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Guidance

Cross-border distance sales of tobacco products, e-cigarettes and/or refill containers

The purpose of this guidance is to provide assistance to retailers involved in the cross-border distance sales of tobacco products, e-cigarettes and/or refill containers.

As interpretation of the law is a matter for the Courts, this guidance is intended to provide general information on the cross-border distance sales of tobacco products, e-cigarettes and/or refill containers and should not be construed as legal advice, nor should it be inferred that all of your legal responsibilities have been identified in this guidance. It is without prejudice to any other legal obligations under criminal or civil law.

Background

Article 18 of the [Tobacco Products Directive 2014/14/EU \(TPD\)](#) sets out the provisions relating to the cross-border distance sales of tobacco products, e-cigarettes and/or refill containers. Retailers established within the European Union (EU)¹ who supply tobacco products, e-cigarettes and/or refill containers by means of cross-border distance sales (e.g. online sales) must register their business with the competent authority where the retail outlet is established and with the competent authorities where the actual or potential consumers are located. Retailers established outside the EU must register with the competent authorities in the EU country where the actual or potential consumers are located.

The requirements were transposed into Irish legislation by Regulations 23 and 25 (3) of the [European Union \(Manufacture, Presentation and Sale of Tobacco and Related Products\) Regulations 2016](#) (S.I. No. 271 of 2016) and are effective from 20th May 2016. These Regulations were amended by the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) (Amendment) Regulations 2017 ([S.I. No. 252 of 2017](#)) which are effective from 13th June 2017.

The Health Service Executive (HSE) has been appointed as the competent authority in Ireland and can be contacted at info.tpd@hse.ie.

¹ The Directive has EEA relevance

The requirements apply to:

- Retailers established in the Republic of Ireland selling tobacco products, e-cigarettes and/or refill containers by means of cross-border distance sales to consumers in another EU country;
- Retailers established in another EU country selling to consumers in the Republic of Ireland by means of cross-border distance sales; and
- Retailers established outside the EU selling by means of cross-border distance sales to consumers in the Republic of Ireland.

Retailers established in the Republic of Ireland selling to consumers in another EU country

A retailer must not supply tobacco products, electronic cigarettes or refill containers by means of cross-border distance sales to consumers located in another EU country where such sales are prohibited under its national legislation.

Where such sales are permitted under its national legislation, a retailer established in the Republic of Ireland selling tobacco products, e-cigarettes and/or refill containers to consumers in another EU country must:

1. register with the competent authority of any EU country where the retailer intends to sell tobacco products, e-cigarettes and/or refill containers by means of cross-border distance sales;
2. request a registration form from the HSE by e-mail at info.tpd@hse.ie and register with the HSE; and,
3. provide the HSE with copies of confirmation of any registration provided by the competent authority in the EU country(s) that the retailer intends to by means of cross-border distance sales.

Confirmation of registration will not be processed until all documents are received by the HSE.

Retailers who intend to trade in EU countries where the registration website or contact details are yet to be confirmed are advised to contact the national authorities of the relevant country.

Retailers established in EU countries selling to consumers in the Republic of Ireland

A retailer established in another EU country selling tobacco products, e-cigarettes and/or refill containers to consumers in the Republic of Ireland by means of cross-border distance sales must:

1. register with the competent authority of the EU country(s) where the retailer intends to sell tobacco products, e-cigarettes and/or refill containers from by means of cross-border distance sales;
2. request a registration form from the HSE by e-mail at info.tpd@hse.ie and register with the HSE; and,

3. provide the HSE with copies of confirmation of any registration(s) provided by the competent authorities in another EU country which the retailer intends to sell from by means of cross-border distance sales.

Confirmation of registration will not be processed until all documents are received by the HSE.

Retailers established outside the EU selling to consumers in the Republic of Ireland

A retailer established outside the EU selling tobacco products, e-cigarettes and/or refill containers to consumers in the Republic of Ireland by means of cross-border distance sales must:

1. request a registration form from the HSE by e-mail at info.tpd@hse.ie and register with the HSE.

Confirmation of registration will not be processed until all documents are received by the HSE.

Confirmation of registration

Once the completed registration form and relevant documents are submitted to the HSE, an e-mail will issue within 3 working days confirming receipt of the registration application. When the registration process has been completed, a further e-mail will issue from the HSE confirming registration.

If the information provided to the HSE is incomplete under the European Union (Manufacture, Presentation and Sale of Tobacco and Related Products) Regulations 2016(as amended), the retailer will be contacted for further information.

Without confirmation of registration, retailers must not supply tobacco products, e-cigarettes and/or refill containers to a consumer by means of a cross-border distance sale.

Business to business sales, that is sales not direct to consumers, do not need to be registered with the competent authority.

Please be aware that the HSE is required to publish a list of registered retailers on their website.

Change to particulars in the register

A retailer registered with the HSE for cross-border distance sales must inform the HSE in writing if a particular entered in the register in relation to him or her ceases to be correct as soon as practicable.

Age verification system for tobacco products

Retailers must operate an age verification system which will verify at the time of the sale of tobacco products, that the consumer purchasing the product in the Republic of Ireland is over 18 years of age. As set out above, the retailer must provide the HSE with a description of the details and functioning of the age verification system in place for cross-border distance sales of tobacco products.

Excise Duty and Value Added Tax

In the case of tobacco products sold in the Republic of Ireland, the retailer must appoint a tax representative, established in Ireland, who is liable for the payment of Excise Duty and Value Added Tax.

Further information is available at <https://www.revenue.ie/en/companies-and-charities/excise-and-licences/tobacco-products-tax/information-for-traders.aspx>.

Data Protection

Retailers are required to process personal data of a consumer in accordance with the [Data Protection Acts, 1988 and 2003](#) and must not disclose it to a manufacturer of a tobacco product, electronic cigarette and/or refill container or a company forming part of the same group of companies or to any other third parties. Similarly, retailers must not use or transfer personal data of a consumer for purposes other than the actual purchase of the product.

The HSE fully respects your right to privacy. Any personal information relating to the cross-border distance sales of tobacco products, e-cigarettes or refill containers will be treated in accordance with the [Data Protection Acts, 1988 and 2003](#) (and any amending or substituting legislation). Your personal information will be used only for the purposes for which it is provided, for example, for conducting regulatory checks or requirements or to comply with a legal process. You are entitled to access information that the HSE holds relating to you and can do so by applying to the HSE in writing and on payment of the prescribed statutory fee. The HSE reserve the right to charge a reasonable administration fee for each access request. The HSE are entitled to take reasonable steps to establish your identity in relation to any query, amendment, access or deletion request in respect of the information notified.

Contact

If you have any further queries relating to this process, email info.tpd@hse.ie

Further Guidance on Electronic Cigarettes and Refill Containers

The Department has also issued guidance documents in relation to other aspects of the TPD namely:

- notification requirements for manufacturers and importers of e-cigarettes and refill containers.
- prohibition of cross-border advertising and promotion of e-cigarettes and refill containers.
- safety and quality requirements, refill mechanisms, information and labelling requirements, product presentation and public health concerns (see guidance on electronic cigarettes and/or refill containers).

Discussion papers were developed by Member States and are set out below. These papers provide guidance to manufacturers and importers submitting notifications for their products and are as follows:

- [Chapter 1 – Submission Type](#)
- [Chapter 2 – Product Type](#)
- [Chapter 3 – Emissions from Electronic Cigarettes](#)
- [Chapter 4 – Dose of Nicotine Delivered & Uptake and Consistency of Dose](#)