Tobacco and related products: manufacture, presentation and sale

2012/0366(COD) - 08/08/2018 - Follow-up document

The Commission presents a report on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Directive 2014/40/EU on the approximation of the laws and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products (Tobacco Products Directive). Under the terms of the Directive, the Commission is required to draw up a report in respect of the delegation of power conferred on the Commission for a period of **five years from 19 May 2014.**

The Commission reports that it **adopted two delegated acts** based on Articles 10(3)(b) and 15(12) of the Tobacco Products Directive.

Delegated act adopted under Article 10(3)(b): this provision empowers the Commission to adopt delegated acts to **establish and adapt a picture library**. The pictures contained in that library are an integral part of the combined health warning which is required to appear on each unit packet and outside packaging of tobacco products for smoking placed on the EU market. Commission adopted Delegated Directive 2014/109/EU amending Annex II to Directive 2014/40/EU of the European Parliament and of the Council by establishing the library of picture warnings to be used on tobacco products.

Delegated act adopted under Article 15(12): the relevant provisions of Article 15 require Member States to ensure that:

- all unit packets of tobacco products are marked with a unique identifier, in order to enable their movements to be recorded by all economic operators involved in the trade of tobacco products;
- manufacturers and importers of tobacco products conclude data storage contracts with an independent third party, for the purpose of hosting the data storage facility for all relevant traceability data recorded in this context

The Commission may adopt delegated acts to define the **key elements of the data storage contracts**, such as duration, renewability, expertise required or confidentiality, including the regular monitoring and evaluation of those contracts.

Accordingly, the Commission adopted Delegated Regulation (EU) 2018/573 on **key elements of data storage contracts to be concluded as part of a traceability system** for tobacco products, in order to ensure the effective functioning of the traceability system in general and the interoperability of the data storage system in particular.

Procedure: the two draft delegated acts were submitted to the Expert Group on Tobacco Policy prior to their adoption. The European Parliament has been systematically invited to the meetings of this Expert Group. The documents relevant to these consultations were transmitted simultaneously to the European Parliament and to the Council, as provided for in the Common Understanding between the European Parliament, the Council and the Commission on Delegated Acts. The European Parliament or the Council raised no objection to either of the delegated acts adopted by the Commission within the 2-month period provided for in the Directive.

As regards **the other delegated powers conferred**, the **preconditions for their exercise have not yet been met.**

The Directive states that the five-year duration of the delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. The Commission considers that **the delegation of powers should be extended,** since the rationale for the delegation has not changed and the powers granted are essential for achieving the objective of the Tobacco Products Directive.