

Report on the meeting of the European Ombudsman inquiry team with the European Commission's representatives

Correspondence - 20/05/2023

Case OI/6/2021/KR - **Opened on** 26/11/2021 - **Decision on** 19/12/2023 - **Institution concerned** European Commission (Maladministration found) |

Case title : The transparency of the European Commission's interactions with representatives of the tobacco industry

Date : Thursday, 05 May 2022

Remote meeting

Present

Commission representatives:

DG SANTE

Deputy Head of Unit

Team Leader Tobacco Control Law and International

Legal Officer

SG

Deputy Head of Unit

Team Leader - Transparency Register

Policy Officer - Transparency Register

Senior Expert - Coordinator for inter-institutional Relations - relations with the European Ombudsman



Trainee

DG TAXUD

Legal Officer - Coordinator for request of access to documents and comitology

DG TRADE

Policy Officer - Trade aspects of rules of origin

Administrative Agent - Administrative support to the Unit, particularly EP team

DG NEAR

Legal Officer

Coordination Assistant for inter-institutional Relations

Ombudsman representatives:

Ms Jennifer King, Legal Expert

Ms Leticia Díez Sánchez, Inquiries Officer

Mr Koen Roovers, Inquiries Officer

Ms Nina Klubert, Inquiries Trainee

Purpose of the meeting

When opening the strategic inquiry in November 2021, the Ombudsman asked for an inspection of certain documents the Commission holds regarding its interactions with representatives of the tobacco industry. [1]

The purpose of the meeting was to clarify certain questions that arose when analysing the requested documents. The questions were shared with the Commission in advance of the meeting.

Introduction and procedural information

The Ombudsman inquiry team introduced themselves, thanked the Commission's representatives for meeting with them and set out the purpose of the meeting. The inquiry team



outlined the legal framework that applies to inspections and meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified as confidential to any person outside the Ombudsman's Office, without the prior consent of the Commission.

The Ombudsman inquiry team explained that a report on the meeting would be drawn up and that the draft would be sent to the Commission for review to ensure it was factually accurate and complete.

Information exchanged

The discussion focused on the questions that had been shared with the Commission in advance of the meeting.

I. Could the Commission please provide an overview of any actions it may have undertaken to follow-up on the Ombudsman's Decision of 2016 concerning the European Commission's compliance with the Tobacco Control Convention?

The Commission representatives explained the Commission's broad transparency policy, and in particular requirements concerning its interactions with tobacco representatives. The general regime is set out in two Commission decisions [2] adopted in 2014. These require the publication of all meetings that take place between interest representatives and Commissioners, their cabinet members and Directors-General. Furthermore, Commissioners, their cabinet members and Directors-General can only meet with interest representatives who are registered in the Transparency Register. These rules do not apply to staff members below Director-General level [3]. The representatives explained that when the Commission publishes the details of its meetings with interest representatives on the Commission's websites, this is automatically uploaded to the website of the Transparency Register too.

The Commission representatives explained that DG SANTE follows a special regime, as it proactively makes public its meetings with staff members *at all levels*, as well as the summary records of such meetings, on a dedicated website. In compliance with the WHO Framework Convention on Tobacco Control (FCTC) Guidelines, DG SANTE has reduced its meetings with the tobacco industry to only those which are strictly necessary for regulatory purposes. This can happen, for example, when the Commission needs to verify some practical aspects of the supply chain throughout the policy-making process. In such cases, DG SANTE usually organises a wider event in which other parties, such as civil society representatives, are also invited to provide their views. DG SANTE does not generally accept meeting requests made by the tobacco industry alone, as a result of which it does not receive many such requests anymore.

DG TAXUD has followed the same special regime as DG SANTE since 2021.

The Commission representatives explained that DG SANTE and DG TAXUD each produced a note, which were transmitted to the Ombudsman following her inspection request of November



2021.

The note from DG SANTE was distributed on 16 July 2020 to the Directors-General of all Commission DGs. It reminded them of the content of Article 5.3 of the FCTC and the Guidelines adopted under the Convention. The note also explains some recommended practices beyond the standard checks in the Transparency Register, such as refraining from participating in events sponsored by the tobacco industry.

The note from DG TAXUD was distributed on 26 April 2021 to its Directors and Heads of Unit. It recalled the FCTC Guidelines and listed good practices, in addition to the general standards of ethical behaviour, concerning interactions between staff and representatives from the tobacco industry. The note reminded staff members that Commissioners, their cabinet members and Directors-General must publish these meetings through the dedicated IT tool. The summary record of all meetings with tobacco interest groups is registered in ARES and published on a dedicated website. Moreover, DG TAXUD has an internal webpage on which it publishes information relevant to staff members.

DG TAXUD's representatives further explained that the minutes of meetings with interest representatives from the tobacco industry are proactively published on its website. Since it started with this proactive publication, it has experienced a fall in the number of public access to documents requests it receives.

The Commission representatives noted that these more stringent transparency obligations apply to DG SANTE and DG TAXUD because they hold most meetings with the tobacco industry, while other DGs have such meetings only occasionally.

DG SANTE's representatives explained that their DG provides advice upon request to colleagues from the other DGs - for example DG Environment and DG Climate Action - concerning meetings with tobacco interest representatives. For example, DG SANTE receives emails/questions from colleagues concerning requests for a meeting from the tobacco industry or asking whether they can participate in events sponsored by the tobacco industry. In such cases, DG SANTE usually advises colleagues to refrain from participating unless participation is absolutely necessary. In response to a request from the Ombudsman inquiry team, the Commission agreed to provide examples of such advice after the meeting.

Lastly, the Commission representatives noted that the Commission published the Ombudsman's "*Practical recommendations for public officials' interaction with interest representatives*" on the Commission's intranet and has included them in its Ethics Guide for staff members.

II. Could the Commission please double-check if there are any further meetings falling within the scope of the Ombudsman's request?

The Commission representatives clarified that the list of meetings sent to the Ombudsman, in the form of an Excel sheet, was manually retrieved by searching in the Transparency Register



[4] . As a result, the list included meetings held by Commissioners, their cabinet members and Directors-General but not by staff below Director-General level. As regards further meetings involving staff below DG level, the Commission focused its search on DGs SANTE, TAXUD and TRADE, as it considered they were the most concerned DGs when it comes to tobacco lobbying, but also those DGs that received applications for access to documents in the reference period i.e. DG NEAR. This was the reason why representatives from these DGs had been invited to the meeting with the Ombudsman inquiry team.

The Commission representatives agreed to carry out another search to include details of meetings of *all* staff members in *all* DGs and to submit its records to the Ombudsman in the coming weeks.

III. Together with the list of relevant meetings, could the Commission please also provide the minutes of these meetings?

The Commission representatives agreed to identify the minutes of meetings with tobacco interest representatives and to submit a copy of those to the Ombudsman in the coming weeks, if available.

In this context, the Ombudsman inquiry team asked the Commission representatives if there existed any **internal guidelines on how to take the minutes of the meetings** with interest representatives, in general, and with tobacco interest representatives, in particular.

The Commission representatives replied that there is no standard practice of how to take meeting minutes.

The representatives of DG SANTE explained that its staff members are instructed to use common sense. They should try to cover all relevant points of the meeting, such as where and when it took place, what the points discussed were and who participated, while respecting personal data. Furthermore, the minutes should be drafted in such a way that they constitute a useful record of the meeting. Before publishing the summary reports of the meetings, DG SANTE representatives confirmed that they usually send them to the parties, who were present for their information and comments, but this practice does not affect the content of the meeting reports substantially.

The representatives of DG TAXUD explained that the DG has similar requirements. It asks staff members to ensure that the minutes are factual and objective and that they respect personal data. Staff members must also inform the participants that the minutes will be published following the meeting and ask if they want to be consulted on it.

IV. Could the Commission please explain the criteria it takes into account when classifying certain organisations as “tobacco-related organisations”?

The Commission representatives explained that the list of meetings involving Members of the Commission, their Cabinet members and Directors-General provided to the Ombudsman was



manually extracted from the Transparency Register by using tobacco-related keywords, and that this refers to public information. Meetings that were, in the Commission's view, not industry related were not included in the list but they would be publicly available on Europa and on the Transparency Register.

The Ombudsman inquiry team followed up with some questions concerning the functioning of the Transparency Register. Firstly, the inquiry team asked how the Commission interpreted the terms "membership" and "affiliation" in the section of the Transparency Register entitled "*List of organisations, networks and associations that are the members and/or you are affiliated with*". Secondly, the inquiry team asked how the Secretariat ensures the accuracy of the information provided by the registrants, both at the time of registration and by means of control checks at a later stage.

The Commission representatives explained that the Transparency Register is based on an Interinstitutional Agreement between the European Parliament, the Council, and the Commission. Registrants can register and deregister at any time, therefore the Transparency Register is dynamic and subject to change. Furthermore, registration takes place on a voluntary basis. The Commission complies with the conditionality rule provided for in the Interinstitutional Agreement, requiring its decision-makers to meet only interest representatives registered in the Transparency Register.

The Commission representatives agreed that contributing on a regular basis to the funding of an organisation would normally be considered to evidence a form of "affiliation" for the purposes of the Transparency Register. To ensure that the information provided by registrants satisfies the information requirements under the Interinstitutional Agreement, the Secretariat of the Register, which is made up of staff from the Parliament, the Council and the Commission, conducts *ex ante* and *ex post* controls. All new applications have to go through an *ex-ante* check performed by a staff member for compliance with the conditions set out in the Interinstitutional Agreement. However, the ultimate responsibility for the accuracy of the information provided lies with the registrant. There are publicly available guidelines on the Transparency Register to guide applicants and registrants through the (application for) registration process. Further guidance accompanies the input fields in the form used for registration. Moreover, the Secretariat uses an internal procedure for its checks.

The Secretariat also conducts regular *ex post* checks. These are conducted where a complaint is submitted to the Secretariat or on the Secretariat's own initiative in case of a serious concern that a registrant may be ineligible including in suspected cases of inaccurate or incomplete information. The Secretariat's *ex post* checks do not focus on specific policy areas or particular categories of registrants.

The Ombudsman inquiry team asked the Commission representatives whether the Commission ensures the accuracy of the "subject of the meeting" field entered into the Commission's website and the Transparency Register. The inquiry team noted that the Commission's internal guidance for Commissioners, their cabinet members and Directors-General on meetings with interest representatives requires staff members to "*enter a meaningful subject*". This information is



crucial for the public to scrutinise if, as the FCTC guidelines state, the interactions with tobacco representatives take place only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products.

The Commission representatives explained that the responsibility for the accuracy and correctness of the meeting subject lies with the respective service. However, the subject of the meeting can be brief and broad, but it must still be meaningful in accordance with the Commission's internal guidance.

V. Concerning the requests for public access to documents on the Commission's interactions with the tobacco industry, could the Commission please also provide the Ombudsman with its responses to these requests?

The Commission representatives explained that they had interpreted the Ombudsman's request as covering only the documents containing the requests for access to documents. The Commission confirmed that it will provide the Ombudsman with a copy of the responses given to these requests.

Conclusion of the meeting

The Ombudsman inquiry team thanked the Commission representatives for the explanations and clarifications provided.

The Ombudsman inquiry team informed the Commission that, following the analysis of the documents that the Commission has agreed to share with the Ombudsman, it may schedule another meeting in the near future.

Follow-up

The Commission representatives agreed to share with the European Ombudsman:

- A list of meetings with the tobacco industry or organisations related to the tobacco industry of all staff members, also below Director-General level in all DGs, the Secretariat-General and the Legal Service and minutes if available.
- The Commission's responses to the public access to document requests it received in 2020 and 2021 concerning meetings with the tobacco industry.
- Examples of exchanges and advice given by DG SANTE to staff members in other Commission DGs concerning meetings with tobacco interest representatives.

Brussels, 20/05/2022

Leticia Díez Sánchez Jennifer King

Inquiries Officer Legal Expert



[1] Letter from the European Ombudsman to the European Commission on the transparency of its interactions with representatives of the tobacco industry:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/149744> [Link]

[2] [Commission Decision 2014/839/EU of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals](#) [Link] and [Commission Decision 2014/838/EU of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals](#) [Link].

[3] However, the Commission addresses a standard recommendation to all its staff to refrain from engaging in contacts with non-registered interest representatives.

[4] The [Transparency Register](#) [Link] is a database listing ‘interest representatives’ (organisations, associations, groups and self-employed individuals) who carry out activities to influence the EU policy and decision-making process. The [Interinstitutional Agreement](#) [Link] between the European Parliament, the Council of the European Union and the European Commission on a mandatory Transparency Register sets out the rules and principles governing the Transparency Register. The Register is managed by a Secretariat, comprising staff from the European Parliament, Council and Commission.