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[...] (2017) **XXX** draft

**COMMISSION IMPLEMENTING DECISION (EU) .../...**

**of **XXX****

**on technical standards for security features applied to tobacco products**

(Text with EEA relevance)

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**on technical standards for security features applied to tobacco products**

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THE EUROPEAN COMMISSION,

Having regard to Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC<sup>1</sup>, and in particular Article 16(2) thereof,

Whereas:

- (1) Directive 2014/40/EU provides that all unit packets of tobacco products placed on the market are to carry a tamper proof security feature, composed of visible and invisible elements, for the purpose of facilitating the verification of whether or not tobacco products are authentic. Technical standards for a system of security features should be laid down.
- (2) The security features along with the system for ensuring the traceability of tobacco products, provided for in Article 15 of Directive 2014/40/EU and established in Commission Implementing Regulation XXX, should allow for monitoring and more effective enforcement of the compliance of tobacco products with Directive 2014/40/EU.
- (3) Common rules on security feature standards in the Union are essential as divergent and insufficiently precise national requirements are likely to undermine efforts to improve compliance of tobacco products with Union tobacco products regulation. A more harmonised framework for security features across Member States should also facilitate the functioning of the internal market of legal tobacco products.
- (4) The technical standards for security features should give due regard to the high degree of innovation that exists in this area. Lists of permitted types of authentication elements with common minimum requirements, based on which manufacturers and importers of tobacco products are to develop security features, should be established. The inclusion of a variety of different types of authentication elements that may be supplemented by Member States should ensure the necessary balance between flexibility and a high level of security. This should also enable Member States to take

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<sup>1</sup> OJ L 127, 29.4.2014, p. 1.

into account new innovative solutions, capable of further bolstering the effectiveness of security features.

- (5) The combination of different authentication elements should be required as an important step in guaranteeing that the integrity of the final security feature applied to a tobacco product is well protected.
- (6) In order to further protect the integrity of security features, it should be required that at least one authentication element in a security feature is provided by an independent third party solution provider.
- (7) Several Member States require tax stamps or national identification marks for fiscal purposes. Those Member States should be free to allow that their stamps or marks are used as the security feature subject to the requirements of Article 16 of Directive 2014/40/EU and of this Decision. In order to alleviate any unnecessary economic burden, Member States whose tax stamps or national identification marks used as a security feature do not comply with all the requirements of Article 16 of Directive 2014/40/EU and of this Decision should ensure that manufacturers and importers of tobacco products are informed of the additional authentication elements necessary to render the final security feature compliant with those requirements.
- (8) In order to ensure the integrity of security features, they should be applied either by affixing, printing or a combination of both, in a manner that ensures they cannot be replaced, reused or modified in any way. In addition, security features should allow for the identification and verification of the authenticity of an individual unit packet of tobacco product for the entire time the tobacco product is placed on the market.
- (9) In order to allow for the verification of the authenticity of a tobacco product and thereby stepping up the fight against illicit trade of tobacco products in the Union, Member States and the Commission should, upon request, be provided with sample products that may be used as a reference for the purposes of laboratory analysis. Additionally, in order to enable competent authorities of one Member State to verify the authenticity of a tobacco product destined for the national market of another Member State, Member States should assist each other in sharing the reference products obtained.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee referred to in Article 25 of Directive 2014/40/EU,

HAS ADOPTED THIS DECISION:

#### *Article 1*

#### **Subject matter**

This Decision lays down technical standards for security features applied to unit packets of tobacco products placed on the Union market.

## *Article 2*

### **Definitions**

For the purposes of this Decision, in addition to the definitions laid down in Article 2 of Directive 2014/40/EU, the following definitions shall apply:

- (a) 'authentication element' means an element of a security feature;
- (b) 'overt' means directly perceptible by one or more of the human senses without recourse to external devices;
- (c) 'semi-covert' means not directly perceptible by the human senses but detectable by those senses through the use of external devices, such as a UV torch or a special pen or marker, which do not require expert knowledge or specialist training;
- (d) 'covert' means not directly perceptible by the human senses and detectable only through the use of professional laboratory equipment.

## *Article 3*

### **Security feature**

1. Member States shall ensure that security features are composed of no less than five types of authentication elements, of which at least:
  - (a) one is overt;
  - (b) one is semi-covert;
  - (c) one is covert.
2. Member States shall ensure that at least one of the authentication elements, referred to in paragraph 1, is provided by an independent third-party provider meeting the requirements laid down in Article 8.
3. Each Member State shall communicate to manufacturers and importers the types of authentication elements that it permits to be used in security features applied to unit packets of tobacco products placed on its national market.
4. The types of authentication elements communicated in accordance with paragraph 3 shall include at least the twelve types of authentication elements set out in the Annex.

## *Article 4*

### **Use of tax stamps as security feature**

1. Member States allowing tax stamps or national identification marks for fiscal purposes to be used for security features shall ensure that those stamps or marks comply with the requirements of Article 3 of this Decision and Article 16 of Directive 2014/40/EU.
2. Where a tax stamp or national identification mark for fiscal purposes does not comply with all the requirements referred to in paragraph 1, Member States shall ensure that manufacturers and importers of tobacco products are informed of the additional types of authentication elements to be applied.

## *Article 5*

### **Application of security features**

1. Member States shall ensure that security features are applied to unit packets of tobacco products using one of the following methods:
  - (a) affixing;
  - (b) printing;
  - (c) combination of affixing and printing.
2. Security features shall be applied to unit packets of tobacco products in a manner that ensures that they:
  - (a) allow for the identification and verification of the authenticity of an individual unit pack of tobacco product for the entire time the tobacco product is placed on the market; and
  - (b) cannot be replaced, reused or modified in any way.

## *Article 6*

### **Integrity of security features**

1. Member States may decide, at any moment, to implement or withdraw schemes for the rotation of security features.
2. If a Member State has reasons to believe that the integrity of any authentication element of a security feature currently in use on their market is compromised, they shall ensure that the security feature concerned is replaced or modified. If a Member State detects a compromised security feature, it shall inform the manufacturers and importers and security feature providers concerned within five working days thereof.
3. Member States may lay down formal guidelines or requirements on the security of production and distribution procedures, such as those relating to the use of secure equipment and other components, audits, monitoring tools for production quantities, and secure shipping, in order to avert, deter, identify and mitigate the unlawful production, distribution or theft of security features and the authentication elements of which they are composed.

## *Article 7*

### **Verification of authenticity of tobacco products**

1. Member States shall ensure that they possess the means necessary to analyse the security feature for the purposes of determining whether or not a unit packet of a tobacco product is authentic.
2. Member States shall require manufacturers and importers of tobacco products located on their territory to provide, upon written request, samples of tobacco products currently placed on the market. The sample products shall be provided in unit pack format and include the applied security feature. Member States shall, upon request, make available to the Commission the samples of tobacco products received.

3. Member States shall, upon request, assist each other in the verification of the authenticity of a tobacco product destined for the national market of another Member State, including by sharing any samples obtained pursuant to paragraph 2.

*Article 8*

**Independence of authentication element providers**

A provider of authentication elements shall be considered independent, if it meets the following criteria:

- (a) independence from the tobacco industry in terms of legal form, organisation and decision making, in particular absence of any direct or indirect control by the tobacco industry, including by a minority shareholding;
- (b) independence from the tobacco industry in financial terms; such independence is presumed if the provider generates less than 20% of its annual overall turnover with the goods and services supplied to the tobacco sector;
- (c) absence of conflicts of interests with the tobacco industry. In particular, the persons responsible for the management of the provider:
  - (1) must not participate in company structures of the tobacco industry; and
  - (2) must act independently from any interest linked to the tobacco industry.

*Article 10*

**Addressees**

This Decision is addressed to the Member States.

Done at Brussels

*For the Commission*

*The President*

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