



EUROPEAN COMMISSION  
EUROPEAN ANTI-FRAUD OFFICE (OLAF)

The Director-General

Brussels, **10 NOV. 2015**  
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Mr Peter  
(submitted via AskTheEU.org)

**By e-mails :**  
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**Subject: Your application for public access to documents – Gestdem 2015/5524**

Dear Sir,

We refer to your two e-mails dated 29 July 2015, registered on 31 July 2015 as Ares(2015)3227116, in which you apply for a public access to documents. Your application was treated under the above mentioned Gestdem reference number. We apologise for the delay in our reply caused by the necessity to consult a large number of documents with a third party as required by the legislation in force.

You request access to the following:

- A. the annual reports provided by Philip Morris International (PMI) describing PMI's fulfilment of its requirements as described in section 2.02 of the July 9 2004 Anti-contraband and anti-counterfeit agreement; you further specify that such reports should have been provided in years 2005 to 2015;
- B. the minutes of all annual meetings as agreed in Section 6.01 of the July 9 2004 Anti-contraband and anti-counterfeit agreement, between the authorized representatives of PMI and the European Commission (which in the agreement has appointed the Director of OLAF as its designated representative).

Following your application, we have identified the following documents:

- A. PMI annual certifications of compliance for years 2005 to 2015 (Annexes 1 to 11);
- B. the relevant parts of minutes from meetings of the Commission representatives with those of the Member States and economic operators, which took place in years

2012, 2013 and 2014 (Annexes 12 to 14), as well as three presentations attached to those minutes (Annex 15, 16 and 17).<sup>1</sup>

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be for the most part disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The redacted parts of the documents contain personal data, in particular names of the representatives of the Commission, Member States and PMI, as well as commercially sensitive information of PMI.

Disclosure of these parts would undermine the protection of the following:

- (a) *privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data, as provided for in Article 4(1)(b)*

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>2</sup>.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable<sup>3</sup>. According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

If you wish to receive these personal data, we invite you to provide us with arguments showing the need for having these personal data transferred to you and the absence of adverse effects to the legitimate rights of the persons whose personal data should be disclosed.

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<sup>1</sup> The Commission / OLAF has strengthened its practice of rigorously preparing minutes of meetings with industry stakeholders in recent years. It should be noted that PMI has published the reports which were a focus of discussions at past annual meetings. These reports are available at: [http://www.pmi.com/eng/tobacco\\_regulation/illicit\\_trade/Pages/all\\_previous-kpmg-studies.aspx](http://www.pmi.com/eng/tobacco_regulation/illicit_trade/Pages/all_previous-kpmg-studies.aspx)

<sup>2</sup> OJ L8, 12.1.2001, p. 1

<sup>3</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

- (b) *commercial interests of a legal person, as provided for in the first indent of Article 4(2)*

PMI was consulted on the possibility of disclosure of the documents in accordance with Article 4(4) of the Regulation. Certain parts of the documents contain commercially sensitive information, such as names of business counterparts and identification of relevant markets. After examining those parts, I have come to the conclusion that their disclosure may affect the PMI's commercial interests.

The exception laid down in the first indent of Article 4(2) applies unless there is an overriding public interest in disclosure of the information contained in the documents. No such overriding public interest was identified in this case. Also in your application, you did not indicate any such specific public interest.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position, including in case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/327  
B-1049 Bruxelles

Alternatively, it may be submitted by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

I also draw your attention to the Privacy Statement available on the Commission website:  
<https://ec.europa.eu/transparency/regdoc/index.cfm?fuseaction=privacy>

Yours sincerely,

  
Giovanni KESSLER

Annexes: 17