

Improving transparency in tobacco lobbying

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Improving transparency in tobacco lobbying Wednesday, 27 April 2016, 13.30 - 15.30

Good afternoon everyone and I'd like to welcome and thank all of you for taking the time to attend our seminar here today. I'd like in particular to welcome all our speakers including Commissioner Andriukaitis and thank James Crisp for agreeing to moderate here today.

I'd like to begin by giving some brief background to this event, and to clarify its purpose and scope.

The biggest number of complaints that my office receives are about transparency, not just access to EU documents but also the transparency of institution lobbying, revolving doors cases, the composition of Commission expert groups, essentially issues that concern how decisions are made at EU level and who or what influences those decisions.

And because I have very strong investigation powers, my office is often approached by citizens, by civil society and indeed by business interests to try and get information on EU issues or to have complaints resolved that haven't been able to get resolved, or to have resolved, by themselves.

This was the context in which my investigation into aspects of lobbying by the tobacco industry of the European Commission arose. The NGO Corporate Europe Observatory made a complaint alleging that undisclosed meetings between the Commission and the tobacco industry had taken place during the passage of the Tobacco Products Directive a few years ago.

The details of the case are on my website but essentially what I found is that yes meetings had taken place as described, but they were undisclosed only in the sense that to find out about them, an access request under Regulation 1049 had to be made. The only DG that was proactively releasing dealings of such meetings was DG Health.

The complainant alleged that the absence of proactivity in the rest of the Commission was in violation of Article 5.3 of the WHO Framework Convention on Tobacco Control, to which the EU is a signatory and strong supporter of.



The purpose of Article 5.3., in the context of protecting public health through tobacco control, is to limit tobacco industry interactions with government. It states, “ *In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.* ”

The guidelines that flow from this Article are based on three Principles, the first of which reads: “ *There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interest* ”.

As we know 700,000 Europeans die every year from smoking, and as Article 168 of the EU treaties legally requires all EU institutions to ensure a high level of health protection and as the WHO guidelines on Article 5.3 list the Ombudsman institution as one of the enforcement mechanisms, I of course take this issue very seriously.

In brief, following my inquiry I found it was indeed maladministration that the Commission was not fully transparent. I recommended that all DGs should follow the pro-active transparency policies of DG Health as the interests of the industry, like most industries, span several sectors and it therefore, again like others, lobbies widely across the Commission. As we know, all tobacco related issues are in the end health issues.

The Commission has, to date, rejected my recommendation, stating that its transparency policy in this area is in line with the Convention guidelines which are not, as the Commission states, binding. I continue to take the view that the Commission's refusal to follow the example of DG Health fails to follow the Convention's direction that administrations have to act proactively in this regard and has not made a convincing argument for its decision not to extent DG Health's practice across the rest of the Commission.

And while lawyers may indeed disagree on the nature of appropriate implementing measures in a Convention such as this, I still remain puzzled as to why the Commission chose to take the stance it did. An additional administrative burden could not be a sufficient reason for so doing.

I should of course acknowledge that the Junker Commission has set a new standard for transparency. Lobby meetings with Commissioners, Directors General and cabinet members are proactively published and while that is a good start little detail is published unless 1049 requests are made.

My inspection also discovered that meetings in the past, and presumably still, have taken place with legal services and with the secretariat general which are not proactively published. Meetings between Commission legal services and their tobacco industry counterparts are not always recognised as meetings in the context of lobbying, which they can be, an issue which I also dealt with in my recommendation and on which the Commission also disagreed.

So that is what we are here to discuss and before I hand over to James I want to make a



number of quick additional points.

I am aware the tobacco industry is unhappy at not being represented on the panel. I can of course, invite whoever I wish to take part in a seminar that I organise but I did make a decision not to invite tobacco industry representatives as that is how I interpret my obligations under the Convention.

This is however a public event and I did not exclude any interest group from taking part. The Convention concerns governments and public administrations and while it seeks to limit interactions with the industry, it does not prevent them. The tobacco industry continues to be a major global industrial force, and as such of course cannot be ignored by governments as they seek to regulate and make other decisions concerning industry generally and tobacco in particular. But I repeat, today's debate solely concerns the appropriate response of the EU institutions to a Convention which it enthusiastically supported and continues to be a signatory to.

Finally I am also aware that the tobacco industry feels discriminated against and asserts that transparency rules should apply equally across all industries. The point of course is that the purpose of the Convention is precisely to discriminate against the tobacco industry. Decisions therefore to limit interactions are not arbitrary but arise directly from the EU's decision to sign the convention.

Today is about the implementation of the Framework Convention on Tobacco Control by the EU, and I again call on all EU institutions to implement the Convention fully according to its guidelines.

Thank you.