



## Combating tobacco industry tactics: State of play and a way forward

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High level conference **Combating tobacco industry tactics: State of play and a way forward** *European Ombudsman, Ms. Emily O'Reilly Brussels, 2 March 2016*

Good afternoon,

Thank you to the hosts and organisers for the invitation to speak to you today on such a vital issue for the health and wellbeing of people not just here but right around the world. Tobacco industry

Before I outline the details of my inquiry into the transparency of tobacco lobbying, and how the European Commission interprets the UN Framework Convention on Tobacco Control, it is worth recalling that at the core of this convention is the recognition of the tobacco industry as an industry outside of the norm, and one therefore to whom the normal rules of governmental engagement should not apply.

When used as intended, it leads to high death rates among its consumers with consequences not just for victims and their families, but also for health budgets and particularly for those in the developing world.

180 Parties ratified the Framework Convention; the only treaty to date that governs a consumer product, and which entered into force over a decade ago. The European Union signed up to the FCTC under the Prodi Commission, and it is binding on EU institutions and agencies with a role in public health policy.

On signing, former Commissioner for Health David Byrne said the Convention shows the "commitment of governments all over the world to fight the tobacco scourge and protect their citizens from the worst excesses of a powerful global industry".

Parties to the Framework Convention are required to protect their respective tobacco control measures from the commercial and vested interests of the tobacco industry.

The need for specific protection measures is recognised in the Preamble of the Convention and in its Article 5.3, which requires that all signatory parties should protect their public



tobacco control policies from industry manipulation.

Dr Margaret Chan, Director-General of the World Health Organization, described the tobacco industry as a "ruthless and devious enemy" noting their systematic and often covert lobbying tactics around the world, the rationale for Article 5.3.

Another remarkable feature of the Framework Convention is its strict, plain and accessible language; It also implies a distinctively interventionist approach in dealing with the regulation of this one particular industry.

Ombudsman inquiry

In May 2014 a complaint was made to my Office by an NGO alleging that the European Commission had failed to properly implement Article 5.3 of the Convention.

In essence, the complainant alleged that a number of undisclosed Commission meetings with tobacco industry lobbyists had taken place. While the Directorate-General for Health was proactively disclosing such meetings, none of the other DGs had adopted the same practice.

The complaint was made shortly after the adoption of the revised Tobacco Products Directive, a legislative file that reportedly was the most lobbied file in EU history. The passage of the Directive included the sudden resignation of the then Health Commissioner DALLI in contested circumstances and following an OLAF investigation into bribery and other allegations. My inquiry however, relates only to the Framework Convention.

The Commission responded by emphasising its strong commitment to the Convention. In its view, parties to the Convention were however free to choose the means for compliance. This compliance, according to the Commission, was captured through the ethical framework applicable to Commissioners and their cabinets, as well as by its rules on access to documents and transparency, that is Regulation 1049/2001.

In particular the Commission argued that Regulation 1049/2001 ensures a high level of transparency allowing citizens to make a request for documents relating to tobacco industry contacts.

The Commission also argued that the need for tobacco industry lobbyists to register their activity through the EU Transparency Register, set up jointly by Parliament and the Commission in 2011, also implied signing up to its Code of Conduct that includes a number of provisions governing the relationship between the lobbyist and the EU Institutions.

Following an inspection of the meeting records of several senior Commission officials, I did not find the Commission's explanation convincing. I therefore asked the Commission to ensure that the proactive transparency policy put in place by DG Health, requiring the publication online of all tobacco industry meetings 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.



I took the view that Article 5.3 of the Convention and the implementing Guidelines, by requiring Parties to "act" to protect their health policies from commercial or other vested interests of the tobacco industry, imposed a proactive approach and not a reactive or passive one.

The Commission had failed fully to meet this requirement. While DG Health of course plays a lead role in the formulation of health policy, tobacco lobbying spans almost the entire breadth of the Commission including the Legal Service and the Secretariat General.

DG Health is also not a decision-making organ; the College of Commissioners is; and the College of the Commissioners relies on its Secretariat General and its Legal Service to reach those decisions.

The guidelines on Article 5.3 also clearly state that "all branches of government" should be pro-actively transparent and not just one branch of government.

The Commission reliance on the access to documents regime under Regulation 1049 also shifts the burden of compliance with the transparency obligation of Article 5(3) of the Framework Convention from the Commission to the citizen.

In the Recommendation I set out in detail why the scope of compliance with Article 5.3 of the Convention should not be limited.

The tobacco industry maintains that Article 5.3 contravenes existing "Better Regulation" commitments in relation to "wide public consultation" and "business impact assessment". However, the Convention does not exclude the industry from discussions but rather it limits them to the minimum necessary.

As for the EU Transparency Register I welcome the fact the Commission has proposed a mandatory register for the three main institutions, but it does not yet ensure adequate transparency. Front Groups can be hard to identify and without adequate funding disclosure it can be even more difficult fully to identify all of those who have signed up to the register. The Commission has just launched a public consultation on Register reform and I will await the outcome as it relates to those particular issues.

The net point however is that the Commission declined to accept my recommendation to extend proactive tobacco lobbying transparency across all DGs and across all levels of the service. And, given the stated commitment of the EU to the Convention, I confess to being puzzled as to why that is. It can hardly concern the issue of administrative burden. If, as the Commission says, there are few meetings with tobacco lobbyists then there is little administrative burden, and if there are a lot of meetings with tobacco lobbyists then surely that is an issue of concern? This is especially the case given the huge damage to public trust tobacco lobbying has caused the EU over many years.



I do of course acknowledge that Commissioners, their cabinets, and Directors General have to disclose meetings with all lobbyists proactively, but this still does not equate to full disclosure across the Commission.

The Juncker Commission has indeed made real progress in relation transparency and ethics, and indeed is leading not only other EU institutions in terms of lobbying transparency but also many Member States. But it can still do more and I would urge them to think again about this issue.

I am thankful for the excellent co-operation on many issues and constructive dialogue at all levels with the Commission, but their response on this particular inquiry has been disappointing. They are the executive of the European Union, the guardians of the Treaties, and need to lead on these issues as too often the sophistication of the tobacco industry's global lobbying efforts is still seriously underestimated in the European Union. Citizens cannot be expected to be aware, but the European institutions have no excuse.

Thank you.