



European
Commission

Kristalina Georgieva

Vice-president
Budget and Human Resources

Brussels,
A(2015)

Dear [REDACTED]

I thank you for your letters of 27 October and 4 November 2015. I am herewith replying to the latter. You will receive a reply to the one on article 5.3 FCTC in due course.

In relation to your question about the prevalence of the FCTC Protocol over the cooperation agreements with the tobacco companies, I would like to confirm that the provisions of the agreements are subsidiary to the rules in force in the European Union and the Member States, as long as the latter provisions are binding on the parties, i.e., they have force of law. The binding nature of the FCTC Protocol—once concluded—results from article 216.2 of the TFEU. This, together with the respective legality and severability clauses in each agreement, determines the subsidiary nature of the agreements in respect of the FCTC Protocol. I would also wish to recall that Article 5.3 of the FCTC and specifically the Guidelines thereof do not rule out the execution of legally binding and enforceable agreements.

I would take this opportunity to reassure you as well in respect of the concerns you raise in your letter.

As for your question whether the companies might manipulate the data and hence influence the information provided, the agreements contain provisions that allow the EU or the Member States to verify such information, included that on seizures, and to audit the companies. Both at European and at national level, many seizures processed under one of the agreements have been sent for verification to independent laboratories. There has been no evidence of such manipulation to date. For the future, the Commission has also contracted a new laboratory facility for the testing of seized cigarettes with the Commission's own Joint Research Center in Geel, Belgium.

In relation to the possible restrictions to the information sharing, e.g. when it refers to "commercially sensitive" issues under the agreements, this concept generally affects the use of the information and not the cooperating company's obligation to provide it to the EU or to the member states. The agreements are intended to add tools to obtain information and in no way to limit the EU or Member States' ability to obtain such information from the companies.

[REDACTED]
[REDACTED]
Smoke Free Partnership

[REDACTED]
[REDACTED]
European Cancer League

As for the possibility of providing information from non-EU parties to the companies, the information may indeed be shared but only to the extent that the sharing is considered both appropriate and legal, and also in the interest of the EU or the Member States.

I take this opportunity to thank you for your continued efforts in the fight against illicit tobacco trade and look forward to our continued fruitful cooperation on this important matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K. Georgieva', written in a cursive style.

Kristalina Georgieva