

Closing note on the Strategic Initiative on the European Commission's transparency obligations in the context of the forthcoming review of EU tobacco legislation (SI/1/2021/KR)

Correspondence - 12/07/2021

Case SI/1/2021/KR - Opened on 11/02/2021 - Decision on 12/07/2021 - Institution concerned European Commission |

Background

As a party to the WHO Framework Convention on Tobacco Control (FCTC) [1], the EU has committed to protecting public health policies from the tobacco industry.

In December 2016, the Ombudsman concluded an inquiry concerning the obligations of the European Commission under Article 5(3) of the FCTC to be transparent in any dealings with the tobacco industry. [2]

The Ombudsman found that the Commission's failure to apply, across all of its services, the stricter transparency rules applied by its Directorate-General Health and Consumers (DG Health) regarding the publication online of all meetings with tobacco industry representatives, and the publication of minutes of such meetings, constituted maladministration. [3]

The Ombudsman recommended that the Commission should ensure that the proactive transparency policy put in place by DG Health, requiring the publication online of all the meetings its staff have with tobacco industry representatives and the minutes taken of those meetings, should apply across all of the Commission's services irrespective of the seniority of the official concerned and including, specifically, members of its Legal Service. [4]

Strategic initiative

In the context of the upcoming revision of EU legislation related to tobacco products, the European Ombudsman wrote to the Commission to emphasise the relevance of its obligations when it comes to the transparency of interactions with interest representatives from the tobacco industry. [5] It is the Ombudsman's understanding that it is still the case that, apart from DG



Health, the Commission does not proactively publish all information on interactions between the Commission and the tobacco industry.

Related to this, the Ombudsman noted that the Commission, at the end of 2020, had authorised a former Commissioner to take up a position with a communications consultancy, whose largest EU client is a global tobacco company. [6] She urged the Commission to take all necessary steps to monitor that the former Commissioner complies with the conditions the Commission placed on his new role, one of sixteen positions that the Commission has authorised for this former Commissioner during the applicable notification period.

Reply

The Commission replied, setting out steps it had taken in relation to the upcoming revision and detailing assurances received by the former Commissioner concerning the post in question. [7]

The letter summarises various related developments in the area of ethics and transparency, including the 2018 code of conduct for Commissioners [8] , the agreement on a 'mandatory Transparency Register' between Parliament, Council and Commission [9] , the 2014 reform of the Staff Regulations [10] , and the Commission decision on outside activities [11] .

On the upcoming revision of tobacco-related legislation, the Commission said it had reminded the Commission, at the level of Directors-General and Commissioners' Cabinets, of the obligations under the FCTC, including the non-binding guidelines for the implementation of Article 5(3), recommending to refrain from participation in events or platforms involving (health) policy aims or debates where the tobacco industry, openly or covertly, is a sponsor, member or participant. [12]

On the former Commissioner's approved position with a consultancy with a tobacco company as one of its biggest clients, the Commission said that the former Commissioner confirmed to the Commission that he did not and would not, directly nor indirectly, advise the tobacco company, including in his professional activity in general. [13]

On the number of post-employment authorisations of the former Commissioner, the Commission said: "*the number [...] as such does not seem relevant in the framework of the current strategic initiative launched by the European Ombudsman in the context of the upcoming revision of tobacco related legislation.*"

The Ombudsman will continue to monitor developments closely in this important area.

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[1] See: https://www.who.int/fctc/treaty_instruments/adopted/article_5_3/en/ [Link].

[2] See: <https://www.ombudsman.europa.eu/en/decision/en/73774> [Link].

[3] See: <https://www.ombudsman.europa.eu/en/recommendation/en/61021> [Link].

[4] Idem.

[5] See: <https://www.ombudsman.europa.eu/en/correspondence/en/138070> [Link].

[6] See: https://ec.europa.eu/info/files/commission-decision-c-2020-9044_en [Link].

[7] See: <https://www.ombudsman.europa.eu/en/correspondence/en/142498> [Link].

[8] See:
https://ec.europa.eu/info/sites/default/files/code-of-conduct-for-commissioners-2018_en_0.pdf
[Link].

[9] See:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2021.207.01.0001.01.ENG
[Link].

[10] See:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link].

[11] See:
https://www.era.europa.eu/sites/default/files/agency/docs/decision/decision_n182_commission_decision_on_outside
[Link].

[12] In an internal note was circulated in summer 2020.

[13] In a letter from the former Commissioner to the Commission of 17 March 2021