



Emily O'Reilly
European Ombudsman

Decision

in case 1276/2018/FP on the European Commission's alleged failure to disclose the names of the national authorities participating in the High-Level Expert Group on Information System and Interoperability

The case concerned a request for access to documents by a complainant who wanted the Commission to provide him with the names of the national authorities that participated in the High-Level Expert Group on Information System and Interoperability. In response to the complainant's request, the Commission initially stated that it was not in possession of this information, and that the relevant rules only required it to publish the names of the countries participating, not the names of the national authorities.

However, following the intervention of the Ombudsman, the Commission acknowledged that the requested information should indeed have been published for this particular group, and duly provided the complainant with a list of the national authorities involved.

The Ombudsman considered the complaint to be settled and therefore closed the inquiry.

Background to the complaint

1. In 2016, the European Commission established the High-Level Expert Group on Information System and Interoperability (HLEG)¹. Its purpose was to develop a joint strategy to make data management in the EU more effective and efficient, thereby protecting the EU's external borders and enhance internal security. HLEG was comprised of experts from EU Member States, associated Schengen countries and various EU institutions, agencies and bodies.

¹ High Level Expert Group on Information System and Interoperability (E03435), available at: <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3435>.



2. The complainant made a request to the Commission for public access to documents concerning the HLEG, in particular the names of the national authorities whose experts participated in the group.
3. The Commission referred the complainant to a webpage containing a list of the HLEG members. However, according to the horizontal rules on the creation and operation of Commission expert groups,² it is not mandatory to publish the names of the national authorities. The Commission had therefore only published the names of the Member States in question.
4. The complainant asked the Commission to reconsider his request to make available the names of the national authorities involved in the HLEG. The Commission replied that it had carried out a thorough search and had not identified any documents held by the Commission that contained the requested information. While it had a list of the names of the experts from each country, it did not have a record of which national authorities they represented.
5. Dissatisfied with the Commission's reply, the complainant turned to the Ombudsman in July 2018.

The inquiry

6. The Ombudsman opened an inquiry into the Commission's alleged failure to disclose the names of the national authorities participating in the HLEG.
7. In the course of the inquiry, the Ombudsman asked the Commission to comment on the complaint, and received a reply in February 2018. The Commission apologised for the delay in responding.

Arguments presented to the Ombudsman

8. The complainant argued that the Commission failed to fulfil its obligation to publish the names of the national authorities participating in the HLEG. The Commission decision establishing the HLEG clearly states that "*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*".³ This creates an obligation for the Commission, with regards to this particular group, to publish more detailed information than just the names of the participating countries. This is the case even though, as the Commission argued in response to the complainant's

² Article 23(1)(b) of the Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of Commission's expert groups, available at: http://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_COMMISSION_DECISION_EN.pdf.

³ Article 11(2) of the Commission Decision of 17 June 2016 setting up the High Level Expert Group on Information Systems and Interoperability, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D0715%2801%29>.



request, the horizontal rules on Commission expert groups do not state that the names of participating national authorities must be published, only that they “*may be published*”.⁴

9. Following the intervention of the Ombudsman, the Commission acknowledged that the complainant’s arguments were correct. The decision establishing the HLEG does indeed require the names of the participating national authorities to be published in the register of expert groups when the HLEG was created. Due to an administrative oversight, this provision was not taken into account when handling the complainant’s request for access to documents. The Commission therefore provided the complainant with a list of the names of the Member State and third country authorities that participate in the work of the HLEG, and promised to update the register of expert groups accordingly.

The Ombudsman's assessment

10. By correcting its administrative oversight and providing the complainant with the requested information, the Commission has settled the complaint.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:⁵

The Commission having disclosed the requested information to the complainant, the complaint has been settled.

The complainant and the Commission will be informed of this decision.

Emily O'Reilly
European Ombudsman
Strasbourg, 20/03/2019

⁴ Article 23(1)(b) of the Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of Commission’s expert groups, available at:

http://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_COMMISSION_DECISION_EN.pdf.

⁵ Information on the review procedure can be found on the Ombudsman’s [website](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark):

<http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>