

## Transposition Note

### **Article 15 (Traceability) and Article 16 (Security Features) of 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**

1. This transposition note has been prepared by the Her Majesty's Revenue and Customs and is intended to explain how articles 15 and 16 of Directive 2014/40/EU ("the Directive") are implemented in the UK, along with related provisions of the Directive namely article 2 (definitions) and article 23 (cooperation and enforcement).
2. Reference should be made to the Transposition Note accompanying the Tobacco and Related Products Regulations 2016 (SI 2016/507)<sup>1</sup> for further details on how the Directive has been implemented in the UK.
3. In relation to article 15 (traceability), reference should also be made to:
  - the Commission Delegated Regulation (EU) 2018/573 of 15 December 2017 on key element of data storage contracts to be concluded as part of a traceability system for tobacco products ("CDR"); and
  - the Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of the traceability system for tobacco products ("CIR");
 which both contain directly applicable provisions.
4. In relation to article 16 (security feature), the Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on the technical standards for security features applied to tobacco products ("CID") is implemented as set out at Table 2.

**Table 1: The Directive**

Article	Objective	Implementation
Article 2	Definitions	Regulation 1
Article 15.1 1st sentence	All unit packets of tobacco products are required to be marked with a unique identifier.	Does not require transposition – the obligation to mark is implemented by Article 6.1 CIR.
Article 15.1 2nd sentence	Requirements for protecting the integrity the unique identifier.	Regulation 7
Article 15.1 3rd sentence	In the case of tobacco products manufactured outside the EU, obligations laid down in Article 15 apply only to those products that are destined for, or place on the Union market.	Regulations 1(5)
Article 15.2	Requires the factors listed in paragraphs (a) – (k) to be determined by the unique identifier.	Does not require transposition – Articles 8.1(c), (d) and Articles 32 and 33 CIR collectively require the factors listed in Article 15.2 of the Directive to be composed of, or associated with, the unique identifier.

<sup>1</sup> [http://www.legislation.gov.uk/uksi/2016/507/pdfs/uksitn\\_20160507\\_en.pdf](http://www.legislation.gov.uk/uksi/2016/507/pdfs/uksitn_20160507_en.pdf)

Article 15.3	Requires the items listed in Article 15.2(a) – (h) to form part of the unique identifier.	Does not require transposition – Articles 8.1(c) and (d) CIR require a unique identifier to be composed of data elements including those referred to in Article 15.2(a) – (h) the Directive.
Article 15.4	Requires the items listed in Article 15.2(i) – (k) to be electronically accessible by means of a link to the unique identifier.	Does not require transposition – Articles 32, 33 and Sections 3 and 4 of Chapter 2 of Annex 2 CIR provide for the collection of the data elements referred to in Article 15.4 of the Directive to be associated with the unique identifier. The link is established on transmission of the data to the repository system.
Article 15.5	Requires all economic operators to record the entry of tobacco products into their possession and all intermediate movements. This obligation may be complied with by marking of aggregated packaging providing the tracking and tracing of all unit packets remains possible.	Does not require transposition – Article 32 CIR provides for the reporting of product movements covered by Article 15.5 of the Directive. Article 10 CIR implements the flexibility for economic operators to choose to meet recording obligations by marking of aggregate packaging. An aggregate mark must meet the requirements set out in Article 10 and 11 CIR. Article 12 CIR deals with how the aggregate packaging and the unit packet are to be linked.
Article 15.6	Requires all persons engaged in the supply chain of tobacco products to maintain complete and accurate records of relevant transactions.	Does not require transposition – Article 33 CIR implements an obligation for economic operators to record transactions. In addition the Revenue Traders (Accounts and Records) Regulations 1992 requires a person involved in the trade of tobacco products liable to duty to maintain records of transactions.
Article 15.7	Requires manufacturers of tobacco products to provide economic operators with recording equipment	Regulation 8
Article 15.8 Paragraph 1 1st sentence	Requires manufacturers and importers of tobacco products to conclude data storage contracts with an independent third party, for the purpose of hosting the data storage facility for all relevant data.	Does not require transposition – the obligation to conclude contracts is implemented by Article 26(1) CIR.
Article 15.8 Paragraph 1 2nd sentence	The data storage facility is required to be physically located on the territory of the Union.	Regulation 9(1)(a)
Article 15.8 Paragraph 1 3rd sentence	Requirement for the data storage provider and contract to be approved by the Commission.	Does not require transposition – the obligation for approval is implemented by Article 26(1) CIR and Annex 1

Article 15.8 Paragraph 2 1st sentence	Requirement for data storage provider's activities to be monitored by an external auditor, who is proposed and paid by the tobacco manufacturer and approved by the Commission.	Regulation 9(1)(b)
Article 15.8 Paragraph 2 2nd sentence	Requirement for the external auditor to submit an annual report to the competent authorities and to the Commission.	Regulation 11
Article 15.8 Paragraph 3 1st sentence	Requirement for the Commission, the competent authorities of the Member States, and the external auditor have full access to the data storage facilities.	Does not require transposition: <ul style="list-style-type: none"> <li>• the requirement for access to the repository system, which includes the data storage facility referred to in Article 15.8 is implemented by Article 25 CIR.</li> <li>• the requirement for physical and virtual access specifically to the primary repository to national administrators of MS, Commission and external auditors, is covered by Article 6 of CDR</li> </ul>
Article 15.8 Paragraph 3 2nd sentence	In duly justified cases the manufacturers and importers may be granted access to the stored data by the Commission or Member States, provided that commercially sensitive information remains adequately protected	Regulation 12
Article 15.9	Recorded data must not be modified or deleted by an economic operator	Does not require transposition – information transmitted by an economic operator can be cancelled (Articles 32(7) and 33(4) CIR, but will not be deleted from database (Notice to Annex 2 of CIR))
Article 15.10	Personal data must only be processed in accordance with Directive 95/46/EC	Does not require transposition
Article 15.11	Commission's implementing powers	Does not require transposition
Article 15.12	Commission's delegated powers	Does not require transposition
Article 15.13	Application	Regulation 1
Article 16.1 Paragraph 1 1st sentence	All unit packs of tobacco products which are placed on the market are required to carry a tamper proof security feature	Regulation 6(4) and regulation 13
Article 16.1 Paragraph 1 2nd sentence	Requirements for protecting the integrity of the security feature	Regulation 13(3) and (4)
Article 16.1 Paragraph 2	Fiscal marks may be used for the security feature providing they meet the technical standards and functions required under this Article	Does not require transposition
Article 16.2	Commission's implementing power	Does not require transposition

Article 16.3	Application	Regulation 1
Article 23.2	Requirement for non-compliant products not to be placed on the market	Regulation 6
Article 23.3	Penalties for infringements	Part 6 and 7

**Table 2: CID**

CID Article	Objective	Implementation
Article 3.1	Requirement for security features to be composed of no less than five types of authentication elements, of which at least (a) one is overt, (b) one is semi-overt and (c) one is covert	Regulation 13(2)
Article 3.2	Requirement for at least one of the authentication elements to be provided by an independent third party	Regulation 13(2)(b) and regulation 15
Article 5.1	Method of application requirements	Regulation 13(3)
Article 5.2	Manner of application requirements	Regulation 13(5)
Article 7.2	Requirement for samples of tobacco products	Regulation 14
Article 8.1	Requirement for authentication element provider to meet independence criteria	Regulation 15(1)
Article 8.2	Requirement for an authentication element provider to be responsible for independence of subcontractors	Regulation 15(2)
Article 8.3	Annual declarations of independence	Regulation 16
Article 8.4	Requirement for an authentication element provider to inform of changes in independence	Regulation 15(3)
Article 8.6	Requirement for an authentication element provider to inform of threats or attempts to exert undue influence that undermine independences	Regulation 15(4)
Article 9	Transitional provisions	Regulation 1(4)