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ANNEX 1

ANNEX

to the

Commission Implementing Regulation (EU) .../...

on technical standards for the establishment and operation of a traceability system for tobacco products

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SELECTION PROCEDURE FOR INDEPENDENT THIRD PARTY PROVIDERS OF REPOSITORY SYSTEMS

PART A

The following procedures shall apply to the selection of an independent third party provider operating a primary repository:

1. Each manufacturer and importer of cigarettes and roll-your-own tobacco shall notify to the Commission, no later than two months following the entry into force of Delegated Regulation XXX:
 - (a) the name of the third party that it proposes to appoint to operate a primary repository (the "**proposed provider**"), and
 - (b) a draft data storage contract containing the key elements laid down in the Delegated Regulation for approval by the Commission.
2. The notification shall be accompanied by:
 - (a) the written declaration of technical and operational expertise, referred to in Article 4 of Delegated Regulation XXX,
 - (b) the written declaration of the legal and financial independence, referred to in Article 8 of Delegated Regulation XXX, and
 - (c) a table setting out the correspondence between the contractual clauses and the requirements laid down in Delegated Regulation XXX.
3. The Commission shall, within three months of the date of receiving the notification, approve or reject the proposed provider and the draft contract. In the absence of a reply by the Commission within the period of three months, the provider and the draft contract shall be deemed to be approved.
4. Where the Commission does not approve the proposed provider or the draft contract, or where it considers that the contract does not incorporate the key elements laid down in Delegated Regulation XXX, the manufacturer or importer concerned shall, within one month of being informed by the

Commission, propose an alternative provider and/or make necessary amendments to the draft contract.

5. Once the proposed provider and the draft contract has been approved, the manufacturers and importers shall, within two weeks of such approval, provide in electronic format:
 - (a) a copy of the contract signed by both parties, and
 - (b) the declarations required to be provided as part of the contract under Articles 4 and 8 of Delegated Regulation XXX.
6. Manufacturers and importers of tobacco products other than cigarettes and roll-your-own tobacco shall notify to the Commission, by 31 December 2022, the name of the proposed provider and a draft data storage contract containing the key elements laid down in the Delegated Regulation for approval by the Commission.
7. The provider appointed to operate the primary repository shall only integrate its repository into the traceability system following the conclusion of the contract.
8. A list of notified and approved third parties shall be made publicly available by the Commission on a website.
9. Any amendment to the key elements of the contract, as defined in Delegated Regulation XXX, shall be subject to approval by the Commission. Any other amendment to the contract shall require prior communication to the Commission.

PART B

The following procedures shall apply to the selection of an independent third party operating the secondary repository system:

1. The providers of the primary repositories who have been approved in accordance with point 4 of Part A within six months following the entry into force of the Delegated Regulation XXX shall appoint, from amongst themselves, a provider tasked with operating the secondary repository ("the operator of the secondary repository") for the purpose of carrying out the services specified in Chapter V of this Regulation.
2. The appointed operator of the secondary repository shall be notified to the Commission, no later than eight months following the entry into force of Delegated Regulation XXX. In the absence of agreement, the secondary operator is to be appointed by simple majority vote of the providers referred to in paragraph 1.
3. In the event that the providers have failed to appoint and notify the appointment of the operator of the secondary repository system to the Commission, within the eight month period referred to in paragraph 2, the Commission shall appoint the provider of the secondary repository based on an assessment of objective criteria.
4. Each primary repository provider appointed in accordance with Part A shall enter into an individual contract with the provider appointed to operate the secondary repository for the purpose of carrying out the services specified in Chapter V of Implementing Regulation XXX.
5. Where the provider of the secondary repository is appointed in accordance with paragraph 2, the contracts shall be signed and submitted to the Commission within one month from the date of the appointment.

PART C

The following requirements shall apply in addition to the selection procedures outlined in Parts A and B:

1. Where, at any time after the appointment of a provider of a primary repository, the Commission determines that such a provider no longer possesses the independence or capacity requirements as provided for in Article 15(8) of Directive 2014/40/EU, it shall inform the parties to the data storage contract who shall initiate the termination of that contract.
2. Where the contractual relationship between a manufacturer and importer and the provider of a primary repository is terminated, or expected to be terminated, by any of the parties to the contract, for any reason, including for the reasons referred to in paragraph 1, the manufacturer or importer shall immediately inform the Commission of such termination, or expected termination, and as soon as it is known, the date of the notification of termination and the date at which the termination is to take effect. The manufacturer or importer shall propose and notify to the Commission a replacement provider as soon as practicable, and at the latest, three months prior to the termination date of the existing contract.
3. The appointment of the replacement provider shall take place in accordance with paragraphs 3 to 7 of Part A.
4. In the event that the operator of the secondary repository gives notice of its intention to cease operating that repository in accordance with the contract entered into pursuant to Part B, it shall immediately inform the Commission thereof and of the date at which the termination is to take effect. The providers of the primary repository system shall nominate and notify to the Commission a replacement operator as soon as practicable, and at the latest, three months prior to the termination date of the existing contract.
5. Where the finding referred to in paragraph 1 applies to the provider who has been appointed to operate the secondary repository, the parties to the contract for the operation of that secondary repository shall, in turn, be terminated.
6. The termination of the contract for the operation of the secondary repository system and the appointment of the replacement operator of the secondary repository shall take place in accordance with termination and appointment provisions set out in Part B.