

June 2020

PRIVACY NOTICE FOR THE TOBACCO SEIZURE MANAGEMENT SYSTEM (TOSMA)

1. DESCRIPTION OF THE PROCESSING OPERATION

The Tobacco Seizure Management Application (ToSMA) is a filing system under the Anti-Fraud Information System (AFIS) platform that contains notices with information on tobacco and cigarettes seizures made by competent authorities¹ in the Member States. ToSMA is developed by the European Anti-Fraud Office (OLAF). The notices are submitted by Member States' competent authorities by means of secured transmissions set up under the AFIS platform and are subsequently recorded in ToSMA after a quality control by staff in OLAF. After this quality control, OLAF may transmit information from this notice, via secured electronic transmissions separate from AFIS, to tobacco manufacturers listed under point 4 of this notice, for further inspection and comments. The replies from the manufacturers are recorded by OLAF in ToSMA and further transmitted to the competent authorities in the Member States.

The information in the notices is recorded in a structured manner in ToSMA. The purpose of the processing of the notifications is to enable statistical analyses to report on the implementation of the tobacco agreements (listed under point 2). The results of the statistical analyses are also used by the Commission to comply with the requirements under Article 325 of the TFEU to publish an annual report on its effort to combat and prevent fraud in the EU.

The controller of the processing operation is the European Commission, European Anti-Fraud Office (OLAF), Unit B.1 – Customs, Trade and Tobacco Anti-Fraud Strategy.

Personal data recorded in ToSMA will not be used for automated individual decision-making, including profiling². Data subjects will not be subjected to a decision solely based on automated processing, including profiling, which produces legal effects concerning him or her or similarly affects him or her.

¹ The term 'Competent authorities' is defined in Article 2(2) of Council Regulation (EC) 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters, OJ L 082, 22 March 1997, as amended.

² As defined in Article 24 of Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union Institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) 45/2001 and Decision No. 1247/2002/EC, OJ L 295 of 21 November 2018, p. 39, ("EUDPR").

2. LEGAL BASIS FOR THE PROCESSING

The legal bases for this processing are:

- Regulation 2018/1725, the EU Data Protection Regulation ("EUDPR"), in particular Article 4 (1) (a) and (b) on the lawfulness of processing,
- Regulation 515/97, as amended, the "Mutual Assistance Regulation", in particular Title III,
- Regulation 883/2013³, as amended,
- The agreements concluded between the European Union and three tobacco manufacturing companies⁴,
- The Treaty on the Functioning of the European Union (TFEU), Article 325 (5), reporting requirement.

3. CATEGORIES OF PERSONAL DATA COLLECTED

The following categories of personal data on authorised staff within the competent authorities in the Member States and OLAF, are recorded in ToSMA:

- Name
- Telephone number
- E-mail address
- City
- Organisational Unit/Service

The provision of the personal data is mandatory to meet the requirements under the Mutual Assistance Regulation and/or tobacco agreements. A failure to provide the data may lead the data controller to default on its obligations under the Mutual Assistance Regulation and/or tobacco agreements.

Personal data are collected from a natural person if s/he is linked to the legal entity for which data are collected. Personal data of natural persons who are not linked to a legal entity are not collected.

4. WHO HAS ACCESS TO YOUR INFORMATION AND TO WHOM IS IT DISCLOSED?

The information in ToSMA is only **accessible** to authorised staff in:

- the competent authorities of the Member States for the information provided by them,
- the European Commission and the European Anti-Fraud Office (OLAF)

The information in ToSMA may be **disclosed** to authorised staff within:

- the competent authorities of the Member States for the information provided by them,
- the European Commission and the European Anti-Fraud Office (OLAF),
- tobacco manufacturing companies for the information on seizures related to their products, subject to the conditions set out in the tobacco agreements.

³ Regulation (EU, Euratom) No. 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No. 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No. 1074/1999, OJ L 248 of 18 September 2013.

⁴ Cooperation agreements between the European Union, represented by the European Commission, the Participating Member States and Japan Tobacco International (JTI - 14 December 2007), British-American Tobacco (BAT - 15 July 2010) and Imperial Tobacco Limited (ITL - 27 September 2010). The texts of these agreements are available on: https://ec.europa.eu/anti-fraud/investigations/eu-revenue/cigarette-smuggling_en

Authorised staff are those staff members within the organisations mentioned above tasked with detecting, investigating or prosecuting infringements of customs or agricultural legislation.

Personal data recorded in ToSMA will not be transferred outside the EU.

5. HOW DO WE PROTECT AND SAFEGUARD YOUR INFORMATION?

In order to protect your personal data, technical and organisational measures have been put in place. Technical measures include appropriate actions to ensure online security as well as measures to address risks of data loss, alteration of data or unauthorised access, taking into consideration the risks presented by the processing and the nature of the data that are processed. Organisational measures include actions restricting data access to authorised persons who have a legitimate need to know for the purposes of this processing operation.

6. HOW LONG DO WE KEEP YOUR DATA?

Your personal data may be retained by OLAF for a maximum of 10 years.

7. WHAT ARE YOUR RIGHTS AND HOW YOU CAN EXERCISE THEM?

You have the right to request access to your personal data, rectification or erasure of the data, or restriction of their processing. You have the right to object to the processing of your data.

Any request to exercise one of those rights should be directed to the Controller (OLAF-FMB-DATA-PROTECTION@ec.europa.eu). Where you wish to exercise your rights in the context of one or several specific processing operations or files, please provide their description and reference(s) in your request.

The controller may apply exceptions in accordance with the Regulation 2018/1725 and, where applicable, restrictions based on Article 25 thereof, in accordance with the relevant Commission Decisions⁵.

8. CONTACT DETAILS OF THE DATA PROTECTION OFFICER

You may contact the Data Protection Officer of OLAF (OLAF-FMB-DPO@ec.europa.eu) with regard to issues related to the processing of your personal data under Regulation (EU) 2018/1725.

9. RIGHT OF RECOURSE

You have the right to have recourse to the European Data Protection Supervisor (edps@edps.europa.eu) if you consider that your rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of your personal data by OLAF.

⁵ Commission decisions based on Article 25 of the EUDPR will be published in the Official Journal as well as on the internet pages of OLAF.