

**To:**

Ms Emily O'Reilly  
European Ombudsman  
1, avenue du Président Robert Schuman  
F - 67001 Strasbourg

**Cc:**

Secretariat-General  
European Commission  
Rue de la Loi 200/ Wetstraat 200  
B - 1049 Bruxelles/Brussel

Brussels, 14 October 2024

**Subject: Request for Investigation into concerns over Conflict of Interest in DG SANTE's Tobacco Control Policy Framework Contract**

Dear Mrs O'Reilly,

I am writing on behalf of Tobacco Europe to formally request that the European Ombudsman investigate concerns regarding potential conflicts of interest in the contract awarded to Open Evidence (OE), a consortium member responsible for providing consultancy services related to the European Commission's tobacco control policies.

On May 8, 2024, Tobacco Europe raised concerns to DG SANTE<sup>1</sup> regarding Open Evidence's handling of the tobacco control policy contract, following a previous complaint on March 13, 2024<sup>2</sup>, involving both OE and the European Network for Smoking and Tobacco Prevention (ENSP). Despite these repeated concerns, DG SANTE's response on August 6, 2024, denying any conflict of interest, is unsatisfactory. DG SANTE's reliance on Open Evidence's declaration of honour under Article 5(3) of the WHO Framework Convention on Tobacco Control (FCTC) failed to acknowledge or properly address the complaints and potential conflicts of interest, especially given the context of EU Financial Regulations<sup>3</sup> and ethical guidelines<sup>4</sup>.

Interestingly, according to Article 61 of the Financial Regulations, which apply to the Commission's external contractors, a "*conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, [...] is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest*". On the latter, the VadeMecum provides guidance applicable "for contracts where the impartiality of the contractor is of importance due to their subject matter (e.g. where contracts deliverables have an impact on policymaking)".

Additionally, it shall be noted that the **notion of impartiality is also one of the key principles of the Better Regulation Guidelines**<sup>5</sup>, which set out the principles that the Commission follows when preparing new proposals.

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<sup>1</sup> <https://www.tobacco-europe.eu/wp-content/uploads/2024/06/TE-Letter-on-Consultants-Conflict-of-Interest-to-the-EC.pdf>

<sup>2</sup> <https://www.tobacco-europe.eu/wp-content/uploads/2024/06/TE-Letter-on-Consultants-Conflict-of-Interest.pdf>

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1046>

<sup>4</sup> [The Vade-mecum on Public Procurement in the Commission](#)

<sup>5</sup> [Better Regulation Guidelines](#)

## Concerns of Impartiality and Objectivity

The issue at hand relates to DG SANTE's reliance on Open Evidence's internal assessment that no conflict of interest exists despite clear indications to the contrary. An Open Evidence employee with direct involvement in the Evaluation of the Tobacco Control legislative framework, is an active member of a Spanish NGO (acting as Youth Ambassador) engaged in anti-industry campaigns. This could point to a political affinity or other ideological or personal reason that would create a situation of conflict of interest for the employee (Article 61 of the Financial Regulation).

Furthermore, involvement with an NGO is specifically mentioned as an example of any other direct or indirect personal interest according to the Financial Regulation Guidance.<sup>6</sup> This individual's participation in public events and advocacy against tobacco, e-cigarettes and tobacco-free products raises questions about Open Evidence's impartiality and creates the appearance of a potential ideological bias, which could affect Open Evidence's capacity to provide unbiased and objective evaluations of the tobacco control framework.

Despite DG SANTE's claim that the employee's participation in these events was personal and unrelated to their employment, the distinction is irrelevant under Article 61 of the Financial Regulation<sup>7</sup>. This regulation<sup>8</sup> stipulates that personal, political, or emotional interests may constitute conflicts of interest, even in cases of pro bono participation.

Given his advocacy and views, expressed at a public event<sup>9</sup> in which he participated in his role as a NGO activist that overlaps with his professional interests, it can be argued that this individual's involvement in evaluating the Tobacco Control Acquis provides for an actual risk that activities within OE have been conducted in a biased manner. The European Commission is currently deliberating key decisions regarding e-cigarettes and other tobacco-free products, which will likely be informed by Open Evidence's analyses. Any potential conflict of interest at this stage could **undermine the integrity** of these decisions.

## Outsourcing and its Impact on Decision-Making

While Tobacco Europe recognizes that DG SANTE retains ultimate decision-making authority under Article 62(3)<sup>10</sup> regarding research and consultancy services, it is essential to stress that any conclusions or opinions stemming from the Evaluation of the Tobacco Control legislative framework (for which Open Evidence is responsible) are meant to be considered as input to future additional assessments regarding policy recommendations and will inevitably shape the Commission's final decisions.

Even if the tasks outsourced did not involve any measure of discretion implying policy choices, Tobacco Europe reminds that **the requirement of independence and impartiality applies to all**

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<sup>6</sup> Tobacco Europe's letter addressed to DG SANTE on May 8, 2024 illustrates those allegations in specific manner with support of social media posts. e

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1046>

<sup>8</sup> Article 61(3) stipulates that a conflict of interest exists where the impartial and objective exercise of functions is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other direct or indirect personal interest.

Additionally, Clause 3.2.1 of the Guidance includes involvement with non-governmental or political organizations as a direct or indirect interest. Clause 3.2.3 of the Guidelines states that a perceived conflict of interest may occur when a person may reasonably be seen as having competing personal and public interests, risking their ability to fulfil tasks impartially and objectively.

<sup>9</sup> <https://youtu.be/Pc0pdmqUZqE?t=5135>

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1046>

**kind of external services and scientific advice.** In this regard, the guidance document "[Scientific advice to European Policy in a Complex World](#)"<sup>11</sup> explains that **'interests' are not only financial** – they may include e.g. career advancement, professional recognition, **ideological convictions or political engagement** (Rowe et al., 2009, 2013; Young et al., 2009). [...]" Furthermore, the importance of **independence in scientific advice given by its expert groups** to the European Commission has been also outlined by the [Ombudsman in complaint 208/2015/PD concerning conflicts of interests in a Commission expert group on electromagnetic field](#)<sup>12</sup>. Finally, it shall be noted that the notion of impartiality is also one of the key principles of the [Better Regulation Guidelines](#)<sup>13</sup>, which set out the principles that the Commission follows when preparing new proposals.

Therefore, it is critical that these inputs be free from any subjective influence or bias.

This was further highlighted in decision on how the European Commission involved stakeholders and managed conflicts of interest in reviewing the protection goals for assessing environmental risks of pesticides<sup>14</sup>. The Ombudsman noted that if concerns about the completeness and/or accuracy of a Declaration of Interest (DOI) are brought to its attention, it expects the Commission to follow up on such concerns and take appropriate steps. Furthermore, in its conclusion, the Ombudsman suggested that the **Commission should require, assess, and publish declarations of interest from experts invited in their personal capacity to similar future events**, which concern the implementation of Union legislation, programmes, and policies.

### **Failure to Investigate Potential Conflicts of Interest and Breach of Procedural Obligations**

Tobacco Europe contends that DG SANTE's failure to properly investigate this potential conflict of interest breaches its obligations under the European Code of Good Administrative Behaviour<sup>15</sup>. Not only did DG SANTE fail to respond within the required time frame, but it also relied solely on the signed declarations of honour provided by Open Evidence, without conducting an independent or thorough investigation. As demonstrated by previous European Ombudsman cases<sup>16</sup>, such as those involving Special Advisors<sup>17</sup>, ensuring impartiality and objectivity requires continuous vigilance, both before and after contract awards. In this case, the Commission failed to act on the concerns brought forward after the contract was granted.

Additionally, Tobacco Europe believes that DG SANTE's exclusive focus on Article 5(3) of the WHO FCTC is overly restrictive. By limiting its assessment to conflicts of interest related only to the tobacco industry, the Commission disregards broader ethical concerns, including personal, political, and NGO affiliations, which are equally relevant under Article 61 of the Financial Regulation and the associated guidance. This is notably illustrated in the ongoing investigation involving the European Network for Smoking Prevention (ENSP) in which the Commission denies that an anti-tobacco NGO working as a consultant in the context of the framework contract on tobacco control policy has potential conflict of interest

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<sup>11</sup> [Scientific advice to European policy in a complex world - Publications Office of the EU \(europa.eu\)](#)

<sup>12</sup> [Decision of the European Ombudsman closing the inquiry into complaint 208/2015/PD concerning conflicts of interests in a Commission expert group on electromagnetic field | Decision | European Ombudsman \(europa.eu\)](#)

<sup>13</sup> [d0bbd77f-bee5-4ee5-b5c4-6110c7605476\\_en \(europa.eu\)](#)

<sup>14</sup> <https://www.ombudsman.europa.eu/en/decision/en/148938>

<sup>15</sup> [European Code of Good Administrative Behaviour](#)

<sup>16</sup> Case 1402/2020/TE

<sup>17</sup> [Case OI/6/2016/AB](#) - Decision of the European Ombudsman setting out suggestions following her strategic inquiry on the Commission's Special Advisers

## Conclusion and Request for Investigation

In light of the aforementioned issues, Tobacco Europe urges the European Ombudsman to investigate the following:

1. Whether DG SANTE properly investigated the potential conflict of interest involving Open Evidence, considering the employee's ties to an anti-tobacco NGO and his actions considering that a conflict of interest can arise for reasons involving inter alia political affinity, any other direct or indirect interest, non-economic interests, involvement with NGOs, political organisations, competing duties of loyalty.
2. Whether the European Commission is adhering to the Financial Regulation's requirements to avoid conflicts of interest in all phases of the procurement and evaluation process.
3. Whether DG SANTE's reliance on Open Evidence's internal declarations is sufficient to meet the high standards of impartiality required in the tobacco control evaluation, in light of the requirement of independence and impartiality, which applies to all kind of external services and scientific advice.
4. Whether DG SANTE complied with the European Code of Good Administrative Behaviour in addressing Tobacco Europe's complaints in a timely manner.

We strongly believe that ensuring **transparency, good governance, and accountability** is essential in maintaining public trust in EU institutions. We therefore kindly request that you initiate a thorough investigation into these concerns to safeguard the integrity of the decision-making process on tobacco control policy.

Thank you for your attention to this matter. We look forward to your prompt and fair resolution of this complaint.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Darge', with a long horizontal stroke extending to the right.

Nathalie Darge

Secretary General, Tobacco Europe AISBL