



Overview of the remarks received in the context of the invitation to comment on the Ombudsman's draft 'Practical guidelines for public officials' interaction with interest representatives' (SI/7/2016/KR)

Correspondence - 24/05/2017

Case SI/7/2016/KR - Opened on 26/05/2016 - Decision on 27/06/2019 - Institution concerned European Commission |

1. Background

To do their job well, public officials need to interact with many individuals and organisations representing a range of interests. This allows them to inform themselves of the real world consequences of the policy and legislation to which they have contributed and which they help implement. But public officials must take care to ensure that welcome input from interest groups does not become undue influence.

In an effort to assist with this, the European Ombudsman has drawn up 'practical guidelines' for public officials to consult when they are interacting with interest representatives. They seek to identify, in a succinct and easily understandable form, the key considerations that should guide public officials in their contacts with interest representatives.

In mid-December 2016, the European Ombudsman invited comments from the EU institutions, bodies, offices and agencies, from members of the European Network of Ombudsmen, from the Council of Europe, and from interested third parties on the then draft guidelines, with a deadline of 28 February 2017. The present report summarises the main points made in the responses, as well as the Ombudsman's planned follow-up to them. The submissions of those who made substantive comments on the draft guidelines ("Dos and Don'ts") will be published in full on the European Ombudsman's website.

2. Summary of the responses

The Ombudsman received 17 responses to the invitation to comment, 12 of which included suggestions on the draft practical guidelines (see annex for a list of the respondents). This summary provides an overview of the general suggestions received and those that relate to each of the specific recommendations (the 'Dos and Don'ts'), coupled with the Ombudsman's position.

Overall, the Ombudsman is pleased to note that the European Parliament observed in its response that the draft practical guidelines address in an easily accessible way the obligations set out in Title II of the Staff Regulations. The European Commission noted that it sees value in offering public officials a short, practical leaflet setting out key "Dos and Don'ts" for their interactions with lobbyists.



Title

A number of contributions suggested that we change the title of our draft 'Practical guidelines for public officials' interaction with interest representatives', to use 'practical recommendations', 'top tips', 'vade mecum', 'practical guidance' and 'best practices'.

European Ombudsman position

After careful consideration, the term 'practical recommendations' was deemed to best capture the nature of this document.

Tailoring the language to EU- and national-level legal frameworks

Several contributions pointed out that the draft version had some content applicable only to the EU-level, as well as some applicable only to the national-level, and commented that this caused some uncertainty.

European Ombudsman position

The final version of the 'Practical recommendations for public officials' interaction with interest representatives' (the 'recommendations') is aimed at the EU-level, in line with existing EU rules and practices. They can however be easily tailored to national or local contexts and we will make a template version available for national authorities to adapt as they see fit.

Institution, Agency or Body-specific rules and practices

Several contributions pointed to rules and practices that are specific to EU Institutions, agencies or bodies, and that are not captured, either in part or in full, by the European Ombudsman's practical recommendations.

European Ombudsman position

Where there are rules specific to an EU Institution that diverge from the practical recommendations, the former should normally take precedence. This clarification is sufficiently important to merit an additional recommendation (Do #10 in the final version).

Adding definitions and other material

Several contributions suggested providing definitions for concepts used in the practical recommendations, and to expand the text with a checklist to encourage self-reflection.

European Ombudsman position

The practical recommendations are meant to be straightforward and succinct; this explains our avoidance of detailed definitions. However, the definitions contained in the Interinstitutional Agreement between the European Parliament and the European



Commission on the EU Transparency Register can, for the most part, be relied upon. Specifically, several contributions referred to the Transparency Register's Code of Conduct wording to describe 'unacceptable lobbying practices', arguably one of the more elusive concepts used in the draft. This is reflected in Do #9 of the final version.

In drawing up the final version of the practical recommendations, the "Dos and Don'ts" have to some extent been re-ordered and reworded to improve readability.

Do #1

Draft: *Verify that interest representatives have registered in the EU (or equivalent national) Transparency Register before meeting them or accepting an invitation to an event.*

Suggestions for this recommendation include:

- deleting the text between brackets given that this is not relevant at EU-level, a suggestion with which the Ombudsman agrees. This text will feature in the template for national or local level adaptation.
- adding a reference to the WHO's 'Framework Convention on Tobacco Control' and the 'Guidelines for implementation of Article 5.3'. In her Decision concerning the European Commission's compliance with the Tobacco Control Convention (852/2014/LP), the Ombudsman has considered this matter and found maladministration in the Commission's refusal to publish online details of all meetings which its staff have with the tobacco industry. The Ombudsman considers that this is reflected adequately in Do #8 of the final version.
- replacing "Verify that interest representatives have registered [..]" with "**Check whether** interest representatives have **to be** registered [..]". This change adds nuance to this recommendation reflecting the fact that some activities of interest representatives are not covered by the Transparency Register under the current rules (for more information, see the 'Activities not covered' of the current Interinstitutional Agreement, points 9 - 12). The Ombudsman therefore agrees to this change.

Do #2

Draft: *Conduct basic research to check what interests they represent and who is funding them. Ask for further information, if needed.*

Suggestions for this recommendation include:

- adding "**Prepare well and** conduct basic research [..]", a suggestion with which the Ombudsman agrees.
- adding the phrase: "**Exercise circumspection – stop and reflect on how to proceed.**" The Ombudsman generally agrees with this idea and this is reflected in Do #5 of the final version.
- adding a second point, namely: "Seek a wide range of input from all sectors of society, ensuring a democratic and transparent participation." The Ombudsman feels that this consideration is captured in draft Don't #4 (which corresponds to Don't #3 of the final version).



Do #3

Draft: Request interest representatives to disclose, in writing and in advance, the meeting purpose, participants' names, the issue for discussion and any relevant background information.

Suggestions for this recommendation include:

- replacing "Request interest representatives" with "**Ensure that interest representatives**", which would reflect the importance of receiving this information. The Ombudsman agrees with this.
- adding "[..], **and on the condition that this information will be made available to the public.**" The Ombudsman feels that this issue is adequately reflected in Do #8 of the final version.
- placing the emphasis on the name of the organisation, instead of the name of the individual, by adding "[..] names **of participants and of the organisations they work for as well as the main features of that organisation**". The Ombudsman agrees that it is important to know which organisations are involved in the interest representation.
- adding "Request interest representatives **to identify the clients (if any) they represent** [..]". The Ombudsman agrees that it is important to be informed about the clients on whose behalf interest representatives act. The Ombudsman has therefore added a reference to organisation and/or clients in the final version of Do #3.

Do #4

Draft: Inform your hierarchy prior to meetings with interest representatives and debrief them afterwards.

Suggestions for this recommendation include:

- adding "**Keep a record of this.**" The Ombudsman feels that Do #7 covers this point.

Do #4 of the draft version has been included in Do #5 of the final version.

Do #5

Assess any risk of conflicts between your private interests and the public interest and how your interaction might be perceived.

Suggestions for this recommendation include:

- adding "Assess **and avoid** any risk of conflicts [..]", a suggestion with which the Ombudsman agrees.
- referring to "**the interests of the institution**". The term 'public interest' can be seen as potentially broader than "the interests of the institution" and is felt to be more appropriate in this context.



Do #5 of the draft corresponds to Do #4 of the final version.

Do #6

Draft: *Err on the side of caution. If in doubt, consult as appropriate and if you decide to go ahead, add a note to the file explaining.*

Suggestions for this recommendation include:

- replacing "consult as appropriate" with "**inform your hierarchy prior to meetings**", . The Ombudsman has reworded the relevant recommendation to refer to one's management.

- replacing "Err on the side of caution" with "**Act impartially**". The Ombudsman reflected on this suggestion, and felt that it did not fully reflect the meaning she had in mind for this recommendation. However, she felt that the text could be improved by replacing "Err on the side of caution" with "Stop and reflect on how to proceed, if you are in doubt."

Do #6, together with Do #4, of the draft version correspond to Do #5 of the final version.

Do #6

New: *Be aware that not all interest representation takes place in a formal setting. Lobbying can also take place during casual encounters and in social settings. Remain professional at all times.*

The Ombudsman feels that this point merits a separate recommendation to reflect the fact that interest representation can happen without one necessarily anticipating it.

Do #7

Draft: *Invite interest representatives to substantiate statements or presentations in writing after meetings or telephone calls.*

Suggestions for this recommendation include:

- adding "[..] **with the understanding that this information will be made publicly available.**" The Ombudsman feels that this issue is reflected in Do #8.

- deleting the recommendation in order to emphasise that the onus on reporting should be on officials and not on interest representatives. The Ombudsman agrees with the deletion of this recommendation. The point that the onus to report rests with the officials is covered by Do #7 in the final version.



Do #8

Draft: *Maintain good record keeping habits, including the meeting date/location, names of participants and issues discussed. Remember that you should use your institution's official file management system.*

Suggestions for this recommendation include:

- adding “[..], **with a view to making this publicly available.**” The Ombudsman feels that this issue is reflected in Do #8.
- adding “[..] names of participants **and the organisations and/or clients they represent** [..]”, a suggestion with which the Ombudsman agrees (see Do #3).
- ensuring that the minutes are drawn up in a manner that allows them to be available in case of a request for access to documents. It is important that public officials keep correct and complete records. If redactions are necessary before meeting minutes are disclosed, this can be done in line with the applicable rules on public access to documents.

Do #8 of the draft version corresponds to Do #7 of the final version.

Do #9

Draft: *Respect the applicable disclosure requirements, for example, at EU level, disclose details of meetings between interest representatives and Commissioners, Cabinet members and Commission Directors-General.*

Suggestions for this recommendation include:

- adding “Respect the applicable **proactive** disclosure requirements **such as details of meetings with interest representatives, and expand this to cover all EU public officials** [..]”. While the Ombudsman has called for the scope of the current disclosure arrangements to be extended, she notes that this proposal does not reflect current rules and practices. She is keen to ensure the greatest possible uptake of these recommendations in the first instance.

Do #9 of the draft version corresponds to Do #8 of the final version.

Do #10

Draft: *Report unacceptable lobbying practices.*

Suggestions for this recommendation include:

- **deleting “Report unacceptable lobbying” and adding “[..] considered unacceptable in particular in light of the Transparency Register Code of Conduct.” The Ombudsman agrees that a reference to the Code of Conduct for interest representatives (see Annex III of the Interinstitutional Agreement on the Transparency Register) provides useful**



guidance as to what is unacceptable and has adapted the text as suggested.

Do #10 of the draft version corresponds to Do #9 of the final version.

Do #10

New: Familiarise yourself, for example via training, with the specific rules that apply to your own institution, office, body or agency. When they diverge from these practical recommendations they should normally take precedence.

Where rules specific to an EU Institution diverge from the practical recommendations, the former should normally take precedence.

The following additional Dos were suggested:

- in relation to the Transparency Register, adding “ **Be aware of the rules requiring registration on the Transparency Register** ”, “ **Promote compliance with the Register** ” and “ **Refer persons lobbying to the EU Transparency Register** ”. The Ombudsman feels that if public officials apply Do and Don't #1 correctly, that these points are adequately covered.

- adding “ **Self-identify as a public official in meetings, business cards and email signatures so that the lobbyist is aware that they must register contact with you.** ”

Although it is important that public officials identify themselves and inform interest representatives where they work, the Ombudsman feels that this suggestion is more relevant to a specific national situation where the onus to register contact is on the interest representative.

Don't #1

Draft: Meet interest representatives not registered in the EU (or equivalent national) Transparency Register without asking them to register. Make clear, if appropriate, that this is a prerequisite.

Suggestions for this recommendation include:

- deleting “[..] without asking them to register . Make clear, if appropriate , that registration this is a prerequisite.” The Ombudsman feels that accepting this wording would not be appropriate given the current regulatory context, but felt that the need to ask interest representatives if they are registered, could be made clearer. The final version of Don't #1 is: “Meet interest representatives not registered in the EU Transparency Register if your own rules disallow or discourage this; please ask the representative to register if their activities fall within its scope.”

- adding a reference to the WHO's guidelines on tobacco-related public health. See the explanation under Do #1 for the Ombudsman's view.

- replacing “Make clear, if appropriate” with “ **if** ”, and adding “[..] this is a **mandatory**



prerequisite." The Ombudsman agrees to this in principle and has adapted the text to make it more reader-friendly.

- adding "[...] not registered **in accordance with the interest representative policy of the institution or body and, where appropriate** , [...]". The Ombudsman has added a recommendation in Do #10 stipulating that if there are rules specific to an EU Institution, body, office, or agency that diverge from the practical recommendations, then the former normally take precedence.

Don't #2

Draft: *Overlook the motives of those who seek meetings or invite you to events. Lobbying can be done by a range of professions, including lawyers and consultants.*

Suggestions for this recommendation include:

- adding "**Be misled or** overlook [...]", replacing "professions" with "**organisations**", and adding "including **companies, consultancies, law firms, NGOs, think-tanks, and grassroots campaigns** lawyers and consultants ". The Ombudsman sees the value in broadening the list of organisation-types to which this might apply and focusing on organisations instead of individuals.

- adding "**Proactively seek meetings for input or feedback from private interests or industry lobbyists outside of the appropriate and transparent channels for seeking input.** " The Ombudsman believes that public officials should be able to actively seek expertise and information to enhance their understanding of issues they are working on, and feels that adding a prohibition - even if conditional - would not be appropriate. The Ombudsman agrees that, where applicable, transparency measures should be respected, which is covered elsewhere.

Don't #3

Draft: *Accept any invitations to meetings or events, which could put your institution in a delicate situation.*

Suggestions for this recommendation include:

- adding "[...], **where you know you will be approached by unregistered interest representatives or which may constitute or be perceived to constitute a clear conflict of interest.** "

- deleting or rewording this recommendation, as it is not always possible to avoid sensitive debates or predict their outcomes.

The Ombudsman would like to encourage public officials to exercise circumspection when deciding on whether or not to accept an invitation. The Ombudsman is however of the opinion that it is not reasonable to expect public officials to be able to predict whom they might be approached by at an event.



Don't #3 of the draft version corresponds to Don't #4 of the final version.

Don't #4

Draft: *Interact with a particular interest representative without considering offering other groups a similar opportunity.*

Suggestions for this recommendation include:

- adding "Interact with **only** a particular interest representative [..]"

Public officials rely on various forms of stakeholder participation in their work including, but not limited to, public consultations, impact assessments, roundtables, conferences and meetings. All of these forms of interaction help to ensure that all relevant viewpoints and interests are borne in mind in decision-making processes. The Ombudsman believes that this is sufficiently clear without the suggested addition.

Don't #4 of the draft version corresponds to Don't #3 of the final version. Don't #5 Draft: *Arrange meetings outside office hours, official premises, and without the presence of another colleague.* Suggestions for this recommendation include: adding "**Accept or** arrange meetings [..]" which is an addition to take both proactive and reactive scenarios into account, a suggestion with which the Ombudsman agrees. adding "**Stay silent when lobbyists behave inappropriately or when colleagues break transparency and ethics rules.**" The Ombudsman feels that this is covered sufficiently in Do #9.

· replacing "**without the presence of**" with "**if you do, consider informing your hierarchy and involving**". The Ombudsman sees the value of having a reference to informing one's management.

Don't #5 of the draft version corresponds with Don't #6 of the final version.

Don't #5

New: *Forget to debrief relevant colleagues and your hierarchy after meetings and events.*

In the draft version this recommendation was part of Do #5. In the final version, it fits better in the list of 'Don'ts'.

Don't #6 - #10

Don't #6 of the draft version corresponds to Don't #9 of the final version. Draft Don't #9 and 10 have been merged in the final version. No explicit suggestions were received on the draft recommendations in Don't #6 - #10.



Annex - list of respondents, based on date received

- Court of Justice of the EU
- Estonian Ombudsman
- European Commission
- EU Agency for Law Enforcement Training (CEPOL)
- Council of the EU
- European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)
- European Economic and Social Committee (EESC)
- Irish Standards in Public Office Commission
- Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU)
- European Medicines Agency (EMA)
- Collective of EU employees concerned with ethics in the EU institutions
- European Central Bank (ECB)
- Group of States against Corruption (GRECO)
- Croatian Ombudsman
- European Chemicals Agency (ECHA)
- Council of Europe
- European Parliament