

## REPORT ON MEETING

### REPORT ON THE MEETING OF THE EUROPEAN OMBUDSMAN INQUIRY TEAM WITH REPRESENTATIVES OF THE EUROPEAN COMMISSION

#### COMPLAINT: 571/2024/FA

**Case title:** How the European Commission handled concerns regarding alleged conflicts of interest in a framework contract on tobacco control policy

**Date:** Friday, 28 June 2024

#### Webex meeting

#### Present

##### *European Commission*

Head of Unit, Better Regulation (SANTE. R1);

Deputy Head of Unit, Disease Prevention and Health Promotion (SANTE.B.4);

Legal and Policy Officer, Disease Prevention and Health Promotion (SANTE.B.4);

Policy Officer, Disease Prevention and Health Promotion (SANTE.B.4);

Legal and Policy Officer, Disease Prevention and Health Promotion (SANTE.B.4);

Policy Assistant, Inter-Institutional Relations (SANTE.A.2);

Legal officer (SANTE.R2);

Internal control officer (SANTE.R3);

Head of Unit, Health, Education and Culture (SG.E.4);

Ethics, Good Administration & Relations with the European Ombudsman (SG.C.2);

Senior Expert - Coordinator for inter-institutional Relations - relations with the European Ombudsman (SG.C.2);

Policy Officer, Health, Education and Culture (SG.E.4);

Head of Unit, EU4Health/SMP Food (HADEA.A.2);

Head of Sector, Procurement (HADEA.A.2.003);

Legal Manager (HADEA.A.2.003);

Head of Legal Sector (HADEA.C.2.003).



### ***European Ombudsman***

Ms Jennifer King, Legal Expert;  
Ms Tanja Ehnert, Inquiries Coordinator;  
Ms Francesca Abbo, Inquiries Officer;  
Mr Koen Roovers, Inquiries Officer;  
Ms Zoé Lejeune, Inquiries Trainee.

### **Purpose of the meeting**

The purpose of the meeting was for the Ombudsman inquiry team to obtain clarifications on how the European Commission verified that the European Network for Smoking Prevention (ENSP) was not in a situation of conflict of interest when taking part in a framework contract on tobacco control policy (contract No HADEA/2022/OP/0011).

### **Introduction and procedural information**

The Ombudsman inquiry team introduced themselves, thanked the European Commission representatives for meeting with them and set out the purpose of the meeting. They outlined the legal framework that applies to meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified by the Commission as confidential, neither to the complainant nor to any other person outside the Ombudsman's Office, without the Commission's prior consent.<sup>1</sup>

The inquiry team explained that they would draw up a draft report on the meeting to be sent to the Commission to ensure that its content is factually accurate and complete. The meeting report would then be finalised, included in the file and provided to the complainant. No confidential information would be included in the report or otherwise provided to the complainant or any third party.

### **Information exchanged**

#### ***1. Introductory remarks***

The Ombudsman inquiry team presented the background to the complaint, reiterated the complainant's claims and set out the reasons for opening the inquiry. In particular, the Ombudsman inquiry team explained that, despite having first asked the Commission to clarify the matter in writing, it remained unclear how the Commission carried out its assessment of any conflicts of interest in light of the specific advocacy agenda of the ENSP and its role under the framework contract.

The Commission representatives explained that this complaint is part of a series of allegations that the complainant, Tobacco Europe, has made against the contractor (with

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<sup>1</sup> Article 4.8 of the European Ombudsman's Implementing Provisions.



Open Evidence as a leader in that consortium), which were brought to the media's attention and covered in press articles. Such allegations have been taken seriously by the Commission and the contractor.

## 2. *The applicable legal framework*

The Commission representatives clarified that they always abide by Article 62.3 of the Financial Regulation when procuring contracts and do not outsource tasks involving the exercise of public authority and discretionary powers of judgement or any measure of discretion implying policy choices.<sup>2</sup> Moreover, the Commission explained that the rules laid down in the Financial Regulation, including those concerning the verification of the selection criteria, which also covers the absence of conflicting interests, apply prior to the award of the contract and for the duration of the contract, irrespective of the status of the tenderer.

The Commission representatives explained that all members, incl. ENSP, of the consortium signed two declarations of honour: a general declaration on exclusion criteria and selection criteria and a specific declaration on the absence of conflicts of interest in the field of tobacco. Both declarations were sent to the Ombudsman inquiry team for inspection. The specific declaration of honour was included in the tender documents to provide additional guarantees from tenderers given the particular nature of tobacco control and in light of the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC)<sup>3</sup> which includes the obligation to take special precautions regarding the tobacco industry, such as not been employed in the tobacco industry in the last four calendar years. The specific declaration, which refers to Article 5.3 of the FCTC, covers a broad definition of conflict of interest, including economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest.

The framework contract also contains standard clauses requiring contractors to declare any change in the situation and provide new information that may give rise to a potential conflict of interest for the duration of the contract.

## 3. *Assessment of the conflict of interest*

The Commission representatives stated that the evaluation committee carefully assessed whether there were any conflicts of interest prior to the award of the framework contract. In particular, the evaluation committee examined both the general and the specific declarations of each member of the consortium as submitted during the tender phase. The evaluation committee also took into account for the completion of the assessment the CVs of the staff members provided by the members of the consortium to carry out tasks under this contract, the work and projects that the consortium members had previously carried out for the institutions and the respective roles that the consortium members would fulfil under the contract.

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<sup>2</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1046>.

<sup>3</sup> WHO Framework Convention on Tobacco Control: <https://fctc.who.int/>.



The Commission representatives acknowledged that the ENSP and the Commission have a shared interest in the field of tobacco. The ENSP's mandate is to work towards reducing tobacco consumption, which is in line with the EU's commitments under the Europe's Beating Cancer Plan and the FCTC. Both the ENSP and the Commission's objectives in the field are transparent and publicly known. The Commission explained that having a shared interest does not necessarily give rise to a conflict of interest. In this case, the evaluation committee carefully assessed the situation and saw no conflict of interest in the fact that the ENSP is active in an area of public health where the Commission is also pursuing its stated objectives.

In reaching this conclusion, the evaluation committee took into account the fact that the ENSP's tasks under the contract are limited to providing clinical and scientific expertise. More specifically, the ENSP's role under this framework contract is to give Open evidence (lead tenderer) access to a network of experts and national contact points, which will provide it with technical, scientific and factual data in relation to tobacco use. The input from the contractor will then help the Commission in the outreach for the consultation stages. The Commission explained that none of the members of the consortium, incl. the ENSP, will be involved in any policy determination, which is the sole responsibility of the Commission.

The Commission representatives further noted that there have been two **specific** contracts to date under this framework contract, and that the ENSP has not carried out any tasks under these contracts. The Commission stated that, when procuring further under this framework contract, it will verify again that there are no conflicts of interest.

The Commission representatives confirmed that the conclusion of the evaluation committee's assessment on the absence of a conflict of interest in relation to this framework contract is available only in the evaluation report provided to the Ombudsman inquiry team for inspection. The Commission agreed to provide the inquiry team with the consortium's tender offer, which specifies the tasks of the ENSP under the framework contract.

The Ombudsman inquiry team further noted that point (f) of the specific declaration of honour provides that "*staff members carrying out the activities under this contract have not been employed in the tobacco industry, nor have they had any professional involvement in any project related to tobacco, in the last four calendar year*". The Ombudsman noted that the ENSP does carry out advocacy activities related to tobacco. The Commission clarified that this provision was meant to ensure that members of the consortium do not have **any links to the tobacco industry**. This meant, in practice, that the evaluation committee examined the CVs of the staff members of the ENSP to verify that they had not previously been employed by the tobacco industry nor worked on projects for the industry.

Following the complainant's allegations, the Commission had also been in contact with Open Evidence, the leader of the consortium, who has taken the issue seriously and gave solid guarantees to the Commission that there was no conflict of interest in this case. The Commission representatives agreed to share its correspondence with Open Evidence with the Ombudsman inquiry team.

#### 4. Application of the rules on conflict of interest to non-profit organisations



The Commission representatives explained that the statement from the ENSP, reported in an article published in Euractiv in 2023, that the concept of conflict of interest does not apply to non-profit organisations was taken out of context and was misinterpreted. The Commission contacted Open Evidence as the leader of the consortium on this point, which reassured the Commission that both Open Evidence and ENSP consider themselves bound by the rules on conflicts of interest. The ENSP clarified through the letter by Open Evidence that it never claimed that conflict of interest rules do not apply to it, but that, in relation to this specific framework contract, it had stated that it is not in a conflict of interest situation because of its mandate. The ENSP confirmed that it considers itself bound by its declarations on the absence of conflicts of interest.

### **Conclusion of the meeting**

The inquiry team thanked the Commission representatives for their time and for the explanations provided, and the meeting ended.

Brussels, 28 June 2024

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Inquiries Officer

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Inquiries Coordinator

Koen Roovers  
Inquiries Officer



## **Annex: List of documents inspected by the Ombudsman inquiry team**

On 21 June 2024, the Commission provided the Ombudsman inquiry team with the following documents for inspection:

- Declaration on honour on exclusion criteria and selection criteria of the ENSP for the framework contract HADEA/2022/OP/0011
- Declaration on honour with respect to absence of conflict of interest in the field of tobacco of the ENSP for the framework contract HADEA/2022/OP/0011
- Declaration on honour on exclusion criteria and selection criteria of Open Evidence for the framework contract HADEA/2022/OP/0011
- HaDEA's evaluation report on Call for tenders HADEA/2022/OP/0011

On 28 June 2024, following the meeting with the Ombudsman inquiry team, the Commission provided the following additional documents for inspection:

- The Framework contract for services HADEA/2022/OP/0011 with all annexes. This includes Annex II (Technical and financial offer, Power of attorney, list of identified subcontractors, commitments letters, absence of Conflict of Interest and CVs)
- correspondence between HaDEA and Open Evidence

The Commission asked the Ombudsman to treat all provided documents with confidentiality.