, with communication between the systems taking place through a central federal system.

ITSA, on the other hand, argued that the most effective option would be a virtual single data storage model, controlled and protected by the member states.

Such a model would in particular be needed for investigating cross-border illicit activities that may have begun in one state and resurfaced somewhere else.

ITSA's concern with a decentralised model composed of separate stores of data was that it could risk becoming a query only system, where if the right question wasn't asked then no answer (or no *helpful* answer) would be given, which would not be at all useful for intelligence-led investigations.

A virtual single data storage model would offer the 'big data' advantage of being able to pull data, manipulate it and analyse it – something which split repositories that don't speak to each other would never be able to offer.

One or more data carriers?

For the third question, pertaining to the choice of data carrier – or unique identifier – for application to all unit and aggregated packaging, the responses from the workshop appeared to be quite varied. For example:

- JTI said the solution would need to work with existing production processes;
- The Confederation of European Community Cigarette Manufacturers said, '4,000 wholesalers: this is the figure to be kept in mind when selecting a solution';
- The Polish Chamber of Commerce said the solution should be based on open standards;
- The Smoke Free Partnership, as well as an EU cigar manufacturer, opted for a single data carrier;
- The Federation of German Wholesalers said the unique identifier needed to be compatible with existing control tools, therefore a limited variety of data carriers was the best choice;
- Domino Printing (a developer of digital printing and industrial coding processes) also opted for a limited variety of carriers;
- BAT commented that a QR code would be wholly unsuited to the high-speed production environment of the tobacco industry, adding that the choice of carrier should be left to the industry.

ITSA's position on the question of the data carrier was that a limited variety of carriers – as opposed to a single carrier from a single source – was the most suitable choice. However, if there was to be no single EU-wide track and trace system, it would be crucial for the different systems to be fully interoperable as a single virtual system.

Unlike BAT, ITSA said the choice should ultimately be made at national sovereign level.

ITSA also commented that traceability should not be viewed as a stand-alone item, without due attention given to the authentication of the data carrier. This was a point strongly emphasised by ITSA at the workshop, especially given the TPD's treatment of traceability and security features as essentially two separate items covered by two separate articles in the directive (15 and 16).

For any traceability solution to work in any industry the physical/digital combination is essential, stressed ITSA. If unsecured codes for track and trace are used in isolation, without integration into optical and covert security elements, this opens the door to valid codes being duplicated onto unauthorised products – with nobody any the wiser, since the codes may look the same and ostensibly perform the same function.

ITSA drew DG SANTE's attention to the fact that this physical/digital combination was covered in published standards ISO 12931 (*Performance criteria for authentication solutions used to combat counterfeiting of material goods*) and 16678 (*Guidelines for interoperable object identification and related authentication systems to deter counterfeiting and illicit trade*), as well as the new tax stamp standard ISO 19998, due for publication at the end of 2017.

ISO 12931 was the very first standard to be published in the domain of anti-counterfeiting and up to now there has been no need to revise it, commented ITSA. And the most pertinent part of ISO 16678 states that in order to mitigate the risk of duplicated (or cloned) unique identifying codes, an intrinsic physical security layer could be incorporated into a code as an authentication element.

ITSA asked DG SANTE whether it intended to ensure compliance with these standards, especially with regard to building secure links between security features and unique identifiers.

Real-time or delayed reporting?

This question referred to the maximum acceptable time lapse between the occurrence of an event and its reporting into the data storage system by economic operators.

ITSA's opinion was that the older the data the less useful it became, therefore the optimum solution was to have real-time data. Obviously there would be some sort of trade-off to consider as far as costs and infrastructure were concerned but systems did exist that worked in near-real time and certainly within 24 hours. Anything beyond that time would become much less useful.

However, the subject of reporting delays was not considered to be as big an issue as the other subjects covered at the workshop.

Label or no label?

The last question addressed the method of applying the security feature to the product (affixed via a label or directly applied).

The industry and its supporters tended to play down the need for physical security features – with comments to the effect that digital only features, applied directly onto the product were 'good enough'.

ITSA's position (as already stated above) was that only a combination of authentication and track and trace technologies, composed of physical and digital features (and operated by an independent third party) could effectively meet the requirements of Articles 15 and 16, as well as of the FCTC Protocol.

ITSA said that in its opinion the most effective way to add the security feature was by affixing it via a label, such as a tax stamp. Indeed, many tax stamps worldwide already incorporated a layered security architecture – combining overt and covert features – in line with the principles of high security.

Despite their small size, ITSA stressed that tax stamps were able to carry a broad range of features, as well as encrypted unique identifiers for traceability purposes. The features were applied in a secure and controlled environment by a specialised security provider, which was preferable to having them applied in an uncontrolled environment (such as by a commercial packaging printer) or within the tobacco manufacturing facility itself.

Although the unique identifier on the tax stamp would be pre-printed – and would therefore not contain, in itself, all the data required under the TPD – the identifier could be linked to a database containing all the necessary information. The pre-printed codes would therefore act as 'passports' into the database.

Furthermore, since tax stamps were often purchased in the billions and priced accordingly, even high-security stamps – equipped with multi-level features similar to the ones found on banknotes – could be more cost-efficient than features embedded into the product packaging, argued ITSA.

What's next?

The next step on the path to implementation consists of another round of workshops in spring 2017, with the objective to discuss and validate the technical specifications of the system with all stakeholders.

After that, the last phase of the project will involve a legislative process to define the implementing and delegated acts under Articles 15 and 16, which must be completed by the end of 2017. Members will then have until 20 May 2019 to roll-out the system in their respective countries.