

Reply of the European Commission to the European Ombudsman

Strategic inquiry: OI/6/2021/KR Subject: The transparency of the European Commission's interactions with representatives of the tobacco industry – Decision and suggestion for improvement

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

The European Union acceded, on 30 June 2005, to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC).

Article 5(3) of the FCTC reads as follows: "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." Subsequently, the Conference of the Parties adopted 'guidelines' on the interpretation of the FCTC, including guidelines for implementation of Article 5(3) of the FCTC.

On 26 November 2021, the European Ombudsman ('the Ombudsman') launched a strategic initiative concerning the transparency of the European Commission's interactions with representatives of the tobacco industry. On that occasion, the Ombudsman required an inspection of all the documents the European Commission ('the Commission') holds regarding: (i) interactions, including meetings and (video-)calls, between Commissioners, their Cabinets and/or Commission staff members and tobacco interest representatives, which occurred in 2020 and 2021; (ii) requests for public access to documents on the Commission's interactions with the tobacco industry under Regulation 1049/2001, submitted in 2020 or 2021; (iii) any guidance related to the subject of this inquiry that was shared within the Commission in 2020 and 2021.

The Commission responded on 7 February 2022 by providing the required documents.

A meeting between the Ombudsman and the representatives of the relevant services of the Commission took place on 5 May 2022. The additional documents as requested during that meeting were provided to the Ombudsman.

As a follow-up to the meeting, the Ombudsman addressed a letter to the Commission on 8 November 2022, requesting the following:

- The minutes of the meetings, (video-)calls, and any other interactions between tobacco interest representatives and Commissioners, their cabinets and/or Commission staff members, also below Director-General level in all DGs, the Secretariat-General and the Legal Service (SJ), which occurred in 2020 and 2021. The Ombudsman noted that, to date (8 November 2022), the inquiry team had been provided with some of the minutes of the meetings identified as having taken place. The Ombudsman requested the Commission to provide any further minutes that have not yet been transmitted to the inquiry team or confirm that no more minutes exist.
- The replies provided by the Commission to the access to document requests GESTDEM 2020/2580 and GESTDEM 2020/2583.

- Advice provided by DG SANTE to other DGs (for example by means of email exchanges between the respective DGs including at services level) in relation to meetings with tobacco interest representatives.
- Any internal guidelines and procedures for the execution of the controls concerning the information declared by registrants in the Transparency Register.

The Commission responded on 13 January 2023 providing the documents requested by the Ombudsman.

On 14 April 2023, the Ombudsman shared her preliminary findings of the strategic inquiry and asked the Commission to provide written replies on the findings. With regard to the publication of details of interactions with tobacco interest representatives, the Ombudsman noted that the inspection showed that the proactive transparency policy put in place by the Commission's Directorate-General for Health and Food Safety (DG SANTE), which requires publishing online information on all the meetings its staff have with tobacco industry representatives and the minutes of those meetings, followed also by the Directorate-General for Taxation and Customs Union (DG TAXUD) in the meantime, did not apply across the entire Commission. The Ombudsman's preliminary view was that the absence of a whole-of-Commission approach to complying with the obligations stemming from the FCTC constitutes maladministration. With regard to record-keeping related to interactions with the tobacco sector, the Ombudsman noted that the Commission did not identify minutes regarding certain meetings that were organised with tobacco interest representatives. The Ombudsman concluded in her preliminary finding that the failure to keep and make available minutes on all the Commission's meetings with tobacco interest representatives constitutes maladministration. Finally, the Ombudsman noted that the implementing guidelines for Article 5.3 of the FCTC state that 'parties should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'. The Ombudsman also noted that, in one instance, the Commission declined a meeting request from a tobacco interest representative because the meeting was deemed to be unnecessary from a regulatory point of view, but also that this assessment of necessity in relation to meeting requests from tobacco interest representatives appeared to be the exception rather than the rule. In this respect, the Ombudsman asked the Commission to explain in what situations an assessment of necessity is conducted, how it is conducted and whether it is documented.

On 15 December 2023, the Commission provided the requested written replies on the preliminary findings and asked the Ombudsman to provide a list of the meetings for which minutes are claimed to be missing in order to allow for further verification. In that response, the Commission also indicated that, as further pro-active follow-up to the Ombudsman's observations, a process was under way to instruct its Directors-General and Heads of Service, and all Heads of Cabinet, to conduct an assessment of the exposure of their Services to the lobbying by tobacco representatives in the context of health policies and policies related to tobacco control, and, in case of likely exposure, to put in place internal procedures requiring staff to publish minutes of meetings with tobacco representatives and providing a place for their publication.

On 19 December 2023, the Ombudsman shared her final decision. That decision largely confirmed the preliminary findings, namely, the failure by the Commission to ensure a comprehensive approach across all its departments to transparency of meetings with representatives of the tobacco industry constitutes maladministration. This included the

Commission's failure to ensure a systematic assessment, across all directorates-general, as to whether potential meetings are needed with representatives of the tobacco industry. At the same time, the Ombudsman also made suggestions for improvement; in particular, she welcomed the Commission's commitment to further assess how exposed its services are to lobbying by tobacco representatives and asked the Commission to report back on the outcome of the assessment and the progress made by 30 June 2024. The Ombudsman also proposed that the Commission should put in place a formal procedure for assessing the necessity of meetings with the tobacco industry representatives, before such meetings take place, and ensure that this is consistently applied across all its services.

As anticipated in her decision on the enquiry, on 29 January, the Ombudsman sent to the Commission an additional follow-up letter containing a number of relevant points deemed important for the exposure assessment exercise.

II. REPLY OF THE EUROPEAN COMMISSION TO THE OMBUDSMAN DECISION AND SUGGESTION FOR IMPROVEMENT

The Commission has welcomed the strategic inquiry launched by the Ombudsman and was keen to ensure all possible support to that inquiry, including written replies to the preliminary findings shared by the Ombudsman.

The Commission takes due note of the Ombudsman's assessment and conclusions which largely confirm the Ombudsman's preliminary findings.

The Commission generally maintains its view that the horizontal rules on ethics and integrity for Commission staff, and on transparency, combined with dedicated tobacco-specific arrangements and actions applied by the Commission service that holds the main responsibility for setting and implementing public health policies with regard to tobacco control (DG SANTE), provides altogether an effective, proportionate and risk-based framework, which protects the institutions from lobbying interference and ensures an adequate level of transparency in line with the FCTC obligations, and in particular its Article 5(3)¹ and associated implementation guidelines.

In addition to the observations already provided in its reply to the Ombudsman's preliminary findings, the Commission would like to note some additional elements, also in relation to its further proactive action.

With regard to transparency and record-keeping, the Commission thanks the Ombudsman for having provided a comprehensive list of meetings for which minutes are claimed to be missing. On that basis, the Commission carried out additional verifications and will transmit to the Ombudsman via a separate Annex (Annex I) additional information on each of those meetings.

The Ombudsman's assessment also indicated that some of the existing minutes would not provide a meaningful account of the content of the meeting and that several minutes included

¹ The decision of DG TAXUD to publish all its meetings with the tobacco industry on a dedicated tobacco transparency page (https://taxation-customs.ec.europa.eu/meetings-tobacco-industry_en) constitutes a supplementary transparency measure.

only a short summary of the general topic of the discussion and the statements made by Commission staff. In this respect, the Commission generally notes that the drafting of the minutes of meetings is in line with the principle of good public administration. In the Note to the Heads of Cabinets of 27 January 2021² (attached as Annex II), the Secretariat-General indicated that minutes should state the date, place and the purpose of meetings as well as the main points raised, any conclusions and next steps, if applicable. The minutes need to be registered in the ARES system and can be subject to requests for public access to documents.

The Commission also takes due note of the observations communicated by the Ombudsman together with her suggestions for improvement. In this context, the Commission is pleased that the Ombudsman welcomed the Commission's commitment to instruct the Commission's management to assess the risk of exposure to the tobacco industry. Such pro-active commitment reflects the Commission's view that safeguards and policies on this matter, including possible measures on assessment of necessity of meetings and publication of minutes, must be based on a solid risk assessment carried out by the different services and cabinets, taking into account the different nature of their activities and mission. This is consistent with the general objective to have an effective, proportionate, and risk-based framework in place. The Commission thanks the Ombudsman for following up on this matter with her letter of 29 January 2024, drawing the attention to a number of points deemed to be important for the Commission's assessment.

The Commission notes that on 14 March, a note was sent to all directors-general, heads of service, and heads of cabinets recommending all Commission's services and cabinets to conduct an assessment of their exposure to the tobacco industry lobbying by tobacco representatives in the context of health policies and policies related to tobacco control and, as appropriate, to identify adequate corresponding measures. Expected feedback consisted of: the conclusion of the assessment of exposure of the respective services/cabinets to the tobacco industry lobbying by tobacco representatives in the context of health policies and policies related to tobacco control (taking into account the direct or indirect impact of their policies on health policies and policies related to tobacco control); and in case of likely exposure, an indication of the list of relevant internal procedures/measures to be put in place³; where publication of minutes of meetings is considered, an indication of the location of their publication. The full note is attached as Annex III to this reply. A separate communication from the Secretary-General's office sent on 22 March to all services provided additional indications on the nature and timing of the exercises.

Out of 40 responses received up to this date, SANTE and TAXUD reiterated their existing proactive policies on transparency, including publication of the minutes of meetings⁴, as well

² Ares (2021) 662163 of 27/01/2021 "Transparency policy – handling of access to document requests and other transparency related obligations"

³ List of possible measures listed in the Note include: prudential steps to check the extent to which tobacco industry representatives might be sponsors or participants at stakeholder events, particularly those with a bearing on health policies, so that decisions to take part can be taken in full awareness; prior checks to ensure that meetings with tobacco industry representatives are limited to contacts considered essential for effective regulation of the tobacco industry and tobacco products; and a clear trail for the preparation and reporting on any meetings. Services whose policy responsibilities are of direct relevance to the tobacco industry might also consider whether a more proactive transparency policy would be appropriate, on the lines of the proactive online publication of reports of all meetings with the tobacco industry put in place by DG SANTE, and also DG TAXUD.

⁴ For TAXUD: https://taxation-customs.ec.europa.eu/meetings-tobacco-industry_en, and

as on limiting meetings with the tobacco industry to those strictly necessary for effective regulation of the tobacco industry and tobacco and related products. Six Commission services (Directorate-General for Agriculture and Rural Development (DG AGRI); Directorate-General for Translation (DG DGT); the Joint Research Centre (DG JRC); the European Anti-Fraud Office (OLAF); the Directorate-General for Trade (DG TRADE); the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) and the Directorate-General for Mobility and Transport (DG MOVE) indicated some likely exposure, from limited to negligible, to lobbying by the tobacco industry. Those services also report measures/practices already implemented to limit risks resulting from that exposure. These include: the implementation of measures recommended by DG SANTE in their Note of 2020 and the publication of minutes of all meetings of their Civil Dialogue Groups; the establishment of a dedicated Ethics Framework to ensure scientific independence (JRC); refraining from participating in conferences with tobacco industry sponsorship, membership or participation (OLAF); provision of information to senior management about meetings and consultation of senior management when in doubt (TRADE); a no-meeting or discussion policy (GROW); provision of dedicated information to field officers about obligations under FCTC (DGT). Those services consider current measures to be sufficient taking into account the level of exposure. In addition, OLAF noted that proactive publication of minutes of meetings with tobacco industry would not be appropriate on their side, due to the nature of their activities and the confidential information at stake. DGs AGRI, GROW, TRADE and MOVE indicated their openness to apply further measures if deemed appropriate at corporate level.

Among the services that have not identified any likely exposure, Directorate-General Budget (DG BUDG), Directorate-General for Education, Youth, Sport and Culture (DG EAC), Directorate-General for Energy (DG ENER) and Directorate-General for Digital Services (DG DIGIT) reported on consideration of the initiative by senior management. Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) and Directorate-General for International Partnerships (DG INTPA) will ensure that all EU Delegations receive the Note in question as a precautionary measure. DG INTPA has also committed to publishing minutes of meetings with the tobacco industry, in case such meetings take place in the future. Directorate-General “Statistical Authority of the European Union” (DG ESTAT), the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) and the SJ reiterated existing measures which are generally part of the Commission’s corporate transparency acquis and ethics framework, notably publication of minutes of expert groups, prior check of transparency register, evaluation of participation to meetings on a case-by-case basis, in full transparency and taking into account the risk of perception of conflicts of interest, meeting attendance only if strictly necessary for the purpose of policy activities, and reporting of meetings. DG FISMA also noted that meetings of their Director-General are made public in the ATMOS system. Directorate-General for Human Resource and Security (DG HR) and the Health Emergency Preparedness and Response Authority (HERA) took note of corporate guidance on the subject, in view of possible further implementation.

The Commission intends to closely analyse the outcomes of the exercise and will evaluate in the coming months whether any further action is needed at corporate level. It will also make

For SANTE: https://health.ec.europa.eu/tobacco/events_en?f%5B0%5D=topic_topic%3A87

sure to keep the Ombudsman updated about the conclusion of the exercise and any related developments.

III. CONCLUSION

In conclusion, the Commission reiterates its strong attachment to the need to ensure transparency of its interactions with representatives of the tobacco industry, and to comply with the EU's international commitments under the FCTC in relation to 'setting and implementing [its] public health policies with respect to tobacco control' and its continuous commitment to achieve that objective. This commitment was reflected in the EU statement delivered at the tenth session of the Conference of the Parties (COP10) to the WHO FCTC meeting in February 2024, which underlined the importance of keeping work free from the influence of the tobacco industry in line with Article 5.3 of the FCTC and of having an ambitious agenda for the future. This includes the general Commission policy to interact with representatives of the tobacco industry only if this is strictly necessary for the purpose of its activities.

The Commission takes due note of the Ombudsman's final decision and her suggestions for improvement. In this respect, the Commission is in the course of conducting an assessment of the exposure of its Services to the lobbying by tobacco representatives in the context of its health policies and policies related to tobacco control. This exercise is aimed to raise further awareness on the topic and promote risk assessment across the Commission to exposure to tobacco lobbying in line with the overall objective of having an effective, proportionate and risk-based framework in place. In this context, the Commission is currently analysing the responses from services to a note sent by the Secretary-General and the Head of Cabinet of the President on the subject and will decide in the coming months on that basis whether any further action is needed at corporate level.



For the Commission
Valdis DOMBROVSKIS
Executive Vice-President












List of enclosures

- **Annex I** – “Additional information on certain meetings”
- **Annex II** – Note from the Secretary-General of the European Commission for the attention of Heads of Cabinet on “Transparency policy – handling of access to document requests and other transparency related obligations”
- **Annex III** – Note from the Secretary-General of the European Commission and the Head of the Commission’s President Cabinet for the attention of the Directors-General, Heads of Service and Heads of Cabinet on “Contacts with the tobacco industry and the Framework Convention on Tobacco Control (FCTC)”

Annex I – Additional information on certain meetings

Meeting	Date	Commission's reply in which the meeting was declared	Observations from Commission
Stakeholder workshops held by a contractor for the implementation of the SUP directive (notable participants: ESTA/Poeschl Tobacco; Tobacco Europe/BAT/PMI)	25/02/2020	Reply 2 (08/2022)	<p>This was a workshop organised by a contractor, involving a significant number of stakeholders and aimed to discuss the implementation of the Single-use plastics (SUP) Directive. The full list of participants to the workshop and the relevant minutes have been identified and are attached (personal data were removed)</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  Copy of 07-02-20 Workshop WP6_Regi </div> <div style="text-align: center;">  Minutes of Meeting_WP6_25-02 </div> </div>
Unscheduled meeting between former ERC President and CEO of Philip Morris during World Economic Forum	01/2020	Reply 2 (08/2022)	<p>As indicated, rather than arranging a formal meeting, the former ERC President and the CEO of Philip Morris International (PMI) unexpectedly found themselves sharing a panel at the event 'Is there a crisis in global governance?' held on January 24, 2020 at the WEF. The organisers of the event had not informed the ERCEA in advance about the presence of any PMI representatives. In contrast, they had provided the ERCEA with the names and CVs of other speakers several days before the debate. That explains why no minutes exist for this encounter and why it could not have been prevented.</p> <p>It is important to note that the so-called meeting in question fundamentally coincides with the encounter at the panel – meaning it would only consist of the fact of Prof. Ferrari having shared a panel with the PMI representative</p>
Tobacco Europe AISBL with Cabinet member of former Commissioner responsible for EUUK future trade relations	22/07/2020	Reply 1 (02/2022)	No further information is available on this meeting.
Meeting with ECMA	12/02/2021	Reply 2 (08/2022)	The relevant presentation by ECMA is provided here below.

			 ECMA -Presentation - 2021.pdf
PMI meeting with Cabinet member of the Vice-President of the Commission for Interinstitutional Relations on Working priorities of the new European Commission	23/01/2020	Reply 1 (02/2022)	The documents pertaining to this meeting were already dealt with in the context of the access to documents request GESTDEM. Please find below the documents identified, including notes from the meeting    ARES(2020)10911 - ARES(2020)1091287 ARES(2020)1091287 E-mail from Agentura- E-mail from Agentur- Annex to the e-mail  ARES(2020)1091363 - Meeting notes from
ETRC with former Director-General of DG MOVE on virtual arrivals duty free	06/11/2020	Reply 1 (02/2022)	Minutes were identified  Flash report meeting with ETRC 2020.rtf
PMI meeting with Cabinet member of the Commissioner for Neighbourhood and Enlargement on the occasion of the Breakfast with institutional and economic stakeholders organised by Comin & partners	11/09/2020	Reply 1 (02/2022)	This was not a proper meeting. It was a brief encounter in the framework of a breakfast with multiple stakeholders from different economic fields, and therefore usually there are no minutes of such social/casual meet ups.
Meeting with ETRC on FCTC Protocol implementation	14/04/2021	Reply 2 (08/2022)	The minutes were identified and can be shared on the grounds that they concerned non-operational meetings and were not covered by the requirements of confidentiality and professional secrecy applicable to OLAF's independent investigative activity.  20210414 Note to the file ETRC meeting.
Meeting with A1 Fakher on illicit trade in water pipe tobacco	12/10/2021		

			 <p>20211012 Note to the file AF meeting.pd</p>
ETCR with the Director-General of DG TAXUD on the occasion of a Belgium videoconference on excise and VAT rules	27/11/2020	Reply 1 (02/2022)	<p>This meeting was not related to tobacco as already explained in the previous request for information. ETCR is a lobbyist group for the Retail sector (not tobacco) and the meetings was about the duty-free shops. For the Ombudsman's information, we include the meeting minutes of that meeting.</p>  <p>FW_ Meeting Summary ETRC.pdf</p>
Meeting between TAXUD and cabinet of the Commissioner for Economy with JUUL Labs Chief Regulatory Officer	29/04/2020	Reply 01/2023	<p>No further information is available on this meeting. We reiterate however that a follow up e-mail of JUUL with their position paper is available. This paper reflects the contents of the presentation delivered by JUUL during the meeting.</p>



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary-General

Brussels
SG/IJ/(2020)

NOTE FOR THE ATTENTION OF HEADS OF CABINET

Subject: Transparency policy – handling of access to document requests and other transparency related obligations

The principle of transparency is a cornerstone of the Commission and it should characterise the work of all Members of the Commission and their Cabinets. As you know, Commission activity is under constant scrutiny by the public, non-governmental organisations and journalists, as well as the European Ombudsman. For this reason, I would like to remind you of the following obligations and good administrative practices.

1. ACCESS TO DOCUMENTS

The Communication on Working Methods of the European Commission of 1 December 2019¹ makes very clear that Members of the Commission and services should respect the deadlines to respond to **requests for access to documents** at all times. Regulation 1049/2001 lays down the legal framework on public access to documents. It establishes the widest possible access to documents drawn up or held by the Commission. It also provides for the strict deadlines for handling such requests (15 working days). The applicant may challenge the Commission decisions before the Court or turn to the European Ombudsman.

The Commission needs to live up to its obligation in terms of granting access to documents as swiftly as possible. Therefore, I would like to urge you to act as quickly as possible whenever you receive requests from your services for identification and assessment of possible disclosure of documents that are subject to requests for access filed by applicants. Failures to do so are often covered by the media and resonate widely with the public. This inevitably creates a negative image of the institution.

¹ <https://ec.europa.eu/info/sites/info/files/working-methods.pdf>

2. MEETINGS WITH INTEREST REPRESENTATIVES

Equally important are the transparency obligations concerning **meetings with interest representatives**.

Firstly, members of the Commission and members of their Cabinets **must not meet** with professional organisations or self-employed individuals who are not enrolled in the Transparency Register². Therefore, prior to any meeting, you need to consult the Transparency Register³ to ensure that the interest representative in question is registered.

In addition, with respect to the **publication of meetings** with interest representatives, the Commission has adopted a Decision making it mandatory to publish information on such meetings on issues relating to policy development and policy implementation in the EU⁴. It comprises:

- the date and location of the meeting,
- the name of the Member of the Commission and/or member of the Cabinet,
- the name of the organisation or self-employed individual⁵ and
- the purpose of the meeting.

The information is to be encoded into the digital tool ATMOS⁶ within two weeks of the meeting. It will automatically be uploaded on the Europa website and on the Transparency Register. It must be underlined that omissions regarding the publication of these meetings, even if unintended, are often reported in the media and highlighted by transparency watchdogs that scrutinise closely the Commission's activities. The European Ombudsman also pays close attention to the way the Commission is fulfilling its transparency obligations

There is an increased public interest in and scrutiny of relations with interest representatives. Therefore, it is in line with the principle of good public administration to draft concise minutes of these meetings. The minutes should state the date, place and the purpose of the meeting as well as the main points raised, any conclusions and next steps, if applicable. The minutes need to be registered in ARES since these minutes can be the subject of access to documents requests.

² Article 7(1) of the Code of Conduct for the Members of the European Commission.

³ <https://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en>

⁴ [Commission decision on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals, 2014/839/EU, Euratom, and Code of Conduct for the Members of the European Commission, Article 7\(2\).](#)

⁵ Names of individuals acting on behalf of these organisations or self-employed individuals and Commission officials may be indicated only with their consent, in accordance with Regulation (EU) 2018/1725.

⁶ <https://webgate.ec.testa.eu/transparencyinitiative/meeting/listMeeting.do>

3. MISSION EXPENSES

The Commission has also to **publish an overview of mission expenses** per Member of the Commission every two months, covering all missions⁷. The mission costs are published on the Europa website and open to public scrutiny.

The Secretariat-General may provide you with additional information, including, if necessary, individual support for the Cabinets.

Thank you in advance for your collaboration.

Ilze JUHANSONE

c.c.: [REDACTED], Deputy Secretary-General - Chief Operating Officer, SG.DSG1
[REDACTED] - Transparency, Efficiency & Resources, SG.DSG1.C
[REDACTED], Head of Unit - Transparency, Document Management & Access to Documents, SG.DSG1.C.1
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[REDACTED], Deputy Head of Unit - Ethics, Good Administration & Relations with the European Ombudsman,SG.DSG1.C.2
[REDACTED], Assistant to the Deputy Secretary-General - Chief Operating Officer

⁷ Article 6 of the Code of Conduct for the Members of the European Commission.



EUROPEAN COMMISSION
SECRETARIAT-GENERAL
CABINET VON DER LEYEN

The Secretary General
The Head of the President's Cabinet

Brussels
SG.E.4/SS

NOTE FOR THE ATTENTION OF DIRECTORS-GENERAL, HEADS OF SERVICE AND HEADS OF CABINET

Subject: Contacts with the tobacco industry and the Framework Convention on Tobacco Control (FCTC)

The starting point of this note is the obligations under the Framework Convention on Tobacco Control (FCTC)¹. The EU has been a party to the FCTC since 2005.

Article 5(3) of the FCTC requires the parties concerned to pay particular attention to the need to avoid the specific influence of tobacco companies: "[i]n 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".

This was reinforced by guidelines on the interpretation of the FCTC², which all parties to the Convention are encouraged to implement to the extent possible in accordance with their national law. It set out some key principles that are provided in annex.

The FCTC and the Guidelines require that the development and implementation of tobacco control policies are not influenced by the tobacco industry. The guidance requires parties to establish measures to limit interactions with the tobacco industry and ensure the transparency of any such interactions. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, or disclosure of records of such interactions to the public.

The Commission's ethical and integrity framework, and the intensified transparency requirements that now apply, already represent a powerful protection against any undue influence. Information is published on meetings of Commissioners, their Cabinet members and Directors-General with organisations or self-employed individuals on the corresponding pages of the Europa website (Commission Decisions 2014/838/EU and 2014/839/EU). Information on meetings with the Commission is also integrated into the profile of organisations or self-employed individuals registered in the Transparency Register.

¹ [Microsoft Word - WHO-FCTC-English-FOR PRINTING FINAL.doc](#)

² [Guidelines for implementation of Article 5.3 \(who.int\)](#)

In addition, the safeguards provided by the collegiate character of the Commission's decision-making process, the ethical and integrity rules applicable to the Commission staff (notably by virtue of Staff Regulations, Code of Conduct for the Members of the Commission and Code of Good Administrative Behaviour), as well as the applicable rules on access to documents and on transparency regarding relations with interest representatives, constitute overall a powerful protection against any undue influence³.

The FCTC also applies specifically to "setting and implementing [their] public health policies with respect to tobacco control". It is for this reason that DG SANTE has specific rules in place, including publishing online minutes of all the meetings with stakeholders⁴. Where applicable, the more intensive regime of the FCTC would also apply to the Commissioner and Cabinet responsible.

This combination of a rigorous general framework, and a more specific regime for the service with direct responsibility for setting and implementing their public health policies with respect to tobacco control, means that the Commission can be considered to be in full compliance with its obligations under the FCTC.

Nevertheless, as a College, there is a broader collegiate responsibility, and policies within the remit of other services may have significant indirect impact on health policies and policies related to tobacco control through the tobacco industry⁵. The measures applied in different Cabinets and services might appropriately vary according to the risk of giving the impression of cooperation and close interaction with the tobacco industry. As a result, all Cabinets and services are therefore invited to reflect on whether to put in place other measures to reflect the level of risk⁶.

Such steps might include:

- Prudential steps to check the extent to which tobacco industry representatives might be sponsors or participants at stakeholder events, particularly those with a bearing on health policies, so that decisions to take part can be taken in full awareness;
- Prior checks to ensure that meetings with tobacco industry representatives are limited to contacts considered essential for effective regulation of the tobacco industry and tobacco products;
- A clear trail for the preparation and reporting on any meetings;
- Services whose policy responsibilities are of direct relevance to the tobacco industry might also consider whether a more proactive transparency policy would be appropriate, on the lines of the proactive online publication of reports of all meetings with the tobacco industry put in place by DG SANTE, and also DG TAXUD⁷.

It might also be appropriate to ensure a higher engagement of senior management in decisions about such contacts than would be normally the case.

We therefore recommend that all Directors-General and Heads of Service, and all Heads of Cabinet conduct an assessment of the exposure of their services and cabinets to the

³ Notably by virtue of Article 17 of the Treaty on European Union and Article 245 of the Treaty on the Functioning of the EU, the Staff Regulations and Code of Good Administrative Behaviour

⁴ [Events \(europa.eu\)](#)

⁵ The tobacco industry can be considered to include manufacturers, importers, and suppliers of the full range of (also related) products, including electronic cigarettes, novel emerging products etc. The interests of the tobacco industry should be considered in a broad context (for example, it would be difficult to argue publicly that contacts with the tobacco industry concerning e-cigarettes were not relevant).

⁶ DG SANTE set out some suggestions in a note to other services in 2020. Note Ares (2020)3754445.

⁷ TAXUD publishes the minutes of the meetings with tobacco industry: [Meetings with the tobacco industry \(europa.eu\)](#)

lobbying by tobacco representatives in the context of health policies and policies related to tobacco control, and, in case of likely exposure, put in place relevant internal procedures, including requiring staff to publish minutes of meetings with tobacco representatives and providing a location for their publication’.

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