

FINAL

Comments of the Commission on a request for information from the European Ombudsman
- Complaint by Mr Chris JONES, ref. 1276/2018/EWM

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 17 June 2016, the Commission adopted its Decision setting up the High-Level Expert Group on Information Systems and Interoperability (C(2016) 3780). The group was included in the online Register of Commission expert groups and other similar entities ('the Register of expert groups'). The members of the group were Member States' authorities and other public entities, "Type D and E members" respectively, in the sense of Commission Decision C(2016) 3301 of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups¹ ('the horizontal rules').

On 4 July 2016, Mr Jones submitted a request for access to documents relating to the group and its members. The Commission (DG HOME) replied by directing Mr Jones to the public website, which included Decision C(2016) 3780 and which indicated the members. On 12 July 2016, Mr Jones replied, specifically requesting details of national ministries and/or agencies represented in the group. The Commission again replied stating that under the horizontal rules, it was not mandatory to publish the names of Member State and third countries' authorities which are members of expert groups, only to indicate the name of the countries.

By email of 4 August 2016, Mr Jones submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to documents², asking for a review of DG HOME's position and again requesting access to the details in question. By letter of 31 August 2016, the Commission confirmed that it had no list of the names of the national ministries and/or agencies representing each country, only the names of the experts representing each country. The Commission informed Mr Jones of the means of redress available against the decision, in particular the possibility of complaints to the Ombudsman.

II. THE COMPLAINT

On 12 July 2018, Mr Jones submitted a complaint to the Ombudsman. He recalled the previous exchanges in 2016, in particular the Commission's response that under the horizontal rules, it is not mandatory for the Commission to publish the name of the Member States and third countries' authorities. The Commission had cited in particular Article 23(1)(b) of the horizontal rules, which reads as follows: "*where Member States' authorities or third countries' authorities are appointed, it is sufficient to indicate the name of the country in question. The specific administrations of these countries to which experts usually participating in the meetings belong may be published in the Register of expert groups*".

¹ Art. 7.2 (d) and (e).

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43).

In his complaint to the Ombudsman, Mr Jones drew attention to Commission Decision C(2016) 3780 which applies specifically to the group at stake. Mr Jones cited Article 11(2): *“As concerns composition, the name of the members, including the Member States’ authorities, as well as of the observers shall be published on the Register of expert groups.”*

Given the wording ‘shall be published’ in the specific Decision C(2016) 3780 (rather than ‘may be published’ in the horizontal rules), Mr Jones claims in his complaint that the Commission was wrong not to publish the name of the Member States and third countries’ authorities.

III. THE COMMISSION’S COMMENTS TO THE COMPLAINANT’S ARGUMENTS

Mr Jones is correct in referring to Article 11(2) of Commission Decision C(2016) 3780 which applies specifically to the group at stake. Due to an administrative oversight, this provision was not duly taken into account when handling Mr Jones’s request for access to documents. The requested information should, indeed, have been published on the Register of expert groups at the time that the expert group was created. The Commission therefore attaches a list of the names of the Member State and third country authorities that participated in the work of the group.

IV. CONCLUSIONS

The Commission hereby provides the list of authorities that participated as Member State and third country members of the group. The Commission will write directly to Mr Jones to provide the list. Although the group is closed on the Register of expert groups, the Commission will update it.

List of enclosures

- List of Member State and third country authorities of the High-level Expert Group on Information Systems and Interoperability