

## **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**

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### **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 implementation 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 had not yet been transmitted to the inquiry team or to 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 the Directorate-General for Health and Food Safety (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 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 constituted 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 findings that the failure to keep and make available minutes on all the Commission's meetings with tobacco interest representatives constituted 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 were 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 industry 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 industry representatives and to provide a place for their publication.

On 19 December 2023, the Ombudsman shared her final decision. That decision largely confirmed the preliminary findings, namely that the failure by the Commission to ensure, across all its departments, a comprehensive approach to transparency of meetings with representatives of the tobacco industry constituted 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 were to lobbying by tobacco industry 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 tobacco industry representatives, before such meetings take place, and should ensure that this is consistently applied across all its services.

As anticipated in her decision on the enquiry, on 29 January 2024, the Ombudsman sent to the Commission an additional follow-up letter containing a number of relevant points deemed important for the exposure assessment exercise.

On 26 July 2024, the Commission reported to the Ombudsman on the interim results of the exposure assessment exercise and in the same letter committed to keep the Ombudsman updated about the conclusion of the exercise.

In her letter of 17 September 2024, the Ombudsman expressed her expectation to receive an update of the results, while continuing to urge the Commission to undertake systematic assessments of the necessity of meetings with the tobacco industry.

## **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 has ensured all possible support to that inquiry, including through its written replies to the preliminary findings shared by the Ombudsman. The Commission has also taken due note of the Ombudsman's assessment and conclusions, which largely confirm the Ombudsman's preliminary findings. As already indicated in previous exchanges, the Commission has proactively instructed its management to assess the risk of exposure to the tobacco industry. This reflects the Commission's view that safeguards and policies on this matter, including measures on assessment of necessity of meetings with the tobacco industry and publication of minutes, must be based on a solid risk assessment carried out by different services.

This exercise, which started in March 2024, has now been concluded. The exposure exercise generated a response rate of 87% across Commission services (40 responses out of 46 services<sup>1</sup>). DG SANTE and DG TAXUD reiterated their existing proactive policies on transparency, including publication of the minutes of meetings<sup>2</sup>, as well as on limiting meetings with the tobacco industry to those strictly necessary for effective regulation of the tobacco industry and tobacco and related products. Seven 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-

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<sup>1</sup> No replies were received from CNECT, ENV, PMO, SG-RECOVER, IDEA and EEAS.

<sup>2</sup> For TAXUD: [https://taxation-customs.ec.europa.eu/meetings-tobacco-industry\\_en](https://taxation-customs.ec.europa.eu/meetings-tobacco-industry_en), and  
For SANTE: [https://health.ec.europa.eu/tobacco/events\\_en?f%5B0%5D=topic\\_topic%3A87](https://health.ec.europa.eu/tobacco/events_en?f%5B0%5D=topic_topic%3A87)

General for Mobility and Transport (DG MOVE)) indicated some likely exposure, from limited to negligible, to lobbying by the tobacco industry. Those services also reported the measures/practices that are already implemented to limit risks resulting from that exposure. These include the implementation of the measures recommended by DG SANTE in its note of 2020 and the publication of minutes of all meetings of their Civil Dialogue Groups (AGRI); 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); limited meeting or discussion policy with tobacco representatives (GROW); and provision of dedicated information to field officers about obligations under the FCTC (DGT). Those services consider the current measures to be sufficient taking into account the level of exposure, estimated to be limited or negligible. In addition, OLAF noted that proactive publication of minutes of meetings with the tobacco industry would not be appropriate on its side, due to the nature of its 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, currently ENEST) and Directorate-General for International Partnerships (DG INTPA) will ensure that EU Delegations receive the note from SG concluding this exercise 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), 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 conflict 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 its Directorate-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 successful response rate and engagement of services testified the significant level of attention of the Commission services towards the issue of tobacco industry lobbying. The exercise has shown that exposure to tobacco industry lobbying is not limited to DG SANTE and TAXUD alone. However, for the DGs that identified exposure, there is not only a very good awareness of the issue of tobacco industry lobbying and possible interference, but all DGs with risk of exposure also have in place measures and processes to prevent interference by the tobacco industry. While these latter measures may vary in nature, they all stem from a strong common ethics framework baseline.

Taking all findings into consideration, including the best proactive practices at the level of certain services, an internal note to all services and cabinets, together with a communication of the results of the exercise, will outline a list of measures (a toolbox) that services and

cabinets should consider putting in place, depending on their degree of exposure and their internal risk assessment process. Such measures include procedures to ensure consultation of senior management of services ahead of accepting any meeting with the tobacco industry; the appointment of a dedicated contact person for each service; dedicated communication to Delegations and Representations; and the avoidance of conferences with major tobacco industry involvement.

This will raise further awareness on the topic and, most importantly, make corporate expectations clearer and substantiate the Commission's effort to incentivise further proactive measures and harmonise practices, while maintaining the vision of a risk-based and proportionate framework for relations with tobacco stakeholders.

In addition, the Commission would also like to bring to the Ombudsman's attention the new Commission decision (EU) 2024/3082 on transparency measures concerning meetings held between Commission staff holding management functions and interest representatives, and repealing Decision 2014/838/EU, Euratom<sup>3</sup>. This Decision – in line with the President's announcement made in September 2024 that the Transparency Register requirements would be extended to all Commission managers – expands significantly the personal and material scope of the Commission's rules on the transparency of meetings with interest representatives. Notably, it obliges all Commission staff holding management functions who hold meetings with interest representatives to meet only with those interest representatives which are registered in the Transparency Register and to publish the standardised information on every such meeting and the relevant minutes on the Commission's official website within two weeks following the date of the meeting. The Decision has already entered into force, and it applies from 1 January 2025.

### III. CONCLUSION

In conclusion, the Commission reiterates its strong commitment 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'; as well as 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.

As a proactive follow-up to the European Ombudsman strategic inquiry on the transparency of Commission's contacts with tobacco industry, on 14 March 2024, the Commission launched an exercise to assess the exposure of its services to lobbying by tobacco industry representatives and to contribute to the evaluation of existing measures and the formation of novel ones. The findings suggest that exposure to tobacco lobbying is not limited to DG SANTE and DG TAXUD; at the same time, there is an increasing awareness of the issue

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<sup>3</sup> OJ L, 2024/3082, 5.12.2024, ELI: <http://data.europa.eu/eli/dec/2024/3082/oj>.

among services that have identified exposure resulting in the implementation of a number of different measures. Based on these findings, the Commission will reinforce its corporate framing on this issue by communicating to all its services a toolbox of measures that services should consider putting in place, depending on their degree of exposure. In addition, the Commission's corporate rules on transparency are further reinforced by the recently adopted Commission Decision (EU) 2024/3082 which, inter alia, lays down a systematic obligation for Commission staff holding management functions to publish the minutes of all their meetings with interest representatives on the official website of the Commission.