Re: the Commission's opinion on complaint 852/2014/LP

Dear Ms O'Reilly,

Thank you for forwarding the Commission's opinion on my complaint (852/2014/LP) and your invitation to send observations.

Overall, I find it worrying that the Commission, without presenting meaningful new arguments, refuses to act on the recommendations of the European Ombudsman and merely repeats its claim that it "complies in full" with the UN rules, restating the unconvincing argument that its general rules in the field of transparency and ethics are sufficient.

In my view, its refusal to take specific measures to tackle tobacco industry lobbying influence, reflects a worrying complacency and lack of vigilance regarding the lobbying by the tobacco industry and the risk of undue influence.

The Commission argues that additional transparency measures are not needed because meetings between top officials and tobacco lobbyists have been scaled back since the legislative process around the Tobacco Products Directive came to an end. But in fact tobacco industry lobbying is now targeting other issues, such as EU trade policy (TTIP and other trade negotiations), the renewal of the controversial agreements with four tobacco giants on combating illicit trade in tobacco, and the battle around the choice of technology for high-tech digital watermarks in tobacco packaging to prevent counterfeiting, to mention a few examples. EU decision-making on these issues has DGs other than DG SANTE in central roles. There is no justification for refusing to expand DG SANTE's approach to implementing Article 5.3 of the FCTC across all Commission departments. This lobbying, moreover, not only targets the 250 or so top Commission officials whose meetings are disclosed online, but also Commission officials in powerful roles on the levels below but who are not covered by the transparency measures introduced by the Juncker Commission in late 2014. The Commission's general rules in the field of transparency and ethics are clearly not sufficient; full implementation of Article 5.3 of the FCTC should start with publishing details of the meetings of all Commission officials with tobacco lobbyists online.
It is also worrying that the Commission stubbornly sticks to the claim that lawyers representing tobacco companies are not lobbyists but "legal experts". This approach creates a dangerous loophole which, if it is allowed to continue, will enable tobacco lobbying influence outside of public scrutiny. Of course your ruling on complaint 297/2013 is highly relevant here.

The Commission refuses to introduce specific measures for tobacco lobbying (required by Article 5.3 of the FCTC), but its response does not provide any indications that it has analysed whether its general approach adequately addresses the specific risks that exist regarding tobacco industry lobbying influence. The Commission's comment refers to the forthcoming proposal for an Interinstitutional Agreement (IIA) on a mandatory (although not legally-binding) Transparency Register, but does not mention any specific measures that it intends to propose and how these would help ensure genuine transparency around tobacco industry lobbying. The current Transparency Register does not deliver adequate levels of lobby transparency: the information that has to be disclosed is far too limited and there are major loopholes that enable continued secrecy. The tobacco industry has a long history of deceptive lobbying, such as using front groups in its lobbying strategies. To move towards serious implementation of Article 5.3 of the FCTC, the Commission should, as part of its proposal for an IIA, propose improvements to the Transparency Register that effectively prevent secretive tobacco lobbying.

Ultimately a legally-binding lobby register is needed to secure full lobby transparency but as an intermediate step, the Commission should ensure that all its officials only meet with registered lobbyists. This is an important step as we know that the voluntary approach to this matter, as set out in the Commission's Practical Guide for staff on ethics and conduct, does not work, with significant levels of lobbying by unregistered entities occurring towards officials not covered by the formal rules.

The register should not only become mandatory, but also ensure that decision-makers and citizens have access to comprehensive and reliable information about who is influencing EU decision-making, on which issues, on whose behalf, and with what budgets. This will require major changes in terms of effective data monitoring, while submitting inaccurate and / or misleading information must be specified as a punishable offence.

The lobby transparency register disclosure requirements should also be broadened. The data currently disclosed by the tobacco industry in the Transparency Register is often very limited and outdated. Philip Morris International, British American Tobacco and other tobacco giants currently report their lobbying spending for 2014 and the register shows next to nothing about the recent lobbying activities of these companies. The following changes should be made to the transparency register:

- All registrants should submit at least two updates per year to make lobby
Another crucial reform needed to make the Transparency register “tobacco industry-proof” is full disclosure of lobbying through third parties: currently, registrants are required to disclose their membership of other organisations such as networks or trade associations. But this is not sufficient to provide an accurate picture of the tobacco industry's full lobby footprint. Registrants should specify all third party organisations through which it conducts its lobbying and indicate how much they pay to them: law firm, lobby consultancy, business group, NGO coalition, or grass-roots organisation or others. This would ensure that those who back 'astroturf' or so-called front groups, have to declare it.

It is essential to end the think-tank exemption: currently, any organisation registered as a think-tank does not need to disclose its funding sources, but only whether the funding comes from public or private sources. This represents a loophole in the rules which aids the secrecy of industry-funded front-groups which masquerade as think tanks; think-tanks should be required to publish a list of their funders and the sums involved.

All lobby consultancies and law firms should be required to list, alongside the specific lobby revenue received from each client, the precise issues upon which they lobby and / or advise each client.

Finally, the disclosure of lobbyists' names is essential. It would help to bring more transparency around the revolving door (the movement of individuals between the public and private sectors) and make it possible to better track the lobby activities of former commissioners, officials, MEPs and others.

I hope you have found these comments useful; I am happy to provide further information as required.

Thank you for your work so far on this important complaint and I look forward to the next step.

Yours sincerely,

Olivier Hoedeman
Corporate Europe Observatory (CEO)