



## European Ombudsman

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The European Ombudsman's own-initiative inquiry OI/6/2014/NF concerning the composition of Commission expert groups

Dear Mr President,

On 12 May 2014, I informed the Commission of my decision to launch an own-initiative inquiry into the composition of Commission expert groups. The aim of my own-initiative inquiry is to promote transparency and, in a constructive manner, support efforts towards achieving a more balanced composition of Commission expert groups. The purpose of the present letter is to communicate to the Commission (i) the feedback I received to the public consultation carried out in the context of this inquiry, (ii) my preliminary views on the issues involved, and (iii) a set of suggestions (outlined in the Annex), to which I invite the Commission to respond with an opinion by 30 April 2015.

The analysis I have carried out thus far confirms to me that the goal of achieving a balanced composition of Commission expert groups is a complex and challenging task. Nevertheless, the key role played by these groups in contributing to the development of EU legislation and policy makes clear that every effort should be made so that the public can scrutinise and trust their work.

My own view is that the Commission has already embraced a range of positive initiatives that, if applied across the whole spectrum of expert groups, would inject much greater transparency and ensure balance. The suggestions set out below therefore seek to build on what the Commission has already embarked upon in various areas, from DG AGRI's civil dialogue framework to its efforts on the Transparency Register. While the suggestions are detailed and ambitious, I trust that you will find them useful and feasible as you strive to build a model EU administration. Please find hereafter my detailed analysis:



## Public consultation

As a first step in my own-initiative inquiry, I carried out a public consultation. I received 60 contributions that I have taken into account for the purposes of determining the way forward in my inquiry. Please find attached, for your information, copies of the contributions. I will also publish them on my website, as soon as my services have completed the process of document redaction.

The overall tenor of the contributions received is negative as regards the current situation. Stakeholders argue that there are major deficiencies persisting with regard to the composition and transparency of Commission expert groups. The main problems identified by stakeholders are (i) the inconsistent categorisation of organisations that are members of expert groups, (ii) the perceived continued dominance of corporate interests in a high number of expert groups, (iii) a lack of data on the expert groups register, and (iv) the appointment of individuals who are closely affiliated with a specific stakeholder group as experts in their personal capacity, linked to the absence of an effective conflict of interest policy.

## Scope of the own-initiative inquiry and summary of my preliminary views

The scope of my own-initiative inquiry does not cover Commission expert groups which are composed of Member State authorities only.<sup>1</sup> In other words, the present inquiry looks exclusively into Commission expert groups having, among their members, interest representatives (organisations or individual experts representing an interest) and/or independent experts appointed in their personal capacity. In line with the Ombudsman's approach in case 1682/2010/(ANA)BEH, the term 'Commission expert groups' should, in the context of the present inquiry, be understood to refer not only to expert groups in the strict sense but also to cover 'other similar entities'.

Unfortunately, I consider that it is **currently not possible adequately and consistently to review the composition of specific expert groups because of deficiencies in the framework governing such groups, as well as in the expert groups register.** I note that there is **no consistent labelling/categorisation of organisations** appointed to expert groups and that the vague category 'association' appears to be frequently used as a fall-back category. What is more, **the Commission has so far not developed any general criteria for delimiting different groups of stakeholders.** In particular, there are no criteria for the broader categorization of which groups of stakeholders are deemed to represent economic and non-economic interests respectively.

I note, furthermore, that the European Parliament adopted, on 22 October 2014, a resolution on the general budget of the European Union for the financial year 2015, which envisaged holding "*some appropriations in reserve until the Commission modifies the rules on expert groups and ensures their full implementation within all DGs*". The draft amendment tabled by a group of MEPs, on which the resolution was based, pointed to what was perceived as a continued failure to ensure a balanced composition and transparency of expert groups.

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<sup>1</sup> The Commission may, nevertheless, choose to apply the measures it adopts in response to this own-initiative inquiry also to such groups.



In light of the contributions received, the concerns put forward by the European Parliament in the context of the budget procedure, as well as my own preliminary views as outlined above, **I have decided to focus my own-initiative inquiry exclusively on systemic issues which negatively impact on the balanced composition of expert groups and the transparency of the groups' work.**

I have, of course, also taken into account positive developments, which I deem relevant for the present own-initiative inquiry.

#### **Positive developments underpinning my suggestions for improvements**

Since December 2013, DG AGRI's civil dialogue groups, a specific type of Commission expert group, have been governed by a new framework. I consider that this legal framework, the implementation of which is subject to review in the context of own-initiative inquiry OI/7/2014/NF, presents clear advantages over the horizontal rules governing Commission expert groups<sup>2</sup>. I would like to highlight the following points. The framework for DG AGRI's civil dialogue groups is legally binding. It provides that these groups have to have a balanced representation of interests, in particular a balance between economic and non-economic interests. The framework for DG AGRI's civil dialogue groups also requires that, in order to be eligible to be appointed as a member of such a group, an organisation must be registered in the Transparency Register. Moreover, the framework requires a mandatory call for applications for each group. Given these advantages, I consider that the legal framework for DG AGRI's civil dialogue groups should be used as a benchmark for any future amendment of the Commission's horizontal rules governing expert groups.<sup>3</sup>

**I note with great satisfaction that the new Commission has taken a number of initiatives to enhance the transparency of its work.** According to the working methods of the new Commission, Members of the Commission must not, as a rule, meet professional organisations or self-employed individuals which are not registered in the Transparency Register. In addition, since 1 December 2014, meeting agendas of Commissioners, their cabinet members, as well as of Directors-General, with organisations or self-employed individuals on issues relating to policy-making and implementation in the Union are made public.

What is more, the **revised interinstitutional agreement between the Commission and the European Parliament on the Transparency Register** applies since 1 January 2015. The new agreement improves upon the established categorisation of stakeholders by providing more detailed descriptions on the Transparency Register's different sections, with a view to better enabling registrants to choose the right category for registration. It also establishes explicit links to Commission expert groups by (i) requiring registrants to enter their membership in expert groups on the register, as well as by (ii) providing

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<sup>2</sup> The horizontal rules governing Commission expert groups are set out in the following Commission Communication: Framework for Commission Expert Groups: Horizontal Rules and Public Register, 10.11.2010 (C(2010) 7649 final, SEC(2010) 1360).

<sup>3</sup> I would like to clarify that the above does not, in any way, undermine the importance of my own-initiative inquiry OI/7/2014/NF concerning the issue of the balanced composition of civil dialogue groups hosted by DG AGRI. OI/7/2014 was opened with the specific aim carefully to review the appointment of members to the civil dialogue groups. It is not its focus to assess the legal framework underpinning the civil dialogue groups.



that the Commission may offer incentives to registrants with regard to expert groups in order to encourage registration.

In the context of the Transparency Register, I note that you committed the new Commission to submit a proposal for an interinstitutional agreement between the European Parliament, the Council and the Commission on a **mandatory Transparency Register** during its term of office. You have announced that the Commission would lead by example in this process.

In view of the above, **I consider that it is an opportune moment for me to propose that the Commission consider putting in place a new framework for Commission expert groups**, in order for the composition of expert groups to be better balanced and transparent in the future, as well as to provide for the possibility of review of their composition. This new framework should **take into account the following specific suggestions**.

For the sake of clarity, and for ease of reference, I have arranged my suggestions under the following thematic headings: (i) the (legal) nature of the horizontal rules and achieving a balanced composition, (ii) calls for applications, (iii) link to the Transparency Register, (iv) conflict of interest policy for individual experts appointed in their personal capacity, and (v) improvement of data availability on the register.

#### Suggestions for improvement

##### **A. The (legal) nature of the horizontal rules and achieving a balanced composition:**

In my view, it is important that **the framework for Commission expert groups is made legally binding**. Laying down the horizontal rules in a legally binding text would, first of all, ensure consistency between the handling of DG AGRI's civil dialogue groups and the Commission's expert groups in general. There is no obvious reason for the framework for a specific type of Commission expert group to be legally binding, while the framework for other groups is not. What is more, adopting a legally binding text on the framework for expert groups would confirm the Commission's commitment to having balanced expert groups and would enable it to remove the uncertainty that is inherent in the wording of the currently applicable Commission Communication<sup>4</sup>.

In practical terms, making the framework for expert groups legally binding **could be done by adopting a Commission decision on the horizontal rules governing expert groups**.

A Commission decision on the horizontal rules governing expert groups should, moreover, take into account the following points.

1. Notwithstanding the fact that the meaning of 'balance' can be complex and will vary from expert group to expert group, **the balanced representation of all relevant interests should be a mandatory requirement**. The currently applicable provision stipulates that the composition of Commission expert groups has to be balanced only "*as far as possible*". This provision is unsuitable to guarantee that all expert groups are balanced. Nor does it demonstrate commitment on the part of the Commission

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<sup>4</sup> See footnote 2 above.



to strive for a balanced composition of expert groups in each and every case.

2. A Commission decision on horizontal rules for expert groups **should require the Commission to set out an individual definition of 'balance' for each individual expert group.** When establishing such an individual definition, the Commission should take into account the particular objective/tasks of the group; the expertise required; which stakeholders would most likely be affected by the matter; how those groups of stakeholders are organised; and what the ratio of the represented economic and non-economic interests should be.

Given that the appointment of members to a balanced expert group necessarily requires that the Commission has a clear idea of what 'balance' means in the context of the group's mandate, the requirement to set out an individual definition of balance, at the outset, should not involve any extra work for the Commission. Rather, the requirement would amount to an obligation to disclose the definitions that the Commission uses in any event.

The Commission **should publish its individual definition of 'balance' in its decision** establishing an expert group or, if there is no such formal decision, **in the call for applications.** Publishing the definition of 'balance' for formal expert groups also in the calls for applications would ensure that the calls for applications for formal and informal expert groups are structured in a uniform manner.

3. As concerns the individual definition of 'balance', the Commission should, in order to allow for a review of the ratio of economic and non-economic interests represented in an expert group, **develop general criteria for the delimitation of economic and non-economic interests.** Those general criteria should be set out in the Commission decision laying down the general framework for expert groups. The establishment of such criteria would primarily entail that the Commission states which groups of stakeholders it deems to represent economic interests and which groups of stakeholders it deems to represent non-economic interests. In undertaking this exercise, the Commission should rely on the sections and sub-sections of the Transparency Register (see the heading C. further below).

Still on the issue of the balanced composition of expert groups, I have noted the Commission's inconsistent treatment of two organisations active in the agricultural sector: European Farmers ('COPA') and European Agri-cooperatives ('COGECA'). In its expert groups, the Commission has sometimes appointed COPA and COGECA as one single organisation, referring to the relevant member as being 'COPA-COGECA'. In other expert groups, the Commission has appointed 'COPA' and 'COGECA' as separate members.

4. The Ombudsman **invites the Commission to explain this inconsistent treatment and to give its views as to whether COPA and COGECA should, for the purpose of participation in expert groups and other similar entities, be considered as**



**one single organisation or as two distinct organisations.** In this context, regard should be had to the fact that both COPA and COGECA identify their respective legal status as "*association de fait*" on their Transparency Register profiles.

5. The Ombudsman furthermore **invites the Commission to inform her whether it has, in the same manner, inconsistently treated other organisations** appointed to expert groups. If so, the Ombudsman invites the Commission to state its reasons.

## **B. Calls for applications:**

The Commission and civil society organisations tend to agree that the level of representation of civil society in expert groups is not always satisfactory. The Ombudsman recognises that civil society groups will not always have the capacity to participate in relevant groups. The improvements suggested below in relation to the Commission's standards for calls for applications should however help increase the number of civil society organisations eligible for appointment to expert groups.

1. Following the example of the Commission's legal framework for DG AGRI's civil dialogue groups, the **Commission should publish a call for applications for every expert group.**

Given that the potential response to a public call for applications cannot reasonably be predicted, it is difficult to see how and in which specific circumstances the Commission could come to the conclusion, from the outset, that a public call for applications would not serve a useful purpose.<sup>5</sup>

2. What is more, interested stakeholders must be able to **access calls for applications easily.** The Commission **should create a single portal** on which calls for applications are published. The single portal should be created on the model of the Commission's website for consultations<sup>6</sup> and should be interlinked with the expert groups register.

In practice, developing this single portal would mean, in the Ombudsman's view, adding the following functions to the expert groups register's "news" section:

- **Indicative planning for calls for applications**
- **Calls for applications by policy area**
- **E-mail alert system for new calls for applications**

3. The Commission should introduce a **standard deadline** for all calls for applications. This should enable organisations with limited funding and/or human resources to plan accordingly and be able to submit the required documents in time. A deadline of 6 weeks would appear to be a reasonable minimum.

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<sup>5</sup> Given that the Commission decision setting up a framework for DG AGRI's civil dialogue groups, which was adopted in December 2013, provides for a mandatory call for applications for each group, and given further her in-depth analysis of the matter in the course of the present own-initiative inquiry (including relevant arguments put forward in the responses to her public consultation), the Ombudsman's view on the necessity of having a public call for applications for each expert group has evolved since she took her decision closing the inquiry into complaint 1682/2010/(ANA)BEH.

<sup>6</sup> See [http://ec.europa.eu/yourvoice/consultations/index\\_en.htm](http://ec.europa.eu/yourvoice/consultations/index_en.htm).



### C. Link to the Transparency Register:

Inconsistent labelling/categorisation of organisations appointed to expert groups is one of the main obstacles to reviewing whether the composition is balanced or not. The fact that the same organisation may be labelled differently in different expert groups is difficult to comprehend. Furthermore, the labelling of organisations in the expert groups register differs from registrants' categorisation in the Transparency Register. The latter divergence is especially problematic for membership of expert groups which requires registration in the Transparency Register.

I acknowledge that it can be a complex task to label a particular organisation. The Transparency Register, however, contains well-defined categories and subcategories of stakeholders. The delimitation of those categories and subcategories has further been strengthened since 1 January 2015, as mentioned above. The crucial advantage of the Transparency Register, moreover, is that registrants label themselves by choosing the appropriate section of the register to sign up to.

1. Given that registration in the Transparency Register is already a prerequisite for membership of certain Commission expert groups, and given also that it is expected that a mandatory Transparency Register will be introduced in the near future, **I propose that the Commission use the Transparency Register's categorisation to categorise members in Commission expert groups.**<sup>7</sup>
2. Moreover, in light of the working methods of the new Commission and the anticipated mandatory Transparency Register, **the Commission's horizontal rules for expert groups should require registration in the Transparency Register for appointment to expert groups.**

This requirement would, of course, concern only those expert group members who are eligible for registration in the Transparency Register. Already today, Members of the Commission must not meet professional organisations or self-employed individuals which are not registered in the Transparency Register. If the Commission deems it inappropriate for its Members to meet organisations and self-employed individuals not registered in the Transparency Register, it should also deem it inappropriate that those organisations and self-employed individuals influence the Commission's policy and decision-making through their participation in expert groups.

**Concretely, the Commission should require registration in the case of all organisations and of all self-employed individuals to be appointed to expert groups either as representatives of a**

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<sup>7</sup> As regards the inconsistent labelling/categorisation of organisations appointed to expert groups, the Ombudsman has thus developed her thinking on the necessity of having general and well-defined categories of stakeholders since she took her decision closing the inquiry into complaint 1682/2010/(ANA)BEH. The main factors that influenced this development were her in-depth analysis of the matter in the course of the present own-initiative inquiry (including relevant arguments put forward in the responses to her public consultation), the entry into force of the revised interinstitutional agreement on the Transparency Register, as well as the commitment of the Commission's President to come forward with a proposal for a mandatory Transparency Register.



common interest shared by stakeholders or as individual experts in their personal capacity.

As regards individual experts who are not self-employed and who are appointed to represent a common interest shared by stakeholders, one could assume that they will most likely be employees of, or otherwise closely affiliated with, organisations that are part of the group of stakeholders whose common interest they represent.

Even though these individuals are not, by definition, meant to represent those organisations, they will necessarily bear those organisations' interests in mind when acting as members of the relevant expert groups. **I am therefore of the view that it would appear reasonable, in a situation of close affiliation, to require that the relevant organisations themselves register in the Transparency Register.**

3. The proposed linking of the Commission expert groups to the Transparency Register would considerably increase data reliability. However, for this to work properly, **it would appear necessary for the Joint Transparency Register Secretariat to systematically check whether, prima facie, registrants sign up to the right section of the Transparency Register.** This most likely would require an increase in resources for the Secretariat. For any other information provided by registrants, the currently existing system of quality checks, together with the overhauled alerts and complaints system for the detection of incorrect information in the Transparency Register, appears to be a step forward.
4. On a practical note, the Commission should **link each member of an expert group to his/her/its profile** in the Transparency Register so that the public can easily access this data.
5. **Individuals who are not self-employed and who are appointed to expert groups as individual experts in their personal capacity fall outside the scope of the Transparency Register.** Given that those individual experts "*shall [act] independently and [express] their own personal views*", the Commission should, as part of a revised conflict of interest policy, **publish a sufficiently detailed CV and a declaration of interests** for each individual expert concerned on the expert groups register (see the heading D. below).

#### **D. Conflict of interest policy for individual experts appointed in their personal capacity:**

In many of the contributions made to my public consultation, stakeholders expressed concern over the appointment of individuals, who are affiliated with a specific stakeholder group ('lobbyists'), as experts in their personal capacity.

According to the Commission, those individual experts "*shall [act] independently and [express] their own personal views*".





The Commission has however acknowledged, in the context of its collection and use of expertise, that "[i]t is a truism that no one is entirely 'independent': individuals can never entirely set aside all thoughts of their personal background - family, culture, employer, sponsor, etc. Nevertheless, as far as possible, experts should be expected to act in an independent manner. Experts can, of course, still bring to the table knowledge they hold by virtue of their affiliation, or nationality: indeed, experts may sometimes be selected for this very reason. Nevertheless, the aim is to minimise the risk of vested interests distorting the advice proffered by establishing practices that promote integrity, by making dependencies explicit, and by recognising that some dependencies - varying from issue to issue - could impinge on the policy process more than others"<sup>8</sup>.

In light of the above statement, what needs to be guaranteed is that **individual experts appointed in their personal capacity do not find themselves in a conflict of interest situation.**

In my view, the Commission's horizontal rules for expert groups do not provide for sufficient safeguards to this effect. In order to avoid situations in which individuals are appointed as members of expert groups in their personal capacity when, in reality, they have ties to stakeholders that make them unsuited for that role, **it appears necessary for the Commission to revise its conflict of interest policy in this area.** The Commission should take measures with preventive as well as corrective effect.

1. With the aim of preventing conflicts of interest, **the Commission should carefully assess individuals' backgrounds in the course of analysing applications for appointment** to expert groups in a personal capacity. The analysis should be carried out **with a view to detecting any actual, potential or apparent conflicts of interest.**

In line with the OECD Guidelines 'Managing Conflict of Interest in the Public Service', **the Ombudsman has consistently taken the view that principles of good administration and, in particular, the principle of equal treatment, require that the EU institutions ensure that no actual, potential or apparent conflicts of interest affect their work.** As concerns apparent conflicts of interests, the Ombudsman has, moreover, taken the view that the Commission, as an institution, should do its utmost to avoid not only actual conflicts of interest, but also apparent conflicts of interest, in order to maintain public trust and confidence in its activities.

2. The Ombudsman therefore considers that **the Commission should provide, in its decision laying down the general framework for expert groups (proposed by the Ombudsman), that no individual with any actual, potential or apparent conflict of interest will be appointed to an expert group in his/her personal capacity.**
3. If the Commission's assessment of an individual's application for membership in his/her personal capacity reveals a situation of actual, potential or apparent conflict of interest, the Commission could consider the possibility to appoint that individual as a

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<sup>8</sup> Communication from the Commission on the collection and use of expertise by the Commission: principles and guidelines, COM(2002) 713 final, page 9.



representative of a common interest shared by stakeholders or, alternatively, to appoint his/her organisation of affiliation as a member to the expert group.

As concerns corrective measures in the case of a conflict of interest, the sanctions provided for in Rule 9(1) of the horizontal rules (the possibility to exclude an individual expert from the expert group or a specific meeting thereof) can be effective only if a conflict of interest is detected in the first place.

In order to provide for such a possibility to detect conflicts of interest, **the Commission should - subject to the caveat further below -** adopt the following measures in its horizontal rules.

4. **A sufficiently detailed CV of each expert appointed in his/her personal capacity should be published** on the expert groups register. Among other things, the CV should disclose the expert's past and present professional experience, including information on past and present employers, as well as provide information on the sources of funding received.
5. Each expert appointed in his/her personal capacity **should declare in writing any circumstances that could give rise to a conflict of interest as regards his/her activity in the expert group**. This declaration of interests should also be published on the expert groups register. What is more, in order properly to take account of changing interests, **the declaration of interests should be updated on a yearly basis**.

Importantly, **the Commission would have to ensure that it implements the above measures in full compliance with Regulation 45/2001** on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

#### **E. Improvement of data availability on the register:**

The quality of data on the expert groups register - beyond that addressed above in relation to the labelling/categorisation of members - should be further improved.

1. It would be useful for the Commission to **re-design the 'statistics' tab** on the expert groups register. Currently, numbers are provided per type of member (individual expert appointed in his/her personal capacity, individual expert appointed as representative of an interest, organisation, national administration). With a view to enabling the public to review an expert group's balanced composition on the basis of represented interests, **the statistics tab should also display the number of members per category/stakeholder group**. As suggested above, the relevant categories should be equivalent to the Transparency Register's (sub-)sections. On a second level, **the ratio of economic versus non-economic interests represented by the expert group's members should also be displayed on the statistics tab**.

Those technical improvements would allow for a quick first assessment as to an expert group's balanced composition.



2. **The Commission should see to it that documents on expert groups' and their subgroups' work** (agendas, meeting minutes and the like) **are published systematically and in a timely manner.** While the type of documents provided on the work of expert groups themselves seems largely acceptable, documents on the work of subgroups appear to be scarcely available. As a general rule, documents should be published at the earliest convenience, that is, in advance wherever possible. What is more, publication should take place by uploading the documents on the expert groups register - not by hosting them on a different website, for example of the relevant DG. Only if documents are available on the register itself, will the public be able to search them through the register's search function.
3. **The Commission should make sure that it provides sufficient information on the interest that an individual expert represents as a representative of a common interest shared by stakeholders.** That is, the Commission should consistently publish such an individual expert's occupation or professional title, his/her organisation of affiliation (if any), the groups of stakeholders whose interest he/she represents, and the specific common interest represented.
4. In striving for even more transparency, I would like to **invite the Commission to seek to ensure that the minutes that are produced to record expert groups' and their subgroups' meetings, including deliberations, are as detailed as possible.** At the moment, Article 14 of the standard rules of procedure for Commission expert groups provides that a group's deliberations shall be confidential, unless it decides by a simple majority of its members - and in agreement with the Commission's services - to open its deliberations to the public. Article 9 of the standard rules of procedure provides that "*minutes shall not mention the individual position of the members during the group's deliberations*". As concerns meetings more generally, the same Article 9 sets out that "*[s]ummary minutes on the discussion on each point on the agenda and the opinions delivered by the group shall be drafted by the secretariat under the responsibility of the Chair*".

The use of the term 'summary minutes' combined with the fact that minutes must be drawn up only on 'the discussion' and on opinions delivered 'by the group' - and not by its members - creates the risk that reporting a group's activities is done in a vague and limited manner. This is something which should be avoided.<sup>9</sup> In this regard, many of the contributions made to the public consultation raise the concern that expert groups apply the so-called 'Chatham House Rule'<sup>10</sup> in their meetings.

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<sup>9</sup> Rule 11(5) of the horizontal rules for Commission expert groups provides that the obligation of professional secrecy set out in the Treaties, and the rules implementing them, apply. In addition, the provisions of the Commission's rules on security regarding the protection of EU classified information, laid down in the Annex to Commission Decision 2001/884/EC, ECSC, Euratom, apply to expert groups. In the light of these specific safeguards, it is not evident that there is a need to further restrict transparency.

<sup>10</sup> The Chatham House Rule provides that "[w]hen a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed." See <http://www.chathamhouse.org/about/chatham-house-rule>.



On the basis of all of the above, I suggest to the Commission that it consider (i) adopting a decision in 2015 laying down the general framework for expert groups and (ii) reviewing the composition of expert groups which are active or on hold, once this decision has been adopted.

I invite you to submit an opinion on my above analysis and suggestions for improvement by 30 April 2015. I will publish this letter as well as the Commission's opinion on my website.

Please find enclosed, for ease of reference, an Annex with a synopsis of the Ombudsman's suggestions for improvement.

With my suggestions as regards linking Commission expert groups to the Transparency Register in mind, I encourage the Commission to continue to act with a view to putting in place a mandatory Transparency Register.

Yours sincerely,

Emily O'Reilly

Enclosures: (sent by e-mail)

- Annex - Synopsis of the Ombudsman's suggestions for improvement
- Contributions received by the Ombudsman's office to the public consultation concerning the composition of Commission expert groups



## Annex - Synopsis of the Ombudsman's suggestions for improvement<sup>1</sup>

### A. The (legal) nature of the horizontal rules and achieving a balanced composition:

The Commission should **adopt a decision** laying down the framework for expert groups. This Commission decision should require the following.

1. A **balanced representation** of all relevant interests in each expert group.
2. An **individual definition of 'balance'** to be set out for each individual expert group.
3. A provision containing **general criteria for the delimitation of economic and non-economic interests**.

The Ombudsman has noted that the Commission has inconsistently appointed the organisations European Farmers ('COPA') and European Agri-cooperatives ('COGECA') as one single member in some expert groups ('COPA-COGECA') and as two distinct members in other expert groups ('COPA' and 'COGECA'). The Ombudsman thus invites the Commission to:

4. **Explain its inconsistent treatment of COPA and COGECA** as regards membership in expert groups.
5. **Inform the Ombudsman** whether it has, in the same manner, **inconsistently treated other organisations** appointed to expert groups.

### B. Calls for applications:

1. **Publish a call for applications** for every expert group.
2. Create a **single portal for calls for applications** to expert groups.
3. Introduce a **standard minimum deadline of 6 weeks** for all calls for applications.

### C. Link to the Transparency Register:

1. **Use the Transparency Register's categorisation** to categorise members in Commission expert groups.
2. Require **registration in the Transparency Register** for appointment to expert groups.
3. **Systematically check whether registrants sign up to the right section of the Transparency Register**.

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<sup>1</sup> For the precise wording of the suggestion in question, please refer to the full text in the relevant paragraph of the Ombudsman's letter.



4. **Link each member** of an expert group to his/her/its profile in the Transparency Register.
5. See heading D. below for individuals who are not self-employed and who are appointed to expert groups as individual experts in their personal capacity.

#### **D. Conflict of interest policy for individual experts appointed in their personal capacity:**

The Commission should revise its conflict of interest policy and take the following measures.

1. **Carefully assess individuals' backgrounds** with a view to detecting any actual, potential or apparent conflicts of interest.
2. Ensure that **no individual with any actual, potential or apparent conflict of interest will be appointed** to an expert group in his/her personal capacity.
3. Consider, in a situation of conflict of interest, the possibility to **appoint an individual as a representative of a common interest** shared by stakeholders or to appoint his/her organisation of affiliation to the expert group.
4. **Publish a sufficiently detailed CV** of each expert appointed in his/her personal capacity on the expert groups register.
5. **Publish a declaration of interests** of each expert appointed in his/her personal capacity on the expert groups register.

#### **E. Improvement of data availability on the register:**

1. **Re-design the 'statistics' tab** on the expert groups register.
2. **Publish documents** on expert groups' and their subgroups' work on the expert groups register **in a systematic and timely manner**.
3. Publish, on the expert groups register, **sufficient information on the interest that an individual expert represents** as a representative of a common interest shared by stakeholders.
4. Seek to **ensure that the minutes that are produced to record expert groups' and their subgroups' meetings, including deliberations, are as detailed as possible**.

On the basis of the above, the Commission should consider (i) adopting a decision in 2015 laying down the general framework for expert groups and (ii) reviewing the composition of expert groups which are active or on hold, once this decision has been adopted.