



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

The Director-General

Brussels, 7. 06. 2018
Taxud E2/IO – taxud.e.2(2018)2185818

Mr Olivier Hoedeman
Corporate Europe Observatory
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BE – 1050 Brussels

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(By e-mail and registered mail)

Subject: Your application for access to documents – Ref GestDem No 2018/1654

Dear Mr Hoedeman,

I acknowledge receipt of your message dated 5 February 2018 in which you make a request for access to:

*"- all reports (and other notes) from meetings between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc. as well as organisations and individuals that work to further the interests of the tobacco industry), since January 1st 2017
- all correspondence (including emails) between the European Commission and representatives of the tobacco industry (producers, distributors, importers etc. as well as organisations and individuals that work to further the interests of the tobacco industry), since January 1st 2017
- a list of all the above-mentioned documents (including dates, names of participants/senders/recipients and their affiliation, subject of meeting/correspondence)."*

Your request has been dealt with in accordance with Regulation 1049/2001 and we have identified the following documents:

1. BAT "Presentation Fiscalis Project Group", January 2017 [Ares(2017)494876];
2. Meeting report on Fiscalis Project Group classification and inclusion of (new) tobacco products in the scope of excisable tobacco products, 17 January 2017 and Annex (list of attendees) [Ares(2017)4280308];
3. Document from Imperial Brands "Taxation of electronic vapour products", 17 January 2017 [Ares(2017)494803];

4. *Mail from Imptob on the Fiscalis Project Group presentation, 18 January 2017 [Ares(2017)494803];*
5. *Mail from BAT on BAT's presentation, 18 January 2017 [Ares(2017)494876];*
6. *Mail from Zigarrenmanufaktur, 13 February 2017 [Ares(2017)781977];*
7. *Letter from Unitab "Public consultation on the excise duties applied to manufactured tobacco in the framework of the possible revision Council Directive 2011/64/EU", 15 February 2017 [Ares(2017)9376311];*
8. *Mail to Health Diplomats regarding submission to the EC public consultation on excise duties applied to manufactured tobacco, 16 February 2017 [Ares(2017)857768];*
9. *Mail to PMI, "Public consultation", 16 February 2017 [Ares(2017)910355];*
10. *Mail to Stubbe Tobacco on public consultation - excise duties applied to manufactured tobacco, 22 February 2017 [Ares(2017)957269];*
11. *Document from PMI "Update on Excise & Customs classification of tobacco products", 6 March 2017 [Ares(2017)1197955];*
12. *Meeting report "Meeting with Philip Morris International", 6 March 2017 [Ares(2017)1197955];*
13. *Meeting report "Directive 2011/64/EU", 8 March 2017 [Ares(2017)1622073];*
14. *Document from PA Europe-"To combat borderline tobacco products" June 2017 [Ares(2017)3430255];*
15. *AKD "Memorandum outlining a fair, focused and effective tax on borderline cigarillos", 21 June 2017 [Ares(2017)3430255];*
16. *Meeting report "Directive 2011/64/EU", 29 June 2017 [Ares(2017)3381773];*
17. *Presentation Steward Redqueen "Framework for a societally optimal excise duty on vape products", 30 June 2017 [Ares(2017)3397605];*
18. *Meeting report "Directive 2011/64/EU", 30 June 2017 [Ares(2017)3397605];*
19. *Fontem Ventures "Steward Redqueen study: scope & key findings", 6 July 2017 [Ares(2017)3397605];*
20. *Meeting report "Directive 2011/64/EU", 6 July 2017 [Ares(2017)3430255];*
21. *Meeting report British American Tobacco, 31 March 2018 [Ares(2017)5106144];*
22. *Mail from BAT, 30 March 2017 [Ares(2017)1714420];*
23. *Letter of 27 February 2018 from TAXUD to EXPLOTACIONES DE NUEVAS TECNOLOGIAS SL [Ares(2018)1089876];*

24. *Meeting report British American Tobacco 2 February 2018 [Ares(2018)700539];*
25. *Letter of 2 February 2018 from TAXUD to Philip Morris International [Ares(2018)636199];*
26. *Meeting report Japan Tobacco International 19 December 2017 [Ares(2018)12423];*
27. *Letter from TAXUD to ETV Europäischer Tabakwaren-Großhandels-Verband, 4 October 2017 [Ares (2017)4840220];*
28. *Email from TAXUD to Lauko sro, 24 August 2017 [Ares(2017)4204512];*
29. *Email from TAXUD to Lauko sro, 28 August 2017 [Ares(2017)4204542];*
30. *Letter from EXPLOTACIONES DE NUEVAS TECNOLOGIAS SL to TAXUD, 12 December 2017 [Ares(2017)6091662];*
31. *Letter from Philip Morris International to TAXUD, 19 January 2018 [Ares(2018)450788];*
32. *Letter from ETV Europäischer Tabakwaren-Großhandels-Verband to TAXUD, 22 September 2017 [Ares(2017)5387362];*
33. *Email from Japan International Tobacco to TAXUD, 12 January 2018 [Ares(2018)414753];*
34. *Letter from Imperial brands to TAXUD, 1 September 2017 [Ares(2017)4344863];*
35. *Note from TAXUD to all stakeholders, 19 January 2018 [Ares(2018)335618].*

Having examined the documents requested under the provisions of Regulation (EC) N°1049/2001 regarding public access to documents, I am pleased to inform you that Commission agrees with the disclosure of documents 1-23, 25-30 and 35.

For documents 31-34 we initiated consultations with the third parties from whom the documents originate under Article 4, Para 4 of Regulation 1049/2001. I am pleased to inform you that the third parties agreed to the disclosure of documents 31, 32 and 34. However, Japan Tobacco International (JTI) refused the disclosure of document 33 because, the disclosure of this document will directly affect the interests protected under Article 4(2) of Regulation 1049/2001. Namely, the commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice. JTI operates in an extremely regulated legal environment that poses many restrictions on the commercial practices of the tobacco manufacturers and the document in question relate to the implementation of these restrictions by a national government. In particular, document 33 contains all the legal and economic arguments developed by the company to be used in the proceedings against the above-mentioned legal provisions and therefore, its disclosure will harm its commercial interests, vis-à-vis its competitors and customers; as well as it will undermine its position vis-à-vis the public authorities, by making public the fact that the company has lodged a confidential infringement procedure. Finally, disclosure of document 33 will negatively affect the position of the company in currently pending legal case, as it would make public the confidential assessment of the company's position and the arguments that may or may not be used in the case. Based on the position expressed above the Commission agrees that disclosure of document 33 would undermine the protection of the commercial interests of JTI, including intellectual property, court

proceedings and legal advice in accordance with Article 4 (2), second paragraph of Regulation 1049/2001 which states that "*The institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, court proceedings and legal advice.*"

Following the assessments of the Commission, the document 24 is partially disclosed to you, because full disclosure of the requested document would undermine the protection of the purpose of ongoing investigations in accordance with the third indent of Article 4, paragraph 2 of Regulation 1049/2001 which states that "*the institutions shall refuse access to a document where disclosure would undermine the protection of... the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure*". In order to perform efficiently its task as "guardian of the Treaties", the European Commission should be able to carry out its investigations whilst preserving a climate of mutual confidence with the Member State concerned. Such a climate is necessary to foster an amicable resolution of the dispute between the European Commission and the Member State by a voluntary compliance of the latter with Treaty requirements. At this delicate stage of the procedure, publicity of the document you have requested would be premature and would have the effect of jeopardising a friendly settlement of the dispute. The Court has consistently confirmed this position in its judgements¹.

Redactions of personal data

Furthermore, documents 1-10, 12, 13, 15, 16, 18-30 will be partially disclosed to you, as they contain personal data, such as names of persons, addresses, phone numbers, signatures and e-mail addresses. 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 data². When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable³. 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/or 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.

¹ See for example judgement of 11.12.2001 in case T-191/99 *Petrie vi Commission*.

² Official Journal L 8 of 12.1.2001, p. 1

³ 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.

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Confirmatory application

In case you would disagree with the overall assessment of the documents or if you consider that the expunged data are not personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

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 5/282
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,



Stephen Quest

Annexes: as stated above