



## **ACS Submission: Implementing act under Article 15(11) of the Tobacco Products Directive 2014/40/EU**

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the EU Commission's consultation on the implementing act under Article 15(11) of the Tobacco Products Directive 2014/40/EU. ACS represents 33,500 local shops across the UK including the Co-op, Nisa Retail, Costcutter Supermarkets, Spar UK and thousands of independent retailers. See Annex A for more details on ACS' membership.

### **Overview**

ACS is concerned about the costs and administrative burdens that the EU Commission's implementing regulations for the track and trace of tobacco products will place on retailers. From the outset, the EU Revised Tobacco Products Directive has stated that the track and trace proposals would only effect "the last economic operator before the first retail outlet"<sup>1</sup>. We understood this to mean that the track and trace regulations would have no impact on the retail sector but would require wholesalers and manufacturers to work closer together to track tobacco products through their supply chain.

The draft regulations, in their current form, offer a regulatory framework that would place numerous requirements on retailers, resulting increased costs and reduced productivity. There are also elements of the regulations where further clarity is required, for example how and when retailers and wholesalers exchange their Economic Operator Identifier Codes or how retailers could trade with more than one supplier of tobacco products (discussed further below).

The regulations will require wholesalers, retailers, and the UK Government to invest significantly to set up the infrastructure to support the new system by May 2019. The UK Government will have to fund and create a new ID issuer, and retailers and wholesalers will have to invest in the equipment and training for their staff to ensure the exchange of the Economic Operator Identifier Codes work from day one.

We are seeking clarification from the EU Commission on their expectations for how the system would work and the specific requirements on retailers to record the purchase and delivery of product to their stores. We believe that the regulations in their current form would have detrimental impact on the UK convenience sector and need to be clarified and amended.

### **UK Convenience Sector**

There are 49,918 convenience stores across mainland UK almost all of which sell tobacco products. The convenience sector provides over 370,00 jobs and has a total sales value of £38bn.

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<sup>1</sup> [EU Revised Tobacco Products Directive \(Article 15 – 5\)](#)

Tobacco is an important category in the convenience sector, representing 15% of sales. Based on the total sales value of the convenience sector, tobacco sales make up £5.7 billion of total market sales<sup>2</sup>.

### **UK Illicit Tobacco Market**

The cost of the illicit tobacco trade to the UK Exchequer was £2.4 billion in 2015-16<sup>3</sup>, as such, it poses a significant threat to the Government's public health objectives and undermines the legitimate retail trade.

We have continued to call on the UK government to make more effective use of existing sanctions to tackle the tobacco trade. Trading standards officers need better sanctions to tackle retailers that engage in the illicit market. HMRC need more funding to tackle the 'inland' tobacco market, instead focusing solely on border force activity.

ACS' submission<sup>4</sup> to HMRC's consultation on sanctions to tackle tobacco duty evasion and other excise duty evasion can be found [here](#).

### **ACS Understanding of the Track and Trace Regulations**

Figure A below outlines ACS' understanding of the different stages in the process of the 'track and trace' of tobacco products relevant to the retail sector.

We have provided commentary on the different stages of the track and trace process and have raised concerns about the implications for convenience retailers at each stage.

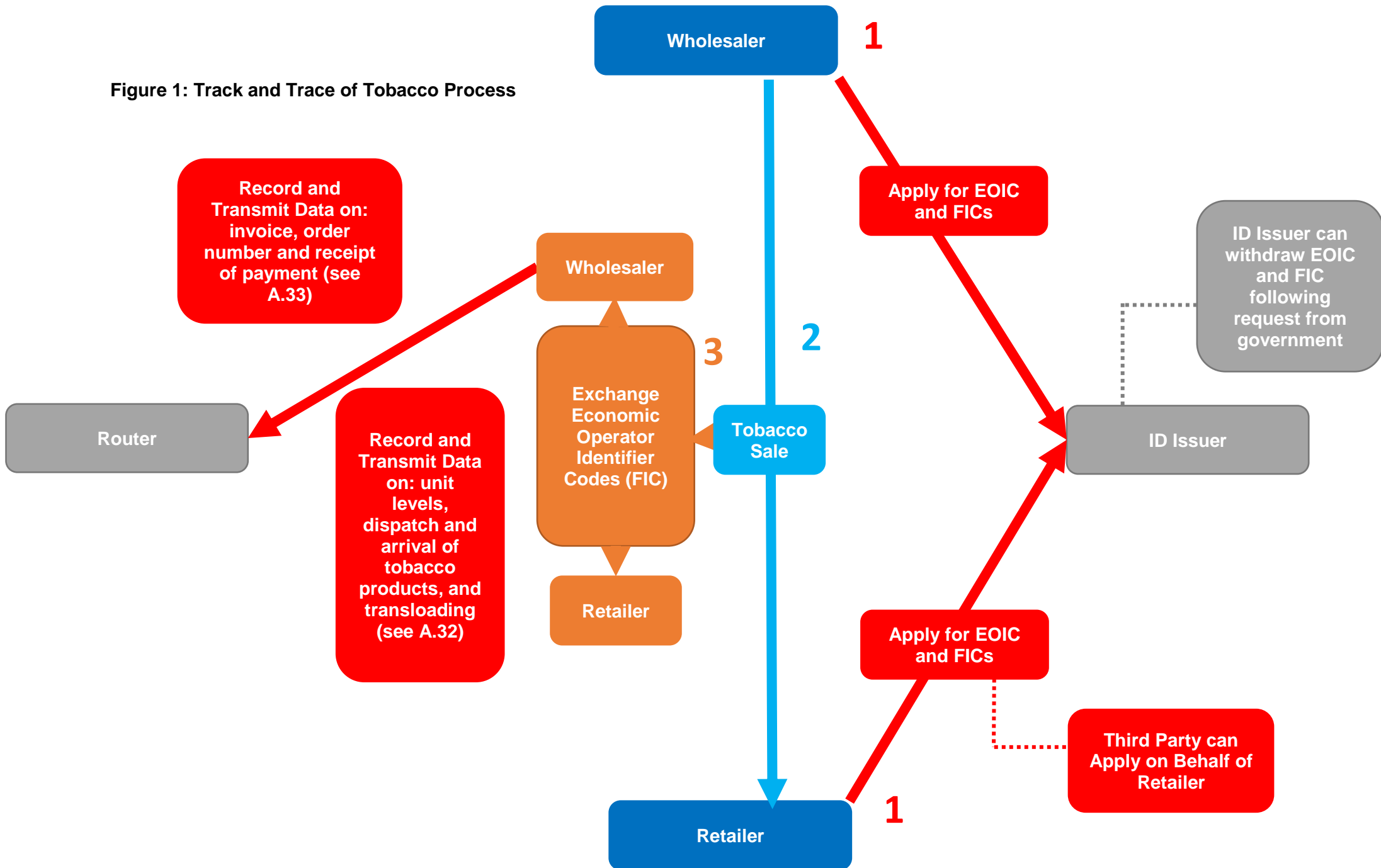
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<sup>2</sup> ACS Local Shop Report 2017

<sup>3</sup> [HMRC: Measuring Tax Gaps 2016](#)

<sup>4</sup> [ACS Submission: Sanctions to Tackle Tobacco Duty Evasion and Other Excise Duty Evasion](#)

### Figure 1: Track and Trace of Tobacco Process



## Creation and Powers of an ID Issuer

### *Costs and Timeframe for Implementation*

The draft regulations stipulate that member states must appoint an ID issuer within a maximum period of six months from the date that the Implementing Regulation comes into force. This places significant time pressures on the UK government to find an appropriate entity to become an ID issuer or set up an ID issuer within an existing Government department. The UK Government would incur significant costs to set up the ID issuer and get it operating properly.

The regulations state: *“Each Member State shall appoint an entity (the ‘ID issuer’) responsible for generating and issuing unique identifiers, in accordance with Articles 8, 9, 11 and 13, within a maximum period of six months from the date of entry into force of this Implementing Regulation.”*

Clarity is needed on whether the six-month deadline is for the appointment of an ID issuer by the Member State or if the ID issuer will already need to be generating and issuing unique identifiers, Economic Operator Identifier Codes (EOIC) and Facility Identifier Codes (FIC). For both the UK Government and UK economic operators in the tobacco supply chain, including retailers, the current implementation timeframe leaves very little time to train staff and set up a system to be compliant with the law.

According to the regulations the ID Issuer would have to issue EOIC and FICs to retailers and wholesalers within two working days from the receipt of the request. While we support quick application process for EOICs and FICs we are concerned there may be backlogs in the system because of the volume of applications. In the convenience sector alone, there would be just under 50,000 stores applying for an identifications code<sup>5</sup> as well as supermarkets, wholesalers and manufacturers also applying. These delays could impact on tobacco sales for both wholesalers and retailers, as it would be illegal for them to secure stock without the appropriate identification codes in place.

During the recent launch of the Alcohol Wholesale Registration Scheme<sup>6</sup> in the UK, the application process was delayed from October 2015 to January 2016. This was due to IT issues which led to concerns about some of the data input, particularly in the case of group applications from large business<sup>7</sup>. We can envisage a scenario where similar delays occur with the track and trace system because of the short timeframes and high volume of applications.

### *Withdrawing EOIC and FIC*

Article 15 (4) states: *“In duly justified cases, Member States may require the ID issuer to withdraw an economic operator identifier code.”* Article 17 (4) also states that: *“In duly justified cases, Member States may require the ID issuer to withdraw a facility identifier code.”*<sup>8</sup>

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<sup>5</sup> ACS Local Shop Report 2017

<sup>6</sup> Businesses who sell alcohol to another business need to apply for approval for the Alcohol Wholesaler Registration Scheme (AWRS). HMRC introduced the scheme to tackle alcohol fraud. Wholesalers will face penalties if they trade without approval. From 1 April 2017 retailers who buy alcohol to sell from a UK wholesaler, will need to check that the wholesaler has been approved by HMRC and has an AWRS Unique Reference Number by using the HMRC online look-up system.

<sup>7</sup> [Convenience Store: Alcohol Wholesaler Registration Scheme Delayed](#)

<sup>8</sup> EU Commission Implementing Regulation – Article 15 and 17

Under what circumstances would the Member State provide the power to the ID issuer to remove an EOIC or FIC? Would codes be removed from economic operators or operators of retail outlets who have committed tobacco related offences or other offences? Would this also extend to fit and proper persons test during the EOIC application process and if so would the application process be made more onerous? In the UK Alcohol Wholesaler Registration Scheme (AWRS), as part of the application process, wholesalers must demonstrate that they are fit and proper to carry on a controlled activity. This means HMRC must be satisfied that the business is genuine and all persons with an important role of interest in it are law abiding, responsible and do not pose any significant threat to fraud<sup>9</sup>.

Giving the ID issuer the power to remove identify codes will threaten convenience retailers' ability to trade and will result in the introduction of a tobacco registration scheme. We have argued against<sup>10</sup> the introduction of a tobacco registration in England, Wales and Scotland as they have been shown to be ineffective in tackling the illicit trade, but place extras cost burdens on the overwhelming majority of retailers that sell tobacco products responsibly.

### *Application Fees*

Article 3 (8) of the draft implementing act states that: *"the ID issuer may charge fees to economic operators for generating and issuing unique identifiers. Fees must be non-discriminatory and proportionate to the number of unique identifiers generated and issued to economic operators."* We would welcome clarity in the regulations whether the fees would also apply to applications for EOICs and FICs?

Application fees place significant costs on retailers. In the case of the alcohol licensing system in England and Wales, there are costs incurred by retailers on the initial application for an alcohol licence as well as annual fees (as outlined in the table below). However, these fees do not include the full cost of the application process. Many licensees find it difficult to manage the application process and instead use a solicitor or a licensing professional to process their alcohol licence application. Retailers must also pay an annual fee to retain their alcohol licence. Retailers not only incur this annual fee, but also additional fees for any variation made to the licence.

<b>Alcohol Premise Licence Fees (England and Wales)<sup>11</sup></b>					
<b>Band</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
<b>Non-domestic rateable value</b>	<b>0-£4,300</b>	<b>£4,301-£33,000</b>	<b>£33,001-£87,000</b>	<b>£87,001-£125,000</b>	<b>£125,001+</b>
New application and variation (premises)	£100	£190	£315	£450	£635
Application for the grant or renewal of a personal licence	£37	£37	£37	£37	£37
Annual charge	£70	£180	£295	£320	£350

<sup>9</sup> [AWRS Excise Notice 2002: 6.9 Fit and Proper Test](#)

<sup>10</sup> ACS Submission: FCTC Tobacco Registration

<sup>11</sup> [Home Office: Alcohol Licensing Fee Levels](#)

The costs set out in the table above do not include implementation procedures to remain compliant with agreed conditions on a licence. Licensees will also have to incur the costs of staff training and pay any additional staff hours in order to ensure that they are compliant with the conditions on their licence.

The EU Commission and UK Government should take into account that it is not just application fees that economic operators and operators of retail outlets will incur, but associated fees including staff training costs and the investment in equipment to check EOIC.

### **Application for EOIC and FIC (See 1 On Figure 1)**

Article 14 (1) states: *“economic operators and operators of retail outlets shall apply for an economic operator identifier code from the ID issuer competent for each Member State in which they operate at least one facility.”*

The information that economic operators and operators of retail outlets would need to provide for an EOIC and FIC is extensive and burdensome. Annex 2 Chapter II Section 1 of the Implementing Regulations states that applicants for EOIC must supply their: registered name, address, country of origin, email address (to inform about registration process, including subsequent changes and other required correspondence), VAT registration status, VAT number, Tax registration number, indication if economic operator has an excise number and an indication whether the economic operator has been allocated another identifier by another ID issuer<sup>12</sup>.

The collection and submission of this data will be a challenge for many of the smallest retailers that do not have centralised administration functions. As with alcohol licensing applications, if the application process is complex then retailers will deem the risk too high to manage in house and will elect to outsource the application and secure professional support. Therefore, in addition to the application fee that retailers may incur they will be paying out for professional support.

We suggest that the application fields be determined by Member States. The application process of the Alcohol Wholesaler Registration Scheme attempted to reduce administrative burdens on wholesalers registering on the scheme by using a Government Gateway account<sup>13</sup>. A business' individual Government Gateway account will already hold most of the information required to apply for an EOIC.

### *Updating Information*

The Implementing Regulation should provide clarity on the process for economic operators and operators of retail outlets to notify the ID issuer if there are any changes to the information they provided on their application for an EOIC or FIC. Currently Article 14 (5) states: *“Any modification of the information submitted in the initial application form and any cessation of the operator activities shall be notified by the relevant operator to the competent ID issuer without delay, in the formats indicated in points 1.2. and 1.3. of Section 1 of Chapter II of Annex II”.*

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<sup>12</sup> Annex 2 Chapter II section 1 – Identifier codes for Economic Operators, Facilities and Machines

<sup>13</sup> The Government Gateway is the central hub for all online dealings with the UK government. Registering with the Government Gateway enables you to sign up for any of the UK government's services that are available over the internet, including: Alcohol Wholesaler Registration Scheme, Corporation Tax, and PAYE for Employers.

We have concerns that 'without delay' is vague and could be left open to interpretation by operators of retail outlets and enforcement officers. There needs to be clarity about these timeframes in order to prevent retailers losing their EOIC or being subject to enforcement activity. Retailers should be given enough time to update their application details without facing enforcement action. The EU Commission or Member States should determine the timeframe of 'without delay' in consultation with economic operators and operators of retail outlets.

## **EOIC or FIC**

Point 16 of the introduction to the regulations states: *"In order to ensure the proper functioning of the traceability system, economic operators and operators of retail outlets should apply in advance to the relevant ID issuers for an economic operator identification code and for a facility identifier code for each facility."*

Our understanding is that retailers will have to apply for both an EOIC and FIC. The EOIC would be to identify the business and the FIC would be for establishing a premises operating within the business estate. However, the ownership and operating structures in the convenience sector are complex and therefore we must understand how exactly the sector will apply for EOICs and FICs. The implications are different for independent (38%), multiple (26%) symbol group retailers (31%)<sup>14</sup>.

Would a single store independent retail operator be required to complete two applications, for an EOIC and FIC, despite only operating one business premises? What implication will the track and trace regulations have on independent retailers that move stock between their stores? Would the retailers be required to transmit information about the movement of stock between different stores, and the associated FICs, after tobacco has been purchased/delivered – how would this be achieved?

Symbol groups are groups of independent retailers trading under a common customer facing brand such as Spar, Nisa Retail, and Premier. Symbol groups head offices do not control the stores, instead they supply them with products, promotional offers, marketing advice and a brand. Would each store owner need to apply for an EOIC as they are a separate business to the symbol group or does the retailer apply for a FIC and the Symbol group apply for the EOIC? A definition of 'operator of a retail outlet' may provide much needed clarity for retailers.

The same challenges would also apply for franchisee or commission operated sites applying for an EOIC or a FIC. The business is operated by the franchisee but the head office has more involvement in delivering and controlling stock. What would the application process for franchisees look like? Would the head office apply for the EOIC and the retail outlet apply for the FIC or would the store operator apply for both EOIC and FIC?

### *Multiple Applications*

We would encourage Member States to make provision for economic operators and operators of retail outlets to apply for multiple FICs in order to sign up all their stores in one application. We have seen significant burdens being placed on larger retailers through other

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<sup>14</sup> ACS Local Shop Report 2017

registration schemes<sup>15</sup> where multiple retailers had to sign up each individual premises separately. To reduce the administrative burden, we would encourage the EU Commission and Member States to create group applications whereby an operator of a retail outlet may sign up multiple stores for FIC at one time.

### *Business Sales*

The Implementing Regulations should also clarify what the process is to notify the ID issuer when a retail business is sold. To our understanding, if a retailer bought a retail store they would have to apply for their own EOIC, however, would they have to apply for a new FIC or could it be transferred to the new EOIC? If tobacco stock was also purchased as part of the sale of a business would there be a requirement on the retailer to transfer information about the newly acquired tobacco stock?

### *Third Party Applications*

Article 14 (3) states: *“For operators of retail outlets the obligation to apply for an economic operator identifier code may also be discharged by any other registered economic operator. Such registration by the third party shall be subject to the consent of the operator of the retail outlet. The third party shall inform the operator of the retail outlet of the full details of the registration, including the allocated economic operator identifier code.”*

We can see value in the third-party application process if the retailer is only buying tobacco from the registered economic operator who registered their EOIC on their behalf. However, would the third-party registration process restrict a retailer from trading with more than one wholesaler? For example, could a retailer top up on tobacco from a cash and carry, who is not their usual supplier, or would they be restricted to the supplier that made the original application for the EOIC?

Could the third party EOIC application process be used to prevent a retailer from sourcing tobacco product from elsewhere and would this reduce competition in the market? We seek reassurances from the EU Commission that the Implementing Regulation makes provisions that an operator of a retail outlet is in possession of their own EOIC if a third party submitted their application.

### *Third Party Application Rejections*

We urge EU Commission to clarify what would happen in the instance that an application by a third party is rejected or the EOIC is withdrawn by the ID Issuer? While third party applications essentially remove operator of retail outlets from the application process for EOIC or FICs, we seek assurances that the ultimately the retailer is responsible for their own EOIC and would be notified directly by the ID Issuer if their application has been rejected or their EOIC has been withdrawn. This would ensure that the retailer is aware of the status of their EOIC and can act accordingly, for example, cease trading tobacco if their application has been rejected.

## **Exchange of Information between wholesalers and retailers (See 2 on Figure 1)**

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<sup>15</sup> Scottish Tobacco Registration Scheme 2011



The Implementing Regulation states that: *“Economic operators and operators of retail outlets shall exchange the information on their respective economic operator identifier code in order to allow economic operators to record and transmit the transactional information, as provided under Article 33”. And; “Economic operators and operators of retail outlets shall exchange the information on their respective economic operator identifier code in order to allow economic operators to record and transmit the information on products movements, as provided under Article 32.”*

The Implementing Regulation does not provide any further detail on how retailers and wholesalers would exchange their respective EOICs. We would welcome more information on how this would work in practice, for example, if an independent retailer is purchasing tobacco at a cash and carry would they trade EOICs at the checkout? Or if a tobacco delivery arrives in-store would the delivery driver trade EOICs with the store owner or staff member?

#### *Point of Sale or Point of Delivery*

We would welcome clarification about recording movements of tobacco. Would this be at the point of sale or the point of delivery or both? For example, information about the receipt of payment would be recorded at point of sale and information about the movement of tobacco would be recorded at the point of delivery. We have concerns that in certain instances, wholesalers may not know the unique identifier at the point of sale as the retailer may be purchasing tobacco for a future date on credit.

#### *Confirmation of Delivery*

Article 32 (5) states: *“The information concerning the event shall be deemed to have been transmitted successfully upon the acknowledgement by the primary repository or the router. The acknowledgement shall include a message recall code to be applied by the economic operator if the original message needs to be annulled.”*

We have concerns that economic operators would have to wait to receive an acknowledgement by the primary repository before they recorded further movements of the tobacco. For example, an economic operator delivering tobacco to a retailer would have to wait to receive a confirmation email after exchanging EOICs before unloading tobacco stock. If economic operators or operators of retail outlets had to wait for confirmation this could slow down delivery times and in turn productivity. We would welcome reassurances that if economic operators have to wait for an acknowledgement from the primary repository that the acknowledgement would be received within a certain time frame to maintain delivery times.

#### **Manufacturer to Provide Equipment for Economic Operators**

Article 15 (7) of the Tobacco Products Directive states that: *“manufacturers of tobacco products [shall] provide all economic operators involved in the trade of tobacco products, from the manufacturer to the last economic operator before the first retail outlet, including importers, warehouses and transporting companies, with the equipment that is necessary for the recording of the tobacco products purchased, sold, stored, transported or otherwise handled”.*

We seek clarification from the commission that this will include all associated cost for retailers of tracking tobacco products through to the supply chain to their stores. The investment required to deliver this system will be extensive, therefore in-depth analysis of the costs incurred by retailers must be developed and identified.

**For more information on this submission, please contact Julie Byers, ACS Public Affairs Manager by emailing [Julie.Byers@acs.org.uk](mailto:Julie.Byers@acs.org.uk) or calling 01252 515001.**