European Medicines Agency

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OVERVIEW OF COMMENTS RECEIVED ON DRAFT GUIDELINE ON PRINCIPLES TO BE APPLIED FOR THE DELETION OF COMMERCIALLY CONFIDENTIAL INFORMATION FOR THE DISCLOSURE OF EMEA DOCUMENTS

Table 1: Organisations that commented on the draft Guideline as released for consultation

	Name of Organisation or individual	Country
1	Merck Sharp & Dohme (Europe) Inc. (MSD)	Belgium
2	The Danish Association of Generics Companies (IGL)	Denmark
3	Association of the European Self-Medication Industry (AESGP)	Belgium
4	European Generic Medicines Association (EGA)	Belgium
5	European Organisation for Rare Diseases (Eurordis)	France
6	The Pharmaceutical Research and Manufacturers of America (PhRMA)	USA
7	BioIndustry Association (BIA)	UK
8	IFAH-Europe (International Federation for Animal Health)	Belgium
9	European Federation of Pharmaceutical Industries & Associations (EFPIA)	Belgium
10	Health Action International (HAI)	Netherlands

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Table 2: Discussion of comments

GENERAL COMMENTS – OVERVIEW

General comments received (and provided below) consisted in:
 	
- Statements welcoming the preparation of a set of principles to be applied for the deletion of commercially confidential information for the disclosure of emea documents,
- Procedural questions on how these principles will be applied, e.g.:
  ➢ To which document and when, those principles will apply,
  ➢ Consultation of the data's owner for deletion of commercially information.
- Questions on the preparation of annexes,
- Application of those principles to generic medicinal product,
- Introduction of the specific comments presented in the second part of this document.
 	
In these respects, it should be noted that:
 	
- The EMEA shall apply these principles in accordance with the Rules for the implementation of Regulation (EC) No 1049/2001 on access to EMEA documents (EMEA/MB/203359/2006 Rev 1).
- Consultation of third parties for deletion of commercially confidential information will be described in specific procedural documents as appropriate (e.g. EMEA reflection paper on publication of withdrawal of MAA - EMEA/239350/2005, EMEA reflection paper on publication on negative opinion and refusal – EMEA/311355/2005). In this regard, it should be noted that it is the Agency' responsibility to assess the confidentiality of the information, and there is no legal obligation to consult the pharmaceutical industry.
- Apart from the current Annex I related to CHMP and CVMP Assessment Reports, other annexes may be developed to cover other type of documents for which the need would be identified.
- The same principles should apply to everybody in order to avoid discrimination between brand leader and generic manufacturer. Information on quality and manufacturing methods of generics will benefit of the same level of confidentiality.
- The fact that EMEA considers openness and transparency to be important measures in the promotion of public health has been emphasised in the revised document.
- The EMEA works with National Competent Authorities to ensure a harmonised approach on transparency.
- Principles on deletion of commercially confidential information shall comply with rules on individual data protection.
- In the context of CxMP assessment report, EMEA considers that a clear distinction can be made between information considered as "general description" and "details", as illustrated by EMEA's long experience in publishing EPARs.
- Other aspects are addressed in the subsequent section on "Specific comments".

[MSD]

The Principles themselves are straightforward and raise few issues. Instead of relying on numerous annexes to cover each and every type of document, it may be beneficial to expand the principles according to the time period a document is to be disclosed and the redaction of commercially confidential information must occur. Prior to the legally mandated release of an assessment report, three categories of information should constitute commercially confidential information: i) information provided during scientific advice procedures, ii) information contained in a clinical trial application and iii) information contained in a marketing authorization application. After the grant of a Community license to a medicinal product, the expert report submitted as part of the marketing authorization application and all information surrounding a scientific advice procedure should be deemed commercially confidential information.

[IGL]

General comments on pending applications for marketing authorisations:

With regard to applications for marketing authorisations submitted by generic manufacturers, confirmation of the existence of a pending application is by itself a piece of strictly confidential information. If confirmation of a pending application is released competitors will get an insight of the applicant's marketing strategies and potential launch date of new products. Products for which a marketing authorisation has not yet been obtained are extremely vulnerable to leakage of information to competitors.

[AESGP]

It is important that a process is in place for preview by the Market Authorisation Holder (MAH) of information which is proposed for release into the public domain. This would avoid any post-release issues that may arise due to special circumstance not covered by the general principles outlined in the EMEA document.

It is also important that the Marketing Authorisation Holder (MAH) receives information on any distributed information, so it should be specified in the guideline that the authorities should immediately give the MAH a copy of the disclosed documents and name and address of the recipient.

[EGA]

In principle, the EGA agrees with the EMEA's general approach to establishing rules of transparency with regard to the EPAR. We strongly support the concept that the information on quality and manufacturing methods are commercially confidential. We would like to draw your attention to certain issues specific to the generic medicines industry. Information which may not be commercially sensitive for an originator company could be highly sensitive for a generic producer, such as API source, for example. In comparison with the brand leader, which benefits from a monopolistic position on the market due to data exclusivity and patent/SPC protection, the generic industry operates in a much more competitive environment as it experiences constant pressure from other generics companies while suffering from the strategies of brand leaders (e.g., strategic litigation for purported patent infringement, purchasing of the API supplier to block a generic product, etc). We trust this aspect will be taken into consideration when EPARs are published for generics.

[EURORDIS]

Eurordis is fully supportive of these principles. In our experience with EMEA activities, confidentiality over commercial data is an obstacle to the involvement of patient representatives in scientific discussions:

- no possibility to discuss the dossier with patient experts when Eurordis needs to invite them to participate to scientific advice or COMP discussions
- no possibility for the expert patient to consult with other patient representatives during the evaluation process by CHMP for a more relevant opinion /

list of questions
- no possibility to discuss the product risk benefit/balance during the ad hoc meeting on thalidomide with victims and patients in 2003-2004
- no possibility to anticipate on CHMP agenda and EPAR documents and package leaflets to identify adequate document reviewers within patient representatives (at least for first marketing authorisation)

Beyond the disclosure of EMEA documents, it can be stated that intellectual property rights and data protection, when opposed to the deletion of commercially confidential information, can force the duplication of clinical trials and expose trials' participants to unnecessary hazards. Thus, the protection of commercial interest of a natural or legal person, including intellectual property, not only limits public access to documents, not only is an obstacle to participate to the work of scientific bodies at EMEA, but also can be considered as a threat to public health interests by forcing the unnecessary duplication of clinical trials.
This document mainly relates to CHMP and CVMP assessment reports, however the principles should also be developed for other fields and committees.

[PhRMA]
PhRMA strongly supports the EMEA initiative to develop principles on commercially confidential information. The regulatory review process for medicines is based on the submission and assessment of very detailed and comprehensive technical and scientific data that result from time consuming and costly development programs, and the need to protect confidential information is more acute here than in most, if not all, other industry sectors. Protection of confidential information is also the natural counterpart of transparency and the new guideline can offer a useful tool in correctly applying the relevant principles.

[BIA]
The BIA generally welcomes this EMEA proposal. It is similar to the current positive situation in the USA under FDA Freedom of Information regulations, where the FDA redacts 'commercially confidential information' from publicly released documents. What is important is that 'commercially confidential' truly means confidential.

We believe that the names of individuals and suppliers/manufacturing companies should be considered as 'commercially confidential information". It is also important that companies be given the opportunity to have sight of the redacted documentation before it is made public in order for the company to verify the EMEA's considerations of confidentiality, given the case by case interpretations of some of the recommendations for the application of the principles of deletion.

[IFAH-EUROPE]
In similar negotiations on transparency and freedom of information with national governments, the following general principles have been accepted, and should be included in the EMEA document:

1. **Firstly**, a clear statement is necessary to make it very clear that all names and addresses would be removed from all released data on the grounds that it was not of interest to anybody except extremists who could target the people. This is not an issue of protection of personal data; it is an issue of personal protection.
2. **Secondly**, the composition of the formulation is a trade secret. Details on the precise formulation must be regarded as of utmost commercial

sensitivity, as these enable competitors to rapidly copy a product. We do not accept the disclosure of the full formulation in the SPC; we only accept disclosure of excipients where there is a justified safety reason. This is extremely important for new technologies and formulations, as knowledge of full disclosure will hinder innovation in Europe. It should also be considered, that in the absence of valid and just reasons, the disclosure of this information may not be legal (this is explored in more detail below).

3. **Thirdly** - although we appreciate why the general public should be allowed to see the reasons why a product has been withdrawn from the market place, we see no valid reasons why they should see a product's details if it has been refused authorisation. What is the public interest in knowing about products that are not marketed? This could be extremely damaging to a company particularly if they were going to try to get approval again in the future. Therefore we accept the publication of the refusal together with a summary of the reasoning; however we do not accept that published information relating to a refusal "should be comprehensive and complete".

APPLICATION OF REGULATION (EC) 1049/2001 regarding public access to EMEA documents

According to Article 73 of the new Regulation 726/2004, "*Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents shall apply to documents held by the Agency*".

Regulation (EC) 1049/2001 provides rules to increase the transparency of the work of the European Institutions (including agencies) by giving the fullest possible public access to all their documents (with some exceptions listed below and without prejudice to rules on copyright), especially the legal documents.

In interpreting these rules, the EMEA must be mindful that obligations for transparency should not over-ride its obligations to safeguard intellectual property rights provided for in the following legal provisions:

1. The information submitted by a company in a marketing authorisation application is protected during an eight-year period of data protection and a ten-year period of marketing protection by:

   - Article 14(11) of Regulation 726/2004
   - Article 13(1) of Directive 2004/28/EC amending Directive 2001/82/EC on the Community code relating to veterinary medicinal products

   Therefore, general provisions addressing access to such information, as is the case of Regulation 1049/2001, should be considered by the EMEA by reference to these premises.

2. Article 4(2) of Regulation 1049/2001 clearly provides 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 - unless there is an overriding public interest in disclosure*". A duty of confidentiality rests therefore upon the EMEA, notwithstanding the data protection period, as regards such data, which should not be disclosed without specific controls or consent in order to ensure that the commercial interests and intellectual property rights of the Applicants are preserved.

Clearly, unless there is an identifiable reason of over-riding public interest, such as a known risk of adverse reaction, then intellectual property such as a product formulation cannot be disclosed. This is particularly relevant to new ingredients where safety risks have not been demonstrated or could reasonably be expected on the basis of existing scientific knowledge of a class of compounds.

3. The correctness of this approach is reinforced by recitals 2 and 3 of Directive 2001/82/EC that confer on the authorities the duty to protect public health, but this must be achieved by means that do not hinder the development of industry. IFAH-Europe considers that the undermining of intellectual property rights will directly affect the development of European industry, and is in direct contradiction to the broader European goals regarding the competitiveness of European industry as defined by the 'Lisbon' agenda. The European Commission is a signatory to the objectives agreed in Lisbon, and as an executive agency of the Commission, the EMEA has a duty to respect these, without prejudice to its primary objective to protect public health.

   The correctness of this approach is reinforced further by primary European Legislation on the protection of intellectual property, such as:
   - Article 287 of the EC Treaty (members of EU institutions shall not disclose information pertaining to professional secrets).
   - Article 39(3) of the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") Agreement (Members shall protect data submitted for marketing approval of pharmaceutical or agricultural products shall protect it from unfair commercial use).
   - Article 1 of the First Protocol of the European Convention on Human Rights, Rome 05/11/50 (no-one shall be deprived of his possessions, including property rights).

[EFPIA]

EFPIA welcomes the initiative to clarify the definition of "commercially confidential information" and the development of these principles. The general principle of transparency is currently well recognized and accepted. EFPIA believes that the drivers for transparency should be to promote the health of the patient, to ensure the medicinal product is used correctly and to facilitate informed decision-making by physicians. EFPIA recommend that these objectives form the basis for deciding what information should be released by EMEA. In many cases (especially in the context of Quality information) a "general description" of the data would be adequate (specific comments related to this observation are provided below).

One of the most difficult aspects is the consideration of the amount of detail that should be provided regarding the actual assessment of a marketing authorisation and the outcome of scientific discussions (rather than the factual information provided by the MAH). Disclosure of information relating to such assessments and discussions must be done with consideration and care, in order not to create unnecessary obstacles should the company decide to supplement its documentation or re-submit a marketing authorisation application (MAA) at a later date. Attention must be paid so that the wider audience is not inappropriately concerned by an apparent negative risk: benefit for the product should it be rejected in the first instance but approved subsequently, based on amendments and additions to the database in a later re-submission.

Within Europe there are both national and EU legislation covering commercially confidential information, thus EFPIA recommends that the EMEA take steps to interact with the national and EU bodies to ensure a consistent approach to the release of documents (otherwise overall EU transparency will for practical purposes occur through the body with the lowest 'hurdles').

EFPIA have the following general comments on the document:

1. The standards in this guidance for what information will be disclosed are not very specific. In particular, Annex I refers to certain categories of information for which "a general description" or "general information" can be disclosed, whereas for that same category of information "details" cannot be disclosed. Based only on this guidance industry cannot determine whether appropriate distinctions will be made as to what information constitutes "general descriptions" versus "details".
2. It should be explicitly stated at the start of Annex I that the MAH should be consulted regarding the disclosure of potentially commercially confidential information. The need for such consultation is supported by Article 4.4 of the "Rules for the implementation of regulation (EC) No 1049/2001 on access to EMEA documents" (EMEA/MB/203359/2006) which states that "As regards third party documents, the Agency shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 [this includes commercial interests] is applicable, unless it is clear that the document shall or shall not be disclosed". This principle of consultation should also be applied to information released in the context of CHMP and CVMP Assessment Reports, since the information in such assessment reports is largely provided by the MAH. As such it is important that companies are consulted and allowed to provide input on prejudice to their commercial interests, rather than this decision being made in isolation by the EMEA
3. Given the potentially ambiguous standards included in the document, the process for implementation will be critical. This guidance should describe such a process, and the owner of the information (normally the Marketing Authorisation Holder) should be provided with an explicit opportunity and sufficient time to review any request for disclosure of its information and to advise the EMEA as to its opinion on whether any or all of the information should be disclosed. The process should also include a defined opportunity for administrative appeal in the event EMEA is proposing to disclose information over a significant objection by the owner. These steps should all take place prior to release of the information.
4. In cases where the EMEA makes a judgement about what is commercially sensitive, particularly if they feel it is obvious (i.e., already in the public domain) it is understood that they will not necessarily keep the MAH informed of what has been requested and what has been released. It would be preferable if the company is consulted in all cases, especially in relation to quality information and at the very least be informed when information, derived from that submitted by the MAH to the agency, has been released.
5. In the cases of any information that may be released by EMEA under "Freedom of information requests", EFPIA believe that MAHs should be made aware of the context of requests, i.e., a copy of the request with the personal information removed. This would not alter the way in which the information is considered but would help to anticipate future requests and facilitate the process.
6. It should be remembered that the level of confidentiality applied should be higher for a product pre-approval and EFPIA would welcome a comment indicating this in the guidance. In particular, the following information should be considered "commercially confidential": i) information provided during scientific advice procedures, ii) information contained in a clinical trial application and iii) information contained in a marketing authorization application.
7. Protection against unfair use of information disclosed in EMEA documents should be taken into consideration, as indicated by the EU in the WTO TRIPS agreement (see WTO.org).

In addition to the deletions that would be made in the assessment report (AR) by EMEA, EFPIA also suggests that with respect to any other document released by EMEA, all MAH specific information (e.g. Brand name, information on production processes) is deleted. This procedure would be similar to long-standing practices in the USA.

[HAI]

Health Action International (HAI Europe) welcomes the EMEA's decision to hold a consultation on *Principles to be Applied for the Deletion of Commercially Confidential Information for the Disclosure of EMEA Documents*.

There is a strong public health imperative for full public access to the research evidence establishing the effectiveness and safety of a medicinal product. Additionally, public accountability of regulatory decisions is only possible if the public has access to the evidence on which those decisions are based, and is provided with a rationale for decisions. One of the key principles enshrined in reforms to EU pharmaceutical legislation introduced in 2003 was improvement in transparency of procedures and decision making. The provisions for transparency in pharmaceutical regulation allow for an exception to be made for commercially confidential information. From a public health perspective, it is crucial that the definition of commercial confidentiality be explicitly limited to information that is unrelated to a product's safety and effectiveness, or more broadly to any scientific evidence of its effects on the human body.

The EMEA consultation document contains a broad definition of commercial confidentiality that gives priority to commercial interests over public health, stating that, "any kind of information is considered commercially confidential if disclosure would hurt the interests or, in other words, prejudice to an unreasonable degree the commercial interests of individuals or companies concerned."

This principle is unacceptable from a public interest perspective and inconsistent with the provisions on transparency within EU pharmaceutical legislation. It would give companies virtually unlimited and unchallengeable rights to insist on nondisclosure.

The principle of transparency has been enshrined in legislation but much work still needs to be done to implement these provisions. Reports of laboratory, animal and clinical studies submitted to the EMEA and national agencies in Europe to establish a medicine's safety and effectiveness for market authorisation are not yet publicly available. Periodic Safety Update Reports and other post-market safety and effectiveness assessments similarly remain secret unless a manufacturer decides to disclose study results. EPARs provide only summary information about the evidence that has been submitted to the regulator. Although an important step forward, their usefulness remains limited and insufficient for peer review. The detail required for critical appraisal of the available evidence, and for independent assessment of validity of product claims and their applicability to patients, remains unavailable. We would argue that access to such data is not only prerequisite to public health and trustworthy communication. It is also fundamental to effective competition, in that companies should also be able to make and justify critical assessments of competing products.

If only partial scientific information is made publicly available – for example publication of positive trials and non-publication of negative trials or publication of only beneficial and not harmful drug effects– prescribing and drug use decisions will be misinformed, not adequately informed. We know from recent experience that these misinformed decisions have serious public health consequences: for example, thousands of heart attacks and deaths from rofecoxib (Vioxx) use might have been prevented had there been full public access both to pre-market data on rofecoxib's cardiac adverse effects and to full data on outcomes of the VIGOR trial.2 3 Similarly, the partial publication of the CLASS trial of celecoxib (Celebrex) misleadingly reports a reduced rate of serious gastro-intestinal complications,4 results that failed to be supported by the full trial report available to regulators. This partial publication led to misinformation concerning the balance of potential benefit versus potential harm expected to result from the use of this product.

A broad and imprecise definition of commercial confidentiality is currently a barrier not only to informed individual drug prescribing and use decisions, but to the ability of national drug reimbursement agencies to publicly defend drug financing decisions, 5 and to the ability of expert advisory committees and other regulatory bodies to meet in public.

Conclusion: Medicines can be both life-saving and life-threatening. Lack of full public access to the body of available scientific evidence about the effects of medicines on human health leaves European citizens at greater risk for otherwise preventable harm. This is unacceptable. A broad definition of commercial confidentiality that puts commercial interests before human health is both inconsistent with EU regulations and almost certain to lead to otherwise preventable harm. Two steps are needed to prevent future harm: a precise and limited definition of commercial confidentiality and regulatory procedures that make transparency the norm and secrecy the exception.

SPECIFIC COMMENTS ON TEXT

GUIDELINE SECTION TITLE

Line no.[1] + paragraph no.	Comment and Rationale	Proposed change	Outcome
I. INTRODUCTION			
2nd paragraph p. 2/5	This statement should indicate who is responsible for the deletion of information.	*Add statement at end:* "Nevertheless, prior to publishing or allowing access to any EMEA document, commercially confidential information should be deleted by the *[to be completed by the EMEA]* Section in EMEA".	To be addressed through procedural guidance as appropriate.
Additional paragraph p.2/5	For further clarification, we would like the scope is defined in this section.	*Proposed following additional sentence:* "The scope of this guidance only concerns the deletion of commercially confidential information for the disclosure of EMEA documents"	The scope of the document is defined under sections II and III (Legislative Framework and General Principles).
II. LEGISLATIVE FRAMEWORK			
1st paragraph	For precision.	The principles refer to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Article 4 (2) of this Regulation states that the Institutions shall refuse access to documents where disclosure would undermine the protection of commercial interest of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.	Agreed

[1] Where applicable

2nd paragraph	Recital 11 - Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents In principle, all documents of the institutions should be accessible to the public.	These principles also apply, but not exclusively, to the publication of assessment reports as foreseen by Regulation (EC) No 726/2004, in particular Articles 13(3) and 38(3) related to EPARs, and Articles 11 and 36 of Regulation (EC) No 726/2004 related to publication on withdrawals of applications.	Not necessary
	It is important to recognise that the grounds for refusal of access to documents as defined in article 4 of Regulation (EC) No 1049/2001 include the protection of commercial interests of, among others, companies, while the guideline covers what constitutes commercially confidential information under the specific publication provisions in Regulation 726/2004.	*Amend the second and the third paragraphs as follows:* ~~These~~ A specific application of these principles ~~also apply to~~ is the publication of assessment reports as foreseen by Regulation (EC) No 726/2004, in particular Articles 13(3) and 38(3) related to EPARs, and Articles 11 and 36 of Regulation (EC) No 726/2004 related to publication on withdrawals of applications, where publication is foreseen by the legislator in the public interest. This document only addresses the specific situation of information for which publication is directly required by the legislation. It does not address whether access to specific documents should be granted or refused in accordance with article 4 of Regulation (EC) No 1049/2001. It also does not address issues of protection of personal data in general. ~~and of public interest nor any of the other exceptions listed in article 4 of Regulation (EC) No 1049/2001 that are not related to commercial interest.~~	The Principles apply to EMEA publication and disclosure of EMEA documents. The EMEA shall apply these Principles in accordance with the Rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1), which should be read in conjunction with these Principles.
1st paragraph p. 2/5	Reference to unfair competition should be added, especially with reference to Art. 39 of the WTO TRIPS agreement.	*Add statement at end:* "… that the Institutions shall refuse access to documents where disclosure would undermine	Agreed, the following sentence has been added:

	Citation Art. 39(3) WTO TRIPS agreement: "3.Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect against unfair commercial use."	the protection of commercial interest of a natural or legal person, including intellectual property and the protection of data submitted to governments or governmental agencies according to Article 39 of the WTO TRIPS Agreement of Jan. 1st ,1995. For information made accessible under the 39 (3) TRIPS means to protect such information against unfair commercial use shall be provided (Citation see left column) as foreseen by Article 73 of Regulation (EC) No 726/2004."	*The EMEA Principles on deletion of commercially confidential information have also been prepared in the light of Article 39(3) of the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") Agreement.*
Page 2, Chap. I.1	Legislative Framework Article 37 (3) of Regulation No. 726/2004 describes information about all refusals and the reasons for them, which shall be made publicly available. This article may also be mentioned under section II. Reasoning: The reason for a refusal could be of commercially confidential nature.		Agreed: reference added.
III. GENERAL PRINCIPLES			
Page 3/5	If EMEA intends to disclose documents, wholly or partly, the applicant shall be informed hereof and receive a copy of such documents, in order for the applicant to examine such material with a view to identifying confidential information. Companies engaged in the trade of goods within the EU have a right of effective court review under EU law. As	The following paragraph should be added: The company should be given the opportunity to comment on the EMEA document before publication or disclosure.	Consultation of third-party for deletion of commercially confidential information will be undertaken in accordance with the rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1) and specific procedural guideline if available (e.g. EMEA reflection paper on publication of withdrawal of MAA – (EMEA/239350/2005).

	such any company have a right to be notified prior to the granting of disclosure of confidential information, and a right of appealing decisions to this effect, ultimately to the courts, prior to any such disclosure. Otherwise an appeal is rendered pointless, as disclosure would have already taken place.		
General Principles	In reference to our general comments, we would like to have the notion of '**prior-review'** of the information proposed to be released in borderline situations, being added in this section.		As above
	The Draft identifies three specific categories of commercially confidential information, in addition to a general description. The third bullet point, covering intellectual property, should also include secret know-how. It is also more consistent to refer to unpublished aspects of trademarks and patents, as both are subject to basic publication procedures.	*Amend the second paragraph as follows:* intellectual property (<u>secret know-how and unpublished aspects of</u> trade marks, patents, etc.)	Agreed
	It should be clear that the unreasonable prejudice to commercial interests can arise directly or indirectly. In the context of competition law, for instance, indirect prejudice is specifically addressed in the 2005 Commission Notice on the rules for	*Amend the third last paragraph as follows:* Furthermore, any kind of information is considered commercially confidential if disclosure would, <u>directly or indirectly</u>, hurt the interest or, in other words, prejudice to an unreasonable degree the commercial interests of individuals or companies concerned.	No added value

	access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004.		
	It is important to recognise that the timing of disclosure of information can be an important element in assessing whether disclosure can hurt the commercial interests of an individual or company and the information should be considered commercially confidential. For example, a Paediatric Investigation Plan clearly relates to the development of the product for which it is prepared and its early disclosure would hurt the commercial interests of the company concerned. In addition, premature disclosure may cause confusion to third parties.	*Add at the end of the third last paragraph:* The timing of disclosure of information will also be taken into account when assessing whether specific information is commercially confidential. In addition, early disclosure that can result in confusion shall be avoided.	These principles should be read in conjunction with the rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1). Other annexes for the application of those principles could be developed as appropriate.
	The guideline should recognise that information that on its own may be considered less important can nevertheless be commercially confidential because of the context in which it can be placed.	*Add before the second last paragraph (i.e. before "These principles …"):* Information can be commercially confidential because of the context within which it must be assessed (such as the link that can be made with other information).	Not accepted.
	It is useful to add a principle on consultation with the interested party, which will typically be the marketing authorisation holder or applicant.	*Add before the second last paragraph (i.e. before "These principles …"):* Before disclosure is made, the marketing authorisation holder or applicant (or where relevant, any other interested party whose information may be disclosed) shall be consulted before such disclosure. This will allow the	Consultation of third-party for deletion of commercially confidential information will be undertaken in accordance with the rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1) and

		marketing authorisation holder, applicant, or third party the opportunity to identify specific information that is held as commercially confidential.	specific procedural guideline if available (e.g. EMEA reflection paper on publication of withdrawal of MAA - EMEA/239350/2005).
	It is useful to state that the absence of marking data as confidential does not imply that they are not confidential. A marking requirement would not be practical and also not be in line with legal principles.	*Add before the second last paragraph (i.e. before "These principles …")* The fact that information is not specifically marked "confidential" will not be taken into account in determining whether the information is commercially confidential. Persons submitting information to the EMEA can, of course, voluntarily identify information (or specific summaries of information) as non-confidential.	Out of scope; procedural aspect. See also above.
	It is important to recognise that information that typically is not confidential can in specific circumstances nevertheless be confidential.	*Add at the end of the last paragraph:* … above principles in other fields. In specific circumstances, information that is normally not considered commercially confidential in line with the classification in an Annex , shall nevertheless be considered confidential if the need for this is demonstrated by the marketing authorisation holder or applicant.	Annex 1 foresees that a company should provide justification for requiring that some information would be considered commercially confidential.
General p. 3/5	In 'General Principles', there is no mention of the need for prior review (by the owner of the commercially confidential information) of the information that EMEA propose to release. EFPIA believe that this important principle and the process to be used for the consultation should be included in this section. The names of individuals employed by companies should be deleted from any documents prior to release. This should	This may be implicit in this paragraph under 'General Principles' but should be made more explicit by a statement to that effect in Annex 1, e.g. "The names of individuals employed by companies will be deleted from any documents prior to release." *Proposed additional statement:* "The names of individuals employed by companies will be deleted from any documents prior to release."	This document does not address issues of protection of personal data and public interest that are not related to commercial interest. However, it has been made clear in the document that principles on deletion of commercially confidential information shall comply with rules on individual data protection.

	be explicit in section 'General Principles'.		
2nd paragraph, bullet 2, p. 3/5	"Commercial confidences" includes other examples such as pricing and cost data	*Change "i.e." to "e.g." and add statement:* "commercial confidences (e.g. structures and development plans of a company, financial data such as cost structure, etc.)"	"i.e." replaced by "e.g."
2nd paragraph, bullet 3, p.2-3/5	The third bullet states that "intellectual property (trademarks, patents etc.)" are considered "commercially confidential information". This statement is somewhat confusing and ambiguous. Is the intention that the data supporting the intellectual property, before it is published, is commercially confidential? Further clarity is needed. In the category of intellectual property, know how should also be protected	*Change to:* "Intellectual property (e.g. know-how and information supporting trademarks, patents, etc.)"	Taken into account
3rd paragraph, p. 3/5	Using the wording "to an unreasonable degree" in relation to prejudice to commercial interests adds an addition layer of subjectivity to the concept of prejudice to commercial interests, which is not helpful and is likely to cause further confusion for those dealing with requests for disclosure of information and the phrase should be deleted. It is recommended that the wording of this sentence reflect the wording of article 4 of Regulation 1049/2001	*Change to:* "Furthermore, any kind of information is considered commercially confidential if disclosure would hurt the interest or would undermine the protection of the commercial interests of individuals or companies concerned, including intellectual property.	Original wording considered more relevant for the purpose of this section.
3rd paragraph, p. 3/5	It is assumed that clinical data would not be disclosed to a degree that would impact regulatory data protection. However, this should be made clear as a	*Add:* "For example, information regarding non-clinical or clinical safety and efficacy will not be disclosed to a degree that could impact	These principles concern commercially confidential information and should be read in conjunction with the rules on access to

	specific example in the paragraph that discussed prejudice to the commercial interests of individuals/companies.	regulatory data protection."	EMEA documents (EMEA/MB/203359/2006 Rev 1).
3rd paragraph, p. 3/5	The names of individuals employed by companies should be deleted from any documents prior to release. This may be implicit in this paragraph under 'General Principles' but should be made more explicit by a statement to that effect in Annex 1, e.g. "The names of individuals employed by companies will be deleted from any documents prior to release."		This document does not address issues of protection of personal data and of public interest that are not related to commercial interest. However, it has been made clear in the document that principles on deletion of commercially confidential information shall comply with rules on individual data protection.
Trade secrets	This is defined in the consultation document to include "*formulas, programs, process or information contained or embodied in a product*". Any product information that has bearing on the product's mechanism of action in the human body, components, characteristics, safety, effectiveness, or other effects on the human body should be explicitly excluded from this definition of trade secrets. (…) Additionally, given the importance of public disclosure of formulas in patents to an extent that allows for generic production under compulsory licensing procedures (for example for production of anti-retrovirals in the countries most affected by HIV/AIDS), EMEA must not be complicit in maintaining trade secrets that should have been disclosed in a patent. The patent is supposed to provide sufficient information for a person 'skilled in the art' to replicate the processes it describes.	*Recommendations concerning trade secrets:* 1. Trade secrets should be limited to aspects of manufacturing for which disclosure is not required in product or process patents; 2. Trade secrets cannot include any data concerning a product's mechanisms of action, components, characteristics, safety, effectiveness or other effects on the human body; 3. Protocols and results of laboratory, animal and clinical trials cannot be considered to be trade secrets; 4. Reviewers' evaluations of research results and explanations of the basis for regulatory decisions (including refusals and withdrawals of applications) are not trade secrets; 5. If information is deemed to be a trade secret, that should have been disclosed in the product patent (i.e. concerning the formula or production process), EMEA should contact the European Patent Office.	The principles section of the guideline considered that "confidential intellectual property, "know-how" and trade secrets (including e.g. formulas, programs, process or information contained or embodied in a product, unpublished aspects of trade marks, patents etc.)" as commercially confidential. Other remarks are consistent with Annex 1 proposals. EMEA will ultimately decide on confidential aspect after considering justification provided by the applicant. The necessity to consult the European Patent Office (EPO) is not foreseen.

Commercial confidences	Commercial confidences are defined in the consultation paper as structures and development plans of a company. Insofar as this category is unrelated to the properties or distribution of specific medicinal products, it is not addressed in this paper. However, commercial confidences must not extend to include data that can assist with an understanding of the public health implication of a medicine's use. For example, sales volume data within the European Union and/or individual member states provide important denominators for safety assessment. Information of a kind that might be provided in Periodic Safety Update Reports (PSURs) should be explicitly excluded from a definition of commercial confidences.	*Recommendations concerning commercial confidences:* 1. Properties of medicinal products, and scientific evaluations of the effectiveness, safety, other characteristics and effects on the human body of these products, should be explicitly excluded from the definition of commercial confidences; 2. Periodic Safety Update Reports should be excluded from the definition of commercial confidences, including data on volume of sales, as this provides a denominator for safety assessments.	Consistent with Annex I PSURs are not addressed in this document. However, in the future, additional annexes will be developed and the general principles will apply.
Intellectual Property	Intellectual property (such as trademarks or patents) is in the public domain and should not be included in the definition of commercial confidentiality except on a time-limited basis following an initial patent application. The contents of an EU patent are confidential until 18 months after the priority date (first submission anywhere in the world). The patent application is then published at 18 months, regardless of whether or not the patent is later granted. Once published, it is in the public domain. Given that pharmaceutical patents are applied for relatively early in the development process, the EMEA rarely if ever	*Recommendations concerning intellectual property:* 1. Any information in patents and trademarks that is in the public domain should be excluded from the definition of commercial confidentiality. 2. If commercial confidentiality is claimed under intellectual property provisions, EMEA should check with the European Patent Office to establish whether the information is already available within the public domain, and only grant commercial confidentiality on a time-limited basis where this is applicable (within 18 months after the priority date, with commercial confidentiality no longer applying at 18 months).	Unpublished aspects of trademarks and patents could be considered commercially confidential. EMEA will ultimately decide on confidential aspect after considering justification provided by the applicant. The necessity to consult the EPO is not foreseen.

	receives a submission for market approval of a patented drug when the patent has not been published in at least one patent jurisdiction.		
Any kind of information that is detrimental to commercial interests: Unacceptable general principle on commercial confidentiality	The proposed test – "would hurt the interests" – is so all-encompassing as to be meaningless as a stimulus to transparency. It would give companies virtually unlimited and unchallengeable rights to insist on non-disclosure. Nor is the proposed test in any way redeemed by the rider, "prejudice to an unreasonable degree", since the basis of reasoning is not adequately defined and no precedence is given to protection of public health over potential harm to a company's commercial interests. (…) Under the general principle that "any kind of information that is detrimental to commercial interests" may be considered commercial confidential, commercial confidentiality could have been claimed by manufacturers of SSRI antidepressants as a reason not to disclose information from clinical trials in children and adolescents concerning lack of efficacy and the potential for serious harm, including increased suicidality and aggression. Under this general principle, the additional data concerning harmful effects of rofecoxib (Vioxx) that was available from the full, unpublished report of the results of the VIGOR trial would not have become publicly available.	*Recommendations:* 1. The definition of commercial confidentiality as "any kind of information… if disclosure would hurt the interests or, in other words, prejudice to an unreasonable degree the commercial interests of individuals or companies concerned" is inconsistent with European principles of transparency and with public health aims of drug regulation. It should be deleted and replaced with wording that [a] underlines the general principle of a public right to know; and [b] safeguards the producers' interests by permitting the withholding of information where disclosure might be expected to cause "substantial harm" to commercial interests when the information concerned excludes health-related information, as described in point [2] below. 2. Any definition of commercial confidentiality in terms of deleterious effects on commercial interests should explicitly exclude all information that is relevant to a product's characteristics, components, characteristics, and effects on the human body, including all protocols and results of laboratory, animal and human clinical trials and all post-market effectiveness and safety evaluations.	Transparency and openness as important measures in the promotion of public health has been emphasised in the revised document. Consistent with the principles

	Under this general principle, companies could continue to selectively publish pre-market clinical trial results, leading to a biased body of publicly available scientific evidence concerning the drug's effects on the human body and the benefits and risks of treatment. Companies naturally seek to publish good news about their products and to prevent publication of poor or indifferent results. This general principle is inconsistent with EU pharmaceutical legislation as it allows any information to be considered confidential at a company's discretion. The consultation document currently gives complete priority to commercial interests over and above the interests of public health.		
Classification of specific types of reports and information submitted to and generated by the EMEA as excluded from commercial confidentiality	In order to ensure that the public interest is served, and that European citizens have full access to the scientific evidence establishing a drug's safety and effectiveness both before and after a marketing authorisation is issued, the following documents must be in the public domain and explicitly excluded from definitions of commercial confidentiality: • Protocols of laboratory and animal studies, clinical trials, and pharmaco-epidemiological studies; • Reports of results of laboratory and animal studies, clinical trials, and pharmacoepidemiological studies;		These principles should be read in conjunction with the rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1).

	• In clinical trial reports, all data that is covered under CONSORT guidelines 6 should be in the public domain as well as full data on mortality, serious adverse events, total adverse events, and withdrawals (total and due to adverse events); • Pharmacological, medical and statistical reviewers' reports, including evaluations of the studies that are submitted in market applications • Background materials and transcripts of expert advisory committee meetings related to drug efficacy, safety or pharmacology; • Periodic Safety Update Reports.		
Expert advisory committee meetings	To improve accountability and democracy of the regulatory process, all advisory committee meetings should be held in public. Neither the background materials provided for scientific meetings concerning the safety or efficacy of an individual drug or drug class should be considered to be commercially confidential, nor should the transcripts of those meetings. Ideally, such meetings should be held in public.		Out of scope
Principles governing the redaction of information deemed to be commercially confidential	The burden of proof should be on manufacturers to provide a rationale for redaction of information from reports.	*Recommendations concerning redactions:* 1. Manufacturers should be required to provide detailed explanations of the rationale for redactions to EMEA, based on three criteria (all three criteria to be met for redactions): a. The information fits under an explicit definition of commercial confidentiality as	Justification for deletion of commercially confidential information is requested in Annex 1.

information from published reports		trade secrets, commercial confidences, or intellectual property (the latter within the first 18 months following the priority date), within the limits described above; b. Detailed evidence is provided that the redacted information has no bearing on scientific knowledge of a drug's composition, characteristics, or effect on human health. c. The information is unrelated to any research evidence on drug safety or efficacy either at the pre- or post-market stage. 2. If reviewers have raised concerns about the validity of a manufacturer's clinical trial report, or differ on classification of outcomes as compared with published or unpublished trial reports provided by the manufacturer, redaction should not be allowed. Instead, manufacturers should be provided the opportunity to respond in writing to these concerns, and the manufacturer's response also made public.	Consistent with section IV of Annex I: "Outcome of the Scientific discussion"
The process by which decisions are made about commercial confidentiality	As a general rule, information that is provided to a regulatory agency by a manufacturer as part of a request for market authorization or to meet post-market regulatory requirements should be considered public unless it meets specific, carefully outlined criteria for commercial confidentiality, as described above, and evidence has been provided that it has no bearing on a product's characteristics, components, effectiveness, safety or other effects on the human body. If information is redacted from a published document as commercially confidential or if a document, meeting or		These principles should be read in conjunction with the rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1). Procedural aspects are out of the scope of this document.

	other event is considered confidential, a timely and transparent appeal procedure should be in place, and EMEA should publish procedures for appeal. These should include an information officer or ombudsperson independent of the EMEA to whom appeals are directed.		
ANNEX 1			
Introduction			
	Any disclosure of incomplete documents concerning medicinal products following extensive extracts of confidential information would create a risk of misunderstanding or misuse.	*The following paragraph should be added:* Incomplete documents following extensive extracts of confidential information are considered confidential if disclosure would create a material risk of misunderstanding or misuse.	Not agreed since such a case is difficult to foresee.
	Under certain circumstances, disclosure of non-confidential information could lead the knowledgeable reader on to confidential information or indirectly give such reader a possibility of making assumptions about the existence of confidential information.	*The following paragraph should be added:* Information that is not by itself confidential shall not be disclosed if it is likely to lead the knowledgeable reader on to confidential information.	Not agreed.
	In general, PhRMA strongly agrees that all the types of information outlined as commercially confidential in the Annex 1 are indeed confidential and must not be disclosed to third parties. The following comments add specific points.		
2nd paragraph	PhRMA recognises that the information in the assessment reports must be sufficiently complete to provide useful information to the public. However, to	*Add at the end of the second paragraph:* However, the disclosure shall be limited to what is required to provide the public with necessary	Not agreed. The principles should apply to both publication of information and access to document.

	protect the legitimate interests of the person who submitted the information, it is important that the disclosure is limited to what is required to provide the public with necessary and sufficient information.	and sufficient information.	
2nd paragraph, p. 4/5	Mention of the TRIPSs agreement should be added to this paragraph.	*Change to:* "The objective of the publication of assessment reports is to make information concerning marketing authorisations as well as refusals and withdrawals of marketing authorisation applications for medicinal products accessible to public, subject to the provisions of Art. 39 TRIPS. For this reason the information should be comprehensive and complete, whilst respecting that commercially confidential information should be deleted and the published part should be indicated as being subject to the reservations of Art. 39 (3) TRIPS. Information that is already in the public domain is not considered as commercially confidential but may be subject to the reservations of Art. 39 TRIPS."	A reference has been added to section II of the main document (Legislative framework) as follows: *"The EMEA Principles on deletion of commercially confidential information have also been prepared in the light of Article 39(3) of the Trade-Related Aspects of Intellectual Property Rights ("TRIPS") Agreement."*
3rd Paragraph, p. 4/5	It should be clarified that there could be exceptions to the statement that "information that is already in the public domain is not considered as commercially confidential." If information is in the public domain due to a breach of law, it should still be treated as potentially commercially confidential and must be assessed according to the principles in this document.		Accepted as follows: *"In case, information has been in the public domain through a breach of the law, it could still be considered confidential in accordance with the principles of this document. However, the owner of the information has to inform the EMEA in writing on the breach of law."*

Page 4/5, Chap. I.2, §2	The last sentence of the second paragraph should be amended as the use of the word "comprehensive" is already sufficient and the additional use of the word "complete" is unnecessary as it will create a conflict with the need to delete unnecessary or confidential detail.	*"For this reason the information should be comprehensive ~~and complete~~, whilst respecting that commercially confidential information should be deleted."*	Not agreed, comprehensive and complete are complementary.
I. Information on the Quality and Manufacturing of Medicines			
General, pages 4-5/5	A general statement should be made under the main heading of section I. This statement should provide some examples of information on items considered commercially confidential because they are not available in the public domain and may be part of the patent strategy and future life cycle management plans for the product.	*Add:* "Any critical characteristics and parameters of the active pharmaceutical ingredient(s), excipient(s) and/or the drug product are considered commercially confidential information. This includes information on polymorphism, isomers, impurities, and degradation products." Information relating to novel or patented packaging and medical devices is also commercially confidential information	This comment has been taken into account for impurities, degradation products and polymorphism. Concerning the chiral form of a molecule or its geometric isomerism (e.g. R / S- isomers; or Z/E- isomers) this is not regarded as confidential where it is explicit in the systematic chemical name – the IUPAC name for example. The comment on packaging and medical device is in line with the general principles describing commercially confidential information.
General	The specific composition of placebo product is useful for other products' development or new indications. Placebo-controlled studies are often delayed or not conducted due to the difficulties to manufacture the placebo. Therefore the section Information on the Quality and Manufacturing of Medicines could include a 1.4 paragraph setting rules on the deletion of commercially confidential information for the placebo products.		The same principles will apply to all products used in comparative clinical trials.

I.1 Composition and product development			
1st paragraph	Bioequivalence studies contain highly confidential information, which would be of substantial value to the competitors of a generic manufacturer.	In general, pharmaceutical development information is commercially confidential. This includes detailed data concerning active substance, formulation and manufacturing and test procedures and validation (see later). The summary and supportive data of clinical studies, including bioequivalence studies are commercially confidential.	Not agreed. The same principles regarding quality, non-clinical and clinical data will apply to both brand leader and generic manufacturer.
3rd paragraph	On the market for generic pharmaceuticals any information about employees, manufacturers, business partner and suppliers, constitute essential trade secrets	In general, the names of employees, manufacturers, business partners or suppliers are accepted as commercially confidential, unless disclosure is necessary for public health reasons, (e.g. for some biological products).	This document does not address issues of protection of personal data and of public interest that are not related to commercial interest. However, it has been made clear in the document that principles on deletion of commercially confidential information shall comply with rules on individual data protection.
3rd paragraph	We would like to suggest the following modifications (additions in bold):	*In general, the names of manufacturers or suppliers of excipients are accepted as commercially confidential, unless disclosure is necessary for public health reasons, (e.g. for some biological products). Suppliers of active substances should also be accepted as commercially confidential.*	Accepted, unless disclosure is necessary for public health reasons.
	The source of an API is commercially extremely sensitive for generics firm due to the intense competition between companies and the actions initiated by the originators (there have already been cases where an originator's takeover of an API supplier has delayed generic entry to the market for many months; the Lundbeck buy-out of VIZ in Italy is a good example). Thus, the names of	The proposed text of this paragraph: *In general, the names of employees, all business partners,* as *well as the names of manufacturers or suppliers of active substance(s)and excipients are accepted as commercially confidential unless disclosure is necessary for public health reasons, (e.g. for certain biological products).*	Agreed; names of manufacturers or suppliers of active substance or excipients can be accepted as commercially confidential, unless disclosure is necessary for public health reasons This document does not address issues of protection of personal data and of public interest that are not related to commercial interest. However, it has been made clear in the document that principles on deletion of

	manufacturers or suppliers of active substance(s) should also be treated as commercially confidential.		commercially confidential information shall comply with rules on individual data protection.
	All pharmaceutical development information must be presumed to be commercially confidential. "In general" should therefore be deleted from the first paragraph.	*Amend the first paragraph as follows:* ~~In general, p~~Pharmaceutical development information is presumed to be commercially confidential.	Not agreed
1st Paragraph p. 4/5	All pharmaceutical development information is commercially confidential; 'In general' should therefore be deleted from the start of this paragraph.	*Change to:* "Pharmaceutical development information is commercially confidential. This includes detailed data concerning active substance, formulation and manufacturing and test procedures and validation (see later)."	Not agreed
2nd paragraph p. 4/5	EFPIA agree that the quantitative formulation of a product should be considered commercially confidential since this composition (which includes overages for excipients etc.) is the result of an in-depth product development programme by the manufacturer. Thus these principles should emphasise that the full formula should be regarded as commercially confidential.	*Change to:* "Only the final qualitative formulation (composition) of the authorised product described in general terms (as it appears in the summary of product characteristics and patient information leaflet) is not commercially confidential."	Not agreed
3rd paragraph p. 4-5/5	It is agreed that generally the names of all manufacturers and suppliers are confidential information. It should be noted that normally a secrecy agreement is signed between the parties so disclosure could represent a breach of confidentiality. Also, the public health issues around any excipient, even biological, is addressed	*Delete:* "unless disclosure is necessary for public health reasons, (e.g. for some biological products)."	Not agreed

	in the application and complies with regulations to ensure safety thus no disclosure should be required for public health reasons.		
Page 4, Chap. I.1	Not only the development information of pharmaceutical products but also the development of biologicals is commercially confidential.	The first sentence should read: "*In general, ~~pharmaceutical~~ product development information*…"	Not agreed; pharmaceutical development also concerns biotechnology products.
Page 4, Chap. I.1, 2nd §	We totally disagree with the statement that "the final qualitative formulation (composition) of the authorised product is not commercially confidential." (…) Full details should only be disclosed where this knowledge is essential for the safe administration of the medicinal product. We would like to have an explanation for which biological products it may be deemed to be necessary to disclose the name of manufacturers or suppliers of excipients. If no substantial justification is available then this part should be deleted as this general proviso is already covered by article 4(2) of Regulation 1049/2001.	*The final qualitative formulation (composition) of the authorised product is ~~not~~ commercially confidential, <u>but ingredients must be disclosed in cases where there is an over-riding public interest</u>.* *In general, the name of manufacturers or suppliers of excipients are accepted as commercially confidential, ~~unless disclosure is necessary for public health reasons (e.g. for some biological products).~~*	Not agreed (the qualitative composition is disclosed in summaries of product characteristics for example) Not agreed
I.2 Active substance			
3rd paragraph	We would like to suggest the following modifications (additions in bold) in both subsections I.2 & I.3	*"A general description of the types of test methods used and the overall appropriateness of the specification is not commercially confidential. Appropriateness of individual tests in the specifications is commercially confidential.*	Not agreed

	Due to the current discussion about INN naming, it would be useful for the sake of clarity to specify the competence of the WHO regarding the allocation of INNs. We agree that information on the structure of the active substance is not commercially confidential. However, data about polymorphism and particle size should be treated as confidential. An active substance can be described generally, including the information about whether this is a novel or an established active substance, with a reference to the relevant Pharmacopoeia.	*Information on the structure of the active substance is not commercially confidential. This will be known and published at the time of allocating the INN by the WHO. However, data about polymorphism and particle size should be treated as confidential.*	The following has been added: *"Detailed information concerning the particulars of studies regarding polymorphism and particle size should be treated as confidential. However a general statement of the results of these studies is not confidential."*
	A proviso should be made that also a general description could, in certain circumstances, be inappropriate. It is more accurate to refer to "detailed information on the test methods used and specifications and quantitative acceptance criteria established for the active substance."	*Amend the third paragraph as follows:* A general description of the types of test methods used and the appropriateness of the specification is not <u>generally</u> commercially confidential. However, detailed information on the test methods <u>used and</u> ~~included in the~~ specification<u>s and quantitative acceptance criteria established for</u> ~~of~~ the active substance ~~and the quantitative acceptance criteria~~ are commercially confidential, unless the tests <u>meet</u> ~~are of~~ <u>specific monographs in the European</u> Pharmacopoeia<u></u>~~l standard~~<u>.</u> <u>In addition, where a general description could result in disclosure of otherwise confidential information, the whole of the information shall be considered commercially confidential and shall not be disclosed.</u>	Revised part of the text on methods and specification agreed.

3rd paragraph, p. 4/5	The limits for monographed active ingredients follow the monographs of the Ph Eur. Company specifications which include additional parameters (compared with the Ph.Eur. monograph) or changes to pharmacopoeial limits are the result of a development programme and / or experience with production and are commercially confidential. This is independent from the question of whether a pharmacopoeial or self-established method of analysis is used.	*Change to:* "…unless tests and acceptance criteria are the same as those in the European Pharmacopoeia'.	See comment above.
4th paragraph 4, p. 4-5/5	Further clarification on the aspects of documentation for biotechnology products, which are considered commercially confidential should be provided (see proposed change).	*Change to:* "For biotechnology products, a general description of the active ingredient including type of molecule (e.g. humanized monoclonal antibody, human hormone or of the type of <u>producer cell (e.g. microbial, mammalian)</u> is not considered commercially confidential. A general statement on the establishment of the Master Cell Bank (MCB) or Working Cell Bank (WCB) and on the stability of the cell banks is also not considered commercially confidential. Information on the cell line is commercially confidential. General information on the fermentation and purification process may be in the public domain e.g. via patent information, otherwise it is commercially confidential. Details on the validation of the active substance manufacturing process (including operating parameters and specific material requirements) are commercially confidential, although statements confirming that the manufacturing and control processes have been validated are not commercially confidential. General information on the characterization of the active	Wording revised as follows: *"In addition, for biotechnology products, a general description of the active ingredient including type of molecule and its general structural features (e.g. number of amino acids, general glycosylation details) or of the type of producer cell (e.g. E. Coli, S. Cerevisiae, CHO, MDKC) is not considered commercially confidential.* *A general statement on the establishment of the Master Cell Bank (MCB) or Working Cell Bank (WCB) and on the stability of the cell banks is also not considered commercially confidential. General information on the fermentation and purification process is not commercially confidential, although details including operating parameters and specific material requirements are commercially confidential. Details on the validation of the active substance manufacturing process are commercially confidential, although statements confirming that the manufacturing and control processes have been validated are not commercially confidential.*

		ingredient and statements confirming that the molecule is appropriately characterized are not considered commercially confidential. However, characterization method details and results elucidating specific structural variants and impurities and the specific process methodology used for their control are considered commercially confidential".	*General information on the characterization of the active substance and statements confirming that the molecule is appropriately characterized are not considered commercially confidential. However, details of characterization methods are considered commercially confidential".*
	In addition to the manufacturing processes, for Biological Medicinal products, MSD believes that it is imperative that the glycosylation pattern of the molecule and the cell line it is derived from is kept confidential.		See above
Section I.2., Heading, p. 4-5/5	The costs and development efforts for formulations with new non-active ingredients are sometimes comparable to the costs and development efforts for products with new active ingredients e.g. development of Inhalers with HFA-propellants 134a and 227 which replaced the CFC-Inhalers. The data generated for this kind of new and innovative ingredient could be justified as being commercially sensitive and should also be protected.	*Change to:* "1.2 Active Substance and other novel ingredients "	The following sentence has been added at the end of section 1.2: *"The above principles will also apply to novel excipients."*
Page 4/5, Chap. I.2, §2	The last sentence of the second paragraph should be amended as the use of the word "comprehensive" is already sufficient and the additional use of the word "complete" is unnecessary as it will create a conflict with the need to delete unnecessary or confidential detail.	*"For this reason the information should be comprehensive ~~and complete~~, whilst respecting that commercially confidential information should be deleted."*	Not agreed, comprehensive and complete are complementary.
Page 4, Chap. I.2 §1	Details on the by-products and degradation products of active ingredients should be commercially	*Detailed information on the synthesis or manufacture of the active substance, <u>including details on the by-products and degradation</u>*	Agreed

	confidential as they allow to identify the route of synthesis which would make it much easier to copy (or get around) our invented active ingredients processes. Details of the validation of the manufacturing / synthesis process are considered commercially confidential.	*products of active ingredients and validation of the manufacturing / synthesis process, is commercially confidential.*	
Page 4, Chap. I.2 §2	Paragraph 2 only relates to pharmaceutical active ingredients, and not to biologicals. We disagree that the structure of the active substance is not commercially confidential. In the field of biologicals (system of INNs not valid) the kind and nature of the active does fall under commercially confidential information, e.g. genetically modified organism or organism. Accordingly there should be a derogation for biologicals. In that respect also the origin of the gene or the type of mother strain comprises an intellectual property and these data should not be disclosed.	*Information on the structure of ~~the~~ a pharmaceutical active substance is not commercially confidential. This will be known and published at the time of allocating the INN. This does not apply biologicals.*	Not necessary
I.3 Finished product			
3rd paragraph	We would like to suggest the following modifications (additions in bold) in both subsections I.2 & I.3	*"A general description of the types of test methods used and the overall appropriateness of the specification is not commercially confidential. Appropriateness of individual tests in the specifications is commercially confidential.*	Not agreed. Current text sufficient.
4th paragraph	We would like to suggest the following modifications (additions in bold)	*"Information on the outcome of stability studies (e.g. carried out in real time conditions or accelerated conditions) is not commercially confidential. Results of individual tests are commercially confidential."*	

Paragraphs 1&3 p. 5/5	In this sections and section I.2 of the document, it is stated that "detailed information" or a "detailed description" is commercially confidential, but that a "general description" is not commercially confidential. This wording is vague and open to interpretation. As both these sections involve commercially confidential information, disclosure of general descriptions should be very limited, and should take account of the fact that in certain circumstances, even a general description could prejudice commercial interests.	*Change:* The wording of sections I.2 and I.3 should be clarified to explain that disclosure of general descriptions should be very limited, and that in certain circumstances, even a general description could prejudice commercial interests.	The following has been added to the guideline:- *"A general principle in the following text is that detailed information is commercially confidential but general information should be disclosed. However, it is acknowledged that in certain circumstances, even a general description of a specific aspect could be regarded as commercially confidential, if justified."*
3rd paragraph p. 5/5	The principles need to take into account the situation where a specification for a product is based on a pharmacopoeial standard but additional work has been undertaken by the company to validate alternative tests or acceptance criteria.	*Change:* "unless the tests and the acceptance criteria are the same as the Pharmacopoeial standard".	Not agreed – it may be relevant to mention the additional tests, but not the acceptance criteria.
4th paragraph p. 5/5	In the context of a Public Assessment Report, information on stability studies is not commercially confidential but in other contexts such information should not be disclosed, unless necessary for public health reasons. Disclosure of stability studies in isolation or out of context is likely to cause confusion and may lead to incorrect conclusions on safety and efficacy. It should be emphasised that in all cases, actual stability data should remain commercially confidential.	*Change:* "Information on the outcome of stability studies (e.g. carried out in real time conditions or accelerated conditions) is not commercially confidential in the context of public assessment reports. Other disclosure where the data are not put into the relevant context should only occur where necessary for public health reasons. Actual stability data (including the test methods and the quantitative acceptance specification applied) are always considered commercially confidential."	Annex I applies only to CHMP and CVMP assessment report.

Paragraph 1.3	To add a paragraph on blood-derived products. Because of the specific safety risks, it seems of utmost importance to delete confidentiality for information on the collection of blood supply, manufacturing and control process.	Finished Product For blood-derived products, the detailed description of the collection of raw-materials, manufacturing and control processes for the product are not commercially confidential.	The principles described will apply to any products, including blood-derived products. In particular detailed information may be accepted as commercially confidential unless disclosure is necessary for public health reasons.
II. Non-Clinical and Clinical Information			
4th paragraph	Disclosure of data and results from the bioequivalence studies could cause substantial financial damage to a company. This is the case with regard to disclosure of the bioequivalence ratio.	*Paragraph 4 shall be replaced by:* Exact results from bioequivalence studies are commercially confidential, except for the fulfilment of the acceptance range applied by the competent authorities.	Not agreed. There is no reason to attribute more confidentiality to results of bioequivalence studies compared to any other study. Risk of misuse has to be addressed through proper information.
1st paragraph	We find that the first paragraph lacks somewhat precision and we would like to suggest the following rewording:	"*In general, the summarised information contained within CHMP/CVMP Assessment Reports encompassing non-clinical and clinical development of the medicinal product and the subsequent assessment by the Committee are not considered to be commercially confidential, and therefore deletion cannot be accepted as a general rule*"	Not agreed. No added value and confusing.
	We would appreciate clarification on the status of the risk management plan and the environmental risk assessment report.		Clarification has been added: the same principles will apply for information related to environmental risk assessments and risk management plans.
	The EGA's position is that certain data generated by the applicant using another manufacturer holder's product, e.g. comparative bioequivalence studies against the reference medicinal product, might be commercially confidential.	~~*Data generated by the applicant using another manufacturer holder's product, e.g. comparative studies against the reference medicinal product are not commercially confidential*~~. *General descriptions of comparative studies (e.g. bioequivalence studies) against the*	Wording revised as follows: *"Data generated by the applicant using another manufacturer holder's product, e.g. comparative studies against the reference medicinal product are not commercially confidential by virtue of this fact only. However its commercial confidentiality shall*

	We are in favor of supplying a general description of the studies as suggested below, but without giving the detailed results of these studies. The experience gained so far is very negative regarding the use of this data for anticompetitive purpose. This is particularly related to the lack of understanding of the bioequivalence principle by health professionals and the general population (e.g. lack of understanding of statistics and the interpretation of the "80%-125% ratio"). Access to this data has already provoked several court cases when the decision by the competent authorities to grant an MA for a generic product was questioned on the basis of bioequivalence studies (e.g., numerous examples in Spain, NL, DK, etc).	*reference medicinal product are not commercially confidential. However, the detailed data of these studies should be treated as confidential*	*be assessed in accordance with the principles set out in this document."*
	For clarification	However, when such studies, <u>their results</u> and their timelines are part of conditions for marketing authorisations, specific obligations or follow up measures, they are not regarded as commercially confidential information.	Accepted
Paragraphs 1 and 2	The wording in the Annex stating "<u>any</u> information encompassing non-clinical and clinical development […] are not commercially confidential," is far too broad. Unless pharmaceutical companies have agreed to the disclosure of specific non-clinical or clinical information, *e.g.* through clinical trial databases, information that goes beyond	*Amend the first two paragraphs as follows:* <u>Information on the non-clinical and clinical development is, as a general rule, commercially confidential. However, relevant summaries of the</u> ~~Any information encompassing~~ non-clinical and clinical development of the medicinal product and the subsequent assessment by the Committee are <u>in principle</u> not commercially confidential and therefore deletion <u>of essential</u>	These principles should be read in conjunction with the rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1).

	useful summaries must, as a matter of principle, be considered commercially confidential. This is, for example, the case for expert reports and study reports, as well as most of the detailed study data that are submitted to the EMEA. Regulatory submissions have to be comprehensive and can include data that are not relevant to the ultimate regulatory decision, such as, for instance, (positive or negative) data on the development of the product in a different therapeutic area. This information can disclose development plans and should not be disclosed.	parts cannot be accepted as a general rule. Following these principles, among others: ▪ Expert reports and study reports are always commercially confidential; ▪ Data that are not relevant to the regulatory decision in question, such as a decision granting a marketing authorisation, shall not be included in the summary; ▪ Specific details on methods used in a study, for example in case of proprietary or unique methods, may, possibly after justification from the company, have to be regarded as confidential information. ~~An exception to this rule would be, for example, specific details on a method used in a study, which, upon justification from the company, could be regarded ad trade secret.~~	Exception covered in Annex 1.
4th paragraph	With regard to comparative data generated using another manufacturer's product, there is no reason to apply different principles than for other non-clinical or clinical information. For example, also in this context specific details on a method used in a study could be a trade secret. The same set of principles should apply and therefore the sentence should be left out because it could suggest a special rule.	*Delete the last paragraph*	See above
	Special care should be taken to ensure that information related to non-clinical and clinical development does not reveal	*Add as the last paragraph:* Special care should be taken to ensure that information related to non-clinical and clinical	Procedural issue

	proprietary manufacturing or other information. This should be expressly recognised in the guideline.	development does not reveal proprietary manufacturing or other information.	
General p. 5/5	'Examples' of exceptions to the general rule are given in this section. This gives weight to the point that EMEA should consult with companies to discuss exceptions/borderline areas. .		Consultation of third-party for deletion of commercially confidential information will be undertaken in accordance with the rules on access to EMEA documents (EMEA/MB/203359/2006 Rev 1) and specific procedural guideline if available (e.g. EMEA reflection paper on publication of withdrawal of MAA - EMEA/239350/2005).
General p. 5/5	Risk Management plans are not specifically mentioned in this section. EFPIA would be concerned if there was an initiative to publish Risk Management Plans on a routine basis and would like it made clear that if this were so, the MAH would have input on the deletion of commercially confidential information.		Clarification added to Annex I: The same principles will apply for information related to risk management plans (and environmental risk assessments).
Paragraphs 1 and 2 p. 5/5	The text, which starts: "Any information encompassing non-clinical and clinical development of" could be open to misinterpretation. The paragraph should be revised as proposed to align with other sections of the guidance, where it is indicated that a summary is not confidential, however certain details may be confidential This annex refers specifically to CHMP/CVMP Assessment Reports where the non-clinical/clinical	*Change to:* "In general, the summarised information contained within CHMP/CVMP Assessment Reports encompassing non-clinical and clinical development of the medicinal product and the subsequent assessment by the Committee are not considered to be commercially confidential, and therefore deletion cannot be accepted as a general rule. However, specific details e.g. on a method or biological model used in a study would be considered commercially confidential."	Not agreed

	information referred to will be summarised information and not complete study reports, nevertheless EFPIA recommend re-wording the paragraph to avoid any ambiguity.		
3rd paragraph p. 5/5	A company may decide to generate additional data on their product for reasons other than investigating a new indication e.g. changing the dosing regimen. Development plans containing relating to this type of data should also be considered commercially confidential.	*Change to:* "any development plan from the company in a different indication or which aims to utilise the product in a novel way, when it is neither requested by the Committee nor related to the safety of the product. However, when such studies and their timelines are part of conditions for marketing authorisations, specific obligations or follow up measures, they are not regarded as commercially confidential information."	Sentence revised as follows for clarity: "*Another example of commercially confidential information could be a development plan from the company, e.g. in a different indication, when it is neither requested by the Committee nor related to the safety of the product*. (…)"
4th paragraph p. 5/5	This section should be amended to clarify that whilst data will not automatically be considered commercially confidential by virtue of the fact that it uses another MAH's product, such data should be assessed according to the principles stated in the preceding paragraphs. The current wording reads as though the fact that data uses another MAH's product automatically makes the data not commercially confidential, which should not be the case. There is also an error in this paragraph in referring to a manufacturer holder rather than a marketing authorisation holder.	*Change to:* "Data generated by the applicant using another marketing authorisation holder's product, e.g. comparative studies against the reference medicinal product will not automatically be considered commercially confidential by virtue of this fact, and its commercial confidentiality shall be assessed in accordance with the principles set out in this section."	Taken into account
Page 5, Chap. II §4	It should be possible to withhold the name of the reference medicinal product in comparative studies using a product		Not agreed. However, it is noted that such information has to be put in context to avoid misinterpretation. This will be achieved in

	from another MAH. This information could easily be used for marketing purposes whereby the message could distort the facts because background information and details of such study will not be reported in the EPAR.		CHMP/CVMP Assessment Reports.
III. Information on Inspections			
	Inspection reports normally contain various forms of commercially confidential information. The language used in the draft principles, that "information on the outcome" is not commercially confidential, is vague and could be applied too broadly. It should be clarified that only a general conclusion on the inspection will be made public and that the other principles will be taken into account.	*Add after the only sentence:* However, detailed information about the inspection is generally regarded as commercially confidential. Therefore, only a general conclusion, taking into account the other principles contained in this document, can be made public.	Agreed in principle. Proposed new wording: "Information on the outcome of inspections (e.g. compliance/non-compliance/outstanding issues to be addressed) is not regarded as confidential**,** however specific details e.g information regarding facilities and equipment are considered commercially confidential."
	We agree that the information on the final outcome of inspections should not be regarded as commercially confidential. We understand this point to mean that a general conclusion about compliance/ noncompliance with GMP rules will be presented without any details from the final inspection report.		Agreed in principle. See above.
Page 5/5	Any information released with regard to inspections should only be released when the inspection has been completed. In this sense 'completed' should be taken to mean when all agreed corrective actions have been taken and all correspondence	*Change to:* "Information on the outcome of inspections (e.g. Compliant to GMP or Not compliant to GMP) is not regarded as commercially confidential**,** however specific details e.g information regarding facilities and equipment and specific	Agreed in principle. See above.

	related to the inspection has been closed. The outcome of GMP inspections (in particular the details of facilities/equipment and classification of observed deficiencies) is commercially confidential. A company's response to inspection findings is also commercially confidential.	inspection findings are considered commercially confidential. The company's response to the inspection is also commercially confidential."	
Page 5, Chap. III	It should be specified what is meant with the statement: "Information of the outcome of inspection…". Part from the outcome "passed" or "failed" nothing should be disclosed as this is of a commercially confidential character.	~~Information on~~ The conclusion of the outcome of inspections is not regarded as commercially confidential. Detailed reports on the outcome of inspections are regarded as commercially confidential.	Agreed in principle. See above.
IV. Outcome of the Scientific Discussions			
	Orphan products and COMP opinions As CHMP assessments refer to the COMP opinion (in particular grounds for the significant benefit at the time of assessment of the application for marketing authorisation), the COMP opinions themselves should not be regarded as commercially confidential information.	The outcome of discussions at the level of the CHMP and CVMP, including the benefit/risk assessment, as well as at the level of other scientific groups and bodies of the Agency (e.g. working parties, scientific advisory groups, COMP etc) is not commercially confidential, but the considerations described in section I to III will apply in every case.	Annex I refer to CHMP and CVMP Assessment Reports. Other annexes may be developed as appropriate.
	We question whether release of such information is appropriate. We fear that the divulgation of such information may undermine public confidence in a certain product (for example in case where positive approval was based on a		Not agreed. Information to be disclosed for transparency.

	marginally positive committee opinion). We suggest deleting this sentence.		
3rd paragraph p. 5/5	The following sentence is of concern "Divergent views within a Committee, as well as data related to the concerns raised are not commercially confidential." We believe that the inappropriate release of such information could seriously undermine the public confidence in a particular product, for example, in a situation where regulatory approval was based on a marginally positive committee Opinion. This could create a significant Public Health issue if reduced public confidence in the safety and/or efficacy of a particular product resulted in reduced patient compliance with a course of treatment prescribed by their doctor.	Delete this sentence.	Not agreed Information to be disclosed for transparency.
Page 5/5	It would be useful to clarify that this section will be applied in accordance with Article 4.3 of the "Rules for the implementation of regulation (EC) No 1049/2001 on access to EMEA documents" (EMEA/MB/203359/2006), and that access to information which relates to a matter where a decision has not been taken, or where disclosure would seriously undermine the Agency's decision-making process, shall be refused unless there is an overriding public interest in disclosure.	*Add to the end of section IV:* "For the avoidance of doubt, the above principles will be applied in accordance with Article 4.3 of the "Rules for the implementation of regulation (EC) No 1049/2001 on access to EMEA documents" (EMEA/MB/203359/2006). Therefore access to information which relates to a matter where a decision has not been taken, or where disclosure would seriously undermine the Agency's decision-making process, shall be refused unless there is an overriding public interest in disclosure."	Addressed within the principles.

Page 5, Chap.IV §3	Depending on the issue the data relating to a divergent view could be deemed to be commercially confidential.	"Divergent views within the Committee, as well as ~~data~~ the summarised reasons related to the concerns raised are not commercially confidential."	Information to be disclosed for transparency.