

COMMISSION DECISION (EU) 2019/691**of 2 May 2019****authorising, in accordance with Article 4(5) of Commission Implementing Regulation (EU) 2018/574, economic operators to use the services of another ID issuer****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 ⁽¹⁾, and in particular Article 15 thereof,

Whereas:

- (1) Directive 2014/40/EU and Commission Implementing Regulation (EU) 2018/574 ⁽²⁾ set out the legal framework for the establishment of a Union-wide traceability system for tobacco products. At Union level, those acts also implement Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control ⁽³⁾, which has been ratified by the European Union ⁽⁴⁾ and provides for an establishment of a global tracking and tracing regime for tobacco products.
- (2) In order to enable all tobacco products to be tracked and traced throughout the Union, Article 15(1) of Directive 2014/40/EU requires Member States to ensure that all unit packets of those products are marked with a unique identifier. Pursuant to Article 15(13) that requirement will apply to cigarettes and roll-your-own tobacco from 20 May 2019.
- (3) Article 3(1) of Implementing Regulation (EU) 2018/574 obliges each Member State to appoint an entity (the 'ID issuer') responsible for generating and issuing the unique identifiers. Article 3(6) requires Member States to notify the Commission of the appointment of the ID issuer and of its identification code within one month of its appointment.
- (4) Article 4 of Implementing Regulation (EU) 2018/574 lays down rules on the competent ID issuers for generating and issuing unique identifiers depending on where the products are manufactured, imported or aggregated. Furthermore, pursuant to the second subparagraph of Article 4(1), a Member State may require that its appointed ID issuer is competent for generating and issuing unique identifiers for all tobacco products placed on its market.
- (5) Article 4(5) of Implementing Regulation (EU) 2018/574 provides that, in the event of the temporary absence of the competent ID issuer, the Commission may authorise economic operators to use the services of another ID issuer already appointed in accordance with Article 3 of that Regulation.
- (6) Articles 9(2) and 13(2) of Implementing Regulation (EU) 2018/574 require economic operators, introducing requests for unit and aggregated level unique identifiers, to supply the information listed in Points 2.1 and 2.2 of Section 2 of Chapter II of Annex II to that Regulation. That information is necessary for the generation of the unique identifiers and includes identifier codes, which allow for the registration of economic operators, facilities, and machines in the traceability system. Therefore, identifier codes are essential in enabling economic operators

⁽¹⁾ OJ L 127, 29.4.2014, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products (OJ L 96, 16.4.2018, p. 7).

⁽³⁾ Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control (OJ L 268, 1.10.2016, p. 10).

⁽⁴⁾ Council Decision (EU) 2016/1749 of 17 June 2016 on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, with the exception of its provisions falling within the scope of Title V of Part Three of the Treaty on the Functioning of the European Union (OJ L 268, 1.10.2016, p. 1). Council Decision (EU) 2016/1750 of 17 June 2016 on the conclusion, on behalf of the European Union, of the Protocol to Eliminate Illicit Trade in Tobacco Products to the World Health Organisation's Framework Convention on Tobacco Control, as regards its provisions on obligations related to judicial cooperation in criminal matters and the definition of criminal offences (OJ L 268, 1.10.2016, p. 6).

to request unique identifiers from the competent ID issuer. Furthermore, the unique identifiers and the identifier codes are jointly necessary for recording and transmission of information on product movements and transactional events. The rules on requesting identifier codes for economic operators, facilities, and machines are set out in Articles 14, 16 and 18 of Implementing Regulation (EU) 2018/574. The competence of the ID issuers for issuing identifier codes is based on the operational location of economic operators.

- (7) At the time of the adoption of this Decision, several Member States have not notified to the Commission the appointment of their respective ID issuers in accordance with Article 3(6) of Implementing Regulation (EU) 2018/574. In the absence of a competent ID issuer, economic operators will not be able to request the identifier codes and the unique identifiers. Consequently, those economic operators will be prevented from placing their products on the market. This could affect the smooth functioning of the internal market, in particular the intra-community trade of tobacco products, and this might compromise the very purpose of the traceability system and the elimination of illicit trade in tobacco products.
- (8) In order to limit to a certain extent the potential distortion of the smooth functioning of the internal market and to help in ensuring that the traceability system starts functioning on time, the Commission should for a limited period of time authorise, in accordance with Article 4(5) of Implementing Regulation (EU) 2018/574, the economic operators to use the services of an already appointed ID issuer.
- (9) It is for the ID issuers already appointed in accordance with Article 3(1) of Implementing Regulation (EU) 2018/574 to decide whether to accept requests from economic operators for generating and issuing unique identifiers. In the temporary absence of the competent ID issuer, other appointed ID issuers may also provide economic operators with the identifier codes necessary for generating and issuing the unique identifiers and in order to fulfil the obligations set out in Article 15(5) of Directive 2014/40/EU and Chapter VI of Implementing Regulation (EU) 2018/574. The provision of additional services should in no circumstances put at risk the other operations of the ID issuer.
- (10) The identifier codes generated by ID issuers in the temporary absence of the competent ID issuer should be transferred to the competent ID issuer once it is appointed along with other relevant information referred to in Articles 14(2), 16(2) and 18(2) of Implementing Regulation (EU) 2018/574. The transfer should be done electronically without undue delay on the basis of a request from the competent ID issuer addressed to the ID issuers who decided to generate the identifier codes in the temporary absence of the competent ID issuer.
- (11) The authorisation to use the services of another ID issuer under Article 4(5) of Implementing Regulation (EU) 2018/574 should only apply in the temporary absence of the competent ID issuer.
- (12) This Decision should not affect the competence rules set out in the Implementing Regulation (EU) 2018/574 with respect to issuing and registration of economic operator and facility codes for operators of first retail outlets.
- (13) Taking into account that the traceability system as set out in Article 15 of Directive 2014/40/EU applies to cigarettes and roll-your-own tobacco from 20 May 2019, this Decision should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (14) Given the temporary nature of the authorisation under Article 4(5) of Implementing Regulation (EU) 2018/574, the Commission considers it necessary to limit this Decision in time,

HAS ADOPTED THIS DECISION:

Article 1

The Commission authorises, in accordance with Article 4(5) of Implementing Regulation (EU) 2018/574, economic operators as defined in Point 2 of Article 2 of that Regulation to use the services of another ID issuer that has been appointed in accordance with Article 3 of Implementing Regulation (EU) 2018/574.

The authorisation referred to in the first subparagraph shall be valid only during the temporary absence of the competent ID issuer and in any event no later than until 31 December 2019.

This Decision shall not affect competence rules set out in the Implementing Regulation (EU) 2018/574 with respect to issuing and registration of economic operator and facility codes for operators of first retail outlets.

Article 2

Economic operator, facility and machine identifier codes generated by the ID issuers in the temporary absence of the competent ID issuer shall be transferred to the competent ID issuer once it is appointed, upon its request and without undue delay. Those identifier codes shall be transferred along with other relevant information referred to in Articles 14(2), 16(2) and 18(2) of Implementing Regulation (EU) 2018/574.

The transfer shall be done electronically.

Economic operators shall be informed of the transfer by the competent ID issuer.

Article 3

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply until 31 December 2019 included.

Done at Brussels, 2 May 2019.

For the Commission
The President
Jean-Claude JUNCKER
