

Decision of the European Ombudsman in her strategic inquiry OI/6/2014/NF concerning the composition and transparency of European Commission expert groups»European Ombudsman

European Ombudsman

Abstract

The EU has the responsibility and challenge of proposing and agreeing policy and legislation which affects over 500 million Europeans. The development of policy, including policy that gives rise to proposals for new EU legislation, is one of the main tasks of the European Commission. While the Commission relies heavily on its internal expertise and experience in this work, it also relies on a wide range of external sources, such as specialised European agencies, studies carried out for it by experts and academics, feedback on its 'green papers', public consultations and hearings, and over 800 expert groups.

This strategic inquiry concerned one important aspect of the European Commission's reliance on external sources of expertise, namely its system of expert groups. The Commission establishes expert groups to seek external advice and expertise from individuals, organisations and/or Member States and other public authorities as it prepares legislative proposals and policy initiatives, drafts delegated acts, and implements existing legislation, programmes and policies. It is for the Commission to decide how to take into account the expertise and advice provided by its expert groups when carrying out its duties in the general interest of the European Union.

Building on the Commission's previous achievements in improving its management of these groups, the Ombudsman's inquiry aimed at assisting the Commission in identifying and addressing the main systemic weaknesses in its general rules governing expert groups. After carrying out a public consultation, the Ombudsman made a range of suggestions to the Commission on how to improve the rules in the following areas: achieving a balanced composition of expert groups, calls for applications for expert group membership, synergies with the Transparency Register, conflict of interest policy for individual experts appointed in a personal capacity, and improvement of data availability on the expert groups register.

Regarding transparency of expert groups' work, there was significant room for improvement. The Ombudsman thus made two specific recommendations to the Commission with a view to allowing the public to follow the detail of expert group deliberations and to know, ultimately, whose viewpoints influenced the Commission.

In 2016, in the course of this Ombudsman inquiry and following calls from the European Parliament and civil society, the Commission reformed its expert group system. It issued a

Commission Decision with revised rules governing the functioning and work of its expert groups. With its reform, the Commission has significantly overhauled its expert group rules and has put in place a more robust and transparent system. The new rules are largely in line with the Ombudsman's suggestions. In particular, the Commission has made the selection procedure for expert group members more transparent, it has put in place a new conflict of interest policy for individual experts appointed in a personal capacity, and it now requires organisations and self-employed individuals to be registered in the Transparency Register in order to be appointed to expert groups.

The Commission has also made good progress on facilitating better public scrutiny of the work of expert groups. Meeting minutes are now required to be “meaningful and complete”, members can have their dissenting opinions published, and expert groups may decide to deliberate publicly. In the event of public deliberations, the public may be invited to attend a meeting or the meeting may be web streamed.

The Ombudsman closes this inquiry, now that reform of the expert group system has been achieved. She will continue to monitor the Commission's implementation of its reforms of the expert groups system.

Outcome of the strategic inquiry - key improvements at a glance:

- *Legally binding rules and increased political accountability for expert groups*
- *Public calls for applications as a standard means of selecting members*
- *Mandatory registration in the Transparency Register*
- *Links between the entries in the expert groups register and the Transparency Register*
- *Consistent categorisation of organisations*
- *New conflict of interest policy for individual experts appointed in their personal capacity*
- *Description of mandate and advice needed for each new group*
- *Meaningful and complete minutes of meetings*
- *Publication of dissenting opinions*
- *Arrangements for public deliberations*

The background to the strategic inquiry^[1]

1. The development of EU policy, including policy that gives rise to proposals for new EU legislation, ultimately affecting more than 500 million European citizens, is one of the main tasks of the European Commission. While the Commission relies heavily on its internal expertise and experience in developing policy, it also seeks input from a wide range of external sources, among them more than 800 expert groups. Expert groups are consultative bodies that are set up by the Commission to provide it with advice and expertise in relation to (i) the preparation of legislative proposals and policy initiatives in the context of the Commission's right of initiative;

(ii) the preparation of delegated acts; (iii) the implementation of existing Union legislation, programmes and policies as well as coordination and cooperation with Member States and stakeholders in that regard; and (iv) the early preparation of implementing acts. Expert groups thus play a crucial and privileged role in the development of EU policy.

2. The legitimacy of EU policy development must of course take into account whether the Commission has consulted with an appropriately diverse range of external sources. It is also important that the contributions of expert groups are, in and of themselves, well-balanced, and viewed as legitimate. To gain this legitimacy, the Commission needs to ensure that the public knows who the experts are, how they were chosen, and what work they deliver for the Commission.

3. The Ombudsman opened this strategic inquiry^[2] to follow up on her commitment to monitor the Commission's progress in terms of the transparency and composition of expert groups^[3]. Building on the Commission's previous achievements in improving its management of these groups, the inquiry aimed at assisting the Commission in identifying and addressing the main systemic weaknesses in its general rules governing expert groups^[4]. These weaknesses risked hampering further progress with regard to the balanced composition of the Commission's expert groups and the transparency of their work.^[5]

4. The then new Commission had just taken a number of important initiatives to enhance the transparency of its work^[6]. It had generally declared transparency and accountability to be priority topics in its efforts to build a model EU administration. The Ombudsman therefore considered that it was an opportune moment to put to the Commission a range of ambitious proposals on how to improve the rules governing the Commission's expert groups. The Ombudsman thereby built on demands that different stakeholders, including the European Parliament, had already made to the Commission.^[7]

5. In the course of her inquiry, the Ombudsman made two types of proposal to the Commission on how to improve its expert group system: 'suggestions for improvement' and 'recommendations'. While both types of proposal aim at addressing identified weaknesses in the system, 'recommendations' are based on a finding of existing maladministration.

The inquiry

6. The Ombudsman's strategic inquiry sought to achieve substantial impact over time. In order to be able to map and measure results, it spanned the period from the new Commission taking up office in 2014, until the end of the Commission's implementation phase of its reformed expert group rules in 2017.

7. As a first step, the Ombudsman carried out a public consultation to allow interested stakeholders to inform her inquiry^[8]. Many stakeholders who submitted contributions were concerned that major deficiencies persisted in the system, notably regarding the inconsistent categorisation of expert group members; a disproportionate representation of corporate interests in expert groups; a lack of data on the expert group register; and the absence of an

effective conflict of interest policy for individual experts appointed in their personal capacity. The Ombudsman took into account the feedback received during the public consultation and looked carefully at the information available on the expert groups register^[9].

8. Following her analysis of the Commission's expert group system, the Ombudsman asked the Commission to reply to a set of detailed suggestions for improvement^[10]. The Ombudsman suggested that the Commission lay down its general rules governing expert groups in a legally binding Commission Decision and that it introduce important changes to the system in the areas set out below:

A. Calls for applications:

1. Public call for applications for every expert group
2. A portal for calls for applications to expert groups
3. A standard minimum deadline for all calls for applications

B. Synergies with the Transparency Register:

1. Mandatory registration in the Transparency Register for appointment to expert groups
2. Consistent categorisation of members in Commission expert groups
3. Systemic checks of and link to a member's profile in the Transparency Register

C. New conflict of interest policy for individual experts appointed in their personal capacity

D. The nature of the horizontal rules and achieving a balanced composition:

1. The concept of balance
2. Balance requirement
3. Individual description of balance per group

E. Transparency, including improvement of data availability on the register:

1. Transparency of deliberations and minutes of meetings
2. Publication of documents
3. Publication of information on the common interest shared by stakeholders represented by an individual expert

9. In its first reply^[11], the Commission agreed to implement, either fully or partially, a number of the Ombudsman's suggestions for improvement. **Most importantly, the Commission signalled that it was ready to reform, in the near future, its rules governing expert groups. The Commission also agreed to link the expert groups register and the Transparency Register^[12] and to reinforce the role of calls for applications in the selection of expert group members. It also announced that it would put in place a revamped version of its expert groups register.** The Ombudsman welcomed the Commission's commitments and made further suggestions^[13] on those matters where, despite

the Commission's willingness to reconsider its rules, she saw further room for improvement.

10. Considering, however, that the Commission's transparency arrangements in relation to the output of expert groups fell short of allowing the public to follow, in detail, expert group deliberations and to know, ultimately, whose viewpoints influenced the Commission, the Ombudsman also made two specific recommendations^[14]. **She recommended (i) that the Commission require that minutes of expert group meetings be meaningful and detailed and (ii) that the groups' deliberations be non-confidential by default.**

11. On 30 May 2016, the Commission announced its reforms of the expert group system. It issued a Commission Decision^[15] with revised rules governing the functioning and work of its expert groups. The following day, it sent a reply^[16] to the Ombudsman's further suggestions and recommendations, presenting the new rules and explaining how they responded to the Ombudsman's suggestions and recommendations. While the new rules are largely in line with the Ombudsman's various suggestions on how to improve the system, it was not clear to what extent the provisions on expert groups' meeting minutes and deliberations gave effect to the Ombudsman's recommendations in those areas.

12. The Ombudsman thus deemed it necessary to further assess the extent to which the Commission had accepted, and had given practical effect to, her two specific recommendations. After the Commission's transitional phase for implementing its new expert group rules had ended, the Ombudsman requested^[17] documents and information to determine how detailed the Commission now requires the minutes of expert group meetings to be and how often, if at all, groups have made use of the possibility of deliberating in public. Ombudsman and Commission staff then met^[18] to discuss the actions taken by the Commission in order to give effect to the Ombudsman's recommendations.

13. The Ombudsman is now in a position to take a final view on the merits of the Commission's new rules governing its expert groups. She attaches importance to the following global evaluation of the impact that her inquiry, together with the efforts of the European Parliament and civil society organisations, has had on the Commission's expert group system. A detailed analysis of how her individual suggestions have been addressed in the Commission's new rules is set out in the Annex.

The Ombudsman's suggestions and the Commission's new rules governing expert groups

The Ombudsman's assessment

14. The Commission's reform of its general rules governing the creation and functioning of its expert groups consists of a set of three documents: the **Commission Decision^[19]** containing the revised general rules; a document with **Annexes^[20]** to the Decision, including standardised forms related to the selection of expert group members and the procedural rules of the groups; and a **Commission Communication^[21]** explaining the main features of the

reform. The new general rules have replaced, and repealed, the old rules. They apply to all existing and future expert groups and had to be implemented by the end of 2016.

15. The Ombudsman acknowledges the huge efforts made by the Commission to make more than 800 groups comply with the new rules within a relatively short period of time. The Commission had, at the same time, to put in place the revamped register of expert groups. With its reform, the Commission has significantly overhauled its expert group rules and has put in place **a more robust, inclusive, and transparent system**. The new rules are a clear response to the different stakeholders who put forward their concerns.[\[22\]](#) While a reform of this scale and scope calls for choices that risk not satisfying each and every demand made, the outcome overall has met the Ombudsman's expectations of what could realistically be achieved over a three year period. The result is commendable.

Political control and accountability

16. As requested by the Ombudsman, the Commission has, for the first time, adopted general rules governing expert groups in the form of a **Commission Decision**, giving these rules legal authority and force. It has also consolidated its system by bringing within its scope advisory bodies which previously were not treated as expert groups, solely because of the small number of members.[\[23\]](#) Importantly, the Commission has shown its determination to assume political control and responsibility over its expert groups by submitting the creation of any expert group to Commissioner-level approval. It has now also officially tasked its Secretariat-General with overseeing the implementation of the new rules governing expert groups[\[24\]](#).

Enhancing the role of the Transparency Register

17. The Commission has taken up fully the Ombudsman's suggestion to boost transparency by creating synergies between the expert groups register and the Transparency Register. The Commission has interlinked the entries of organisations and self-employed individuals on the expert groups register with their profile on the Transparency Register. The Commission has also harmonised the categorisation of those organisations that are members of expert groups with the Transparency Register's categorisation. Importantly, the link between the two registers is not only technical but also means that expert group members are now, as a general rule[\[25\]](#), obliged to register in the Transparency Register. Put differently, entities not registered in the Transparency Register are no longer eligible for membership in expert groups. Thanks to the new links between the two registers, the public has now, for the first time, reliable information about who sits on expert groups. As an additional feature, the Commission now also indicates what interests are represented by organisations and individual experts appointed to represent a common interest shared by stakeholders.

18. The Ombudsman is also pleased to note that, according to the Commission[\[26\]](#), there was a noticeable increase in the number of registrations on the Transparency Register in the nine months following the adoption of the new general rules governing expert groups.

Conflict of interest policy for independent experts

19. The Commission has put in place a new conflict of interest policy for individual experts appointed in their personal capacity to ensure that those experts will act independently and in the public interest. The new policy includes the definition of a conflict of interests, rules for the processing of declarations of interests, and rules on the management of conflicts of interests. The declarations of interests of those individuals who are appointed as experts in their personal capacity are published on the expert groups register. A duly completed declaration of interests form gives an informative account of an expert's recent activities and interests.[\[27\]](#) Individual experts appointed in their personal capacity are now also reminded, on an annual basis, of their obligation to inform the Commission of any changes in their declared interests.

Selection through public calls for applications

20. The Commission has made public calls for applications the standard means of selecting expert group members (reserving itself the right to deviate from the standard rule in exceptional circumstances). The Commission has thus injected greater transparency into the selection process. The Ombudsman believes that the increased transparency of the selection process for expert group membership will make the process more inclusive and ensure a more balanced composition of the groups. To enhance the visibility of calls for applications, the Commission has created a dedicated section on the expert groups register, which includes the possibility to search for, and subscribe to, calls for applications in particular policy areas. More generally, interested stakeholders can now also subscribe to the news feed of a particular expert group, to be notified of changes on the register.

Balanced composition

21. The Ombudsman's view is that the composition of a particular expert group is balanced if it accurately reflects the different types of expertise sought by the Commission which, taken together, enable the group to fully carry out the mandate conferred on it.[\[28\]](#) 'Balance' does not therefore refer to, or require, a situation of arithmetic equilibrium or parity of the different interests represented in an expert group. Noting that the European Parliament agrees with the Ombudsman on this point[\[29\]](#), she regrets that the Commission has not taken the opportunity to explain explicitly, in its new rules governing expert groups, what precisely it understands by 'balance'. The Ombudsman continues to believe that it would be useful for the Commission to take a clear stance on the matter in order to avoid misunderstandings on the part of stakeholders and the public.

22. The Ombudsman welcomes the fact that the Commission has, for all intents and purposes, accepted her suggestion to set out an 'individual definition of balance' for each expert group, that is, an explanation of what composition is sought for a particular group. According to the new rules, the Commission will, when setting up an expert group, "*clearly define its mandate*"

and the tasks of the group and state the area of activity and the type of advice required. The Commission has clarified in its new rules that Member State authorities, as well as other public entities, which are expert group members, can be represented at meetings only by civil servants or other public employees. The Commission has thereby addressed a concern expressed by civil society organisations, that is, the backdoor representation of corporate interests in the guise of public authorities.

23. The Ombudsman is confident that all of these improvements will, taken together, positively impact on the balanced composition of the groups. She also understands and expects that the Commission remains committed to addressing any real or perceived imbalance on a case-by-case basis. In her view, any further steps that might be considered, for example making funds available to support the capacity of under-resourced groups to participate, are to an extent political in nature and more appropriately pursued at that level, including via the European Parliament.

The Ombudsman's recommendations on meeting minutes and deliberations △

The Ombudsman's assessment △

24. The Ombudsman made the following two recommendations to the Commission with a view to enhancing the transparency of its expert groups' work:

The Commission should revise its standard rules of procedure as regards:

- **the content of published minutes and provide that, in the normal course, the published minutes will be as meaningful as possible and, in particular, set out the positions expressed by the members;**
- **the confidentiality of expert group deliberations, and provide that, as a general rule, these deliberations should be transparent and that only in exceptional cases, following a majority vote within the group and with the consent of the Commission, would an expert group's deliberations be confidential. Transparency in this context requires, as a minimum, prior publication of the agenda and of the background documents followed by timely publication of adequate minutes of the particular expert group meeting.**

25. The rules in force at the outset of this inquiry constituted simply standard rules of procedure for expert groups. They were not binding on the Commission and were weak in terms of content. They provided for summary minutes only, which entailed not disclosing the individual positions expressed by expert group members during deliberations. They also provided for deliberations to be confidential. The Ombudsman considered that those arrangements did not adequately allow for public scrutiny of the advice and expertise provided to the Commission by its expert groups.

26. As a first point of change, the Commission has made the relevant provisions on meeting

minutes and deliberations part of the new, legally binding general rules governing expert groups. They are thus no longer simply rules of procedure but an inherent part of the Commission's expert group system. The Commission has thereby sent a strong signal that it takes seriously the emphasis placed by the Ombudsman on the quality of minutes and the transparency of deliberations. While the Commission has not replicated the wording of the Ombudsman's recommendations, the new general rules governing expert groups, together with the implementation measures^[30] taken by the Commission, provide for the following improvements.

Meeting minutes

27. In its new rules governing expert groups, the Commission has introduced **a new quality standard** for expert groups' meeting minutes by requiring that minutes shall be "**meaningful and complete**". The Ombudsman welcomes the fact that the Commission has employed the term 'meaningful', which is taken from her recommendation. While the Commission has not, in its new general rules, explicitly provided for the setting out of viewpoints expressed by members, the Ombudsman understands and expects that the requirement of minutes being 'complete' is intended to accommodate this aspect of her recommendation. Compared with the previously applicable standard of 'summary minutes', the new provision, in itself, marks real progress towards enabling the public to effectively understand the process in the course of which an expert group's opinion was developed.

28. Importantly, **the Commission has taken further action to ensure that its new quality standard for the content of meeting minutes will be properly adhered to at the implementation stage.** The Commission's Secretariat-General has drawn up a **template for minutes** of expert groups meetings, which the Commission's different Directorates-General ('DGs') have been instructed to use. The template includes specific guidance on how to draft minutes. In particular, it asks DGs to list all points discussed by an expert group and to draft the minutes in a way that allows for a thorough understanding of the topics on the agenda, and any other topic discussed at the meeting. **The template also asks for the positions expressed by participants in relation to each of the topics discussed to be recorded,** as well as possible conclusions, or a vote, on each topic discussed.

29. The Ombudsman welcomes the fact that the Commission will continue to monitor its DGs' use of this template and of how they follow the guidance on drafting minutes. The Commission's Secretariat-General has undertaken to circulate best practice examples of meeting minutes to the DGs, asking them to draw on those examples in further improving the meaningfulness of their own expert groups' meeting minutes. It will also continue to provide guidance to the DGs on specific questions and to offer regular training courses for staff. The Ombudsman is satisfied that the best practice examples of expert group minutes, which the Commission sent to the Ombudsman in preparation for a meeting held in June 2017, were indeed meaningful and comprehensive. She encourages the Commission to step up its efforts to ensure that its current best practices in drafting expert group meeting minutes become standard practice in the near

future.

30. As a new transparency feature, the Commission's new rules governing expert groups now allow for dissenting opinions to be published in an annex to an opinion, a recommendation, or a report adopted by vote. While expert groups generally adopt their positions by consensus, and reliance on a vote remains the exception, the new provision is a welcome step towards further increasing the transparency of expert groups' output. The Ombudsman is reassured that members of some expert groups, albeit a small number, have already made use of the new possibility to have their dissenting opinions recorded and published.

Deliberations

31. In relation to expert group **deliberations**, the Commission's new rules fully implement what the Ombudsman identified as the '**minimum transparency requirements**'. **The new rules provide for the prior publication of the agenda and background documents followed by timely publication of minutes of a particular expert group meeting.** The public will thus be informed of the subject matter of all expert group deliberations as well as of how discussions progress. **The Ombudsman thus understands that the Commission has, in accordance with these minimum transparency requirements, done away with confidential expert group deliberations.**

32. This understanding is confirmed by the fact that the Commission has deleted from its rules governing expert groups the explicit statement that deliberations shall be confidential. Rather, the new rules provide that expert groups may decide to deliberate **publicly**. While this change in wording may seem formalistic in nature, the Ombudsman sees it as a step forward. Read together, the new rules on the quality standard for meeting minutes and the minimum transparency requirements for deliberations mean that **the question is no longer whether the public will manage to acquaint itself with the content of expert group deliberations.** Minutes are required for every meeting, including deliberations. **The question is rather how quickly and to what level of detail will the public be in a position to follow deliberations. The answer is obvious if an expert group decides to meet publicly (see point 33 below). Where it does not so decide, the key questions will be how timely the publication of documents is and to what extent the minutes will link the viewpoints expressed to individual members.**

33. The Commission's new template for meeting minutes includes a specific heading - "*nature of the meeting*" -, where it is to be stated whether a particular expert group meeting was held in public or not. **If a group decides to meet in public, the DG is asked to state what arrangements were chosen.**^[31] **By listing the possibility of allowing members of the public to attend a meeting in person or to have a meeting web streamed, the template confirms the Ombudsman's understanding that the new notion of 'public deliberations' goes further than non-confidentiality. In fact, the Commission has**

put into practice the Ombudsman's suggestion that it consider whether some expert group deliberations might be fully open to the public, for example, by way of web streaming[32]. The Commission has confirmed to the Ombudsman that its aim in this area is to encourage more openness and to further publicise, among its DGs, the idea of holding public expert group meetings, whenever opportune. The Ombudsman is pleased that some, albeit a small number of, expert groups have already made use of the possibility to web stream[33] their meetings. On this basis, the Ombudsman understands that the Commission has moved from the concept of confidential deliberations to one of distinguishing between public and non-public deliberations. In the former case members of the public are invited to attend a meeting in person or the meeting is web streamed.

34. Lastly, the Commission has announced that it will, by the end of 2017, create a new section on its expert groups register specifically dedicated to documents on expert groups' work. The Commission expects that this new section, which will classify documents by type, will increase the visibility of the documents and incentivise DGs to publish documents in a timely manner.

Conclusion on the Ombudsman's recommendations

35. Notwithstanding the fact that further progress is possible and needed as regards the transparency of expert groups' work, the Ombudsman considers that the Commission's new rules on expert group meeting minutes and deliberations comply with the spirit of her recommendations. Provided that the Commission follows through with the changes it has now initiated, the Ombudsman is hopeful that tangible results will be achieved and that openness will become the default operating principle for expert groups.

Conclusion

Taking account of the Commission's new general rules governing expert groups, the Ombudsman now closes the inquiry with the following conclusion:

The purpose of this inquiry has been largely achieved, that is, to bring about a reform of the Commission's expert group system. Going forward, the Ombudsman will continue to monitor how the Commission implements her two specific recommendations on the transparency of its expert groups' work.

The Commission will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 14/11/2017

Annex:

The Ombudsman's assessment of the Commission's reform of the general rules governing expert groups

Overview table on individual recommendations, suggestions, and commitments for improvements

Ombudsman recommendation	Commission implementation	Ombudsman assessment
	(Commission Expert Groups Decision and reply to the Ombudsman's recommendation)	

The Commission should revise its standard rules of procedure as regards:

<p>Article 13(7) and (8)</p> <p>"Minutes on the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and complete."</p> <p>"In principle, expert groups shall adopt their opinions, recommendations or reports by consensus. In the event of a vote, the outcome of the vote shall be decided by simple majority of the members. The members that voted against or abstained shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports."</p> <p>Reply</p> <p><i>"In line with the Ombudsman's request, the revised horizontal rules further enhance transparency. As requested by the Ombudsman, the revised horizontal rules foresee that minutes should be meaningful and complete.</i></p> <p><i>As suggested by the Ombudsman, the revised horizontal rules instruct Commission departments to ensure prior publication of the agenda and of the background documents in due time ahead of the meeting, followed by timely publication of adequate minutes of the particular expert group meeting.</i></p> <p>[...]</p> <p><i>When opinions,</i></p>	<p><i>The Ombudsman's wording not replicated; however, the new rules together with the Commission's implementation measures comply with the spirit of the Ombudsman's recommendation.</i></p> <p><i>The rules now provide for a new quality standard, that is, that minutes must be "meaningful and complete".</i></p> <p><i>The Commission's new template for minutes provides for the setting out of positions expressed by participants.</i></p> <p><i>As a new transparency feature, the Commission's new rules now allow for dissenting opinions to be published in an annex to an opinion, a recommendation, or a report adopted by vote.</i></p> <p><i>The Ombudsman's full assessment is set out in the decision closing her strategic inquiry.</i></p>
--	--

recommendations or reports are given by the expert groups, the members that voted against them or abstained shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports."

Article 13(6) and Article 26(1)

"In agreement with the competent Commission departments, the group may, by simple majority of its members, decide that deliberations shall be public."

"The competent Commission department shall make available all relevant documents of expert groups and sub-groups, including the agendas, the minutes and the participant's submissions [...]. [...] In particular, **departments shall ensure publication of the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes.**"

Reply

"As regards the confidentiality of expert group deliberations, the work carried out by expert groups is a collective one, which very often leads to conclusions being reached by consensus, in a spirit of mutual trust. Experts should be able to contribute freely to the work of expert groups in closed discussions. However, as it was done in the past, an expert group may, by simple majority of its members, in an agreement with the relevant Commission department decide that deliberations shall be public. The revised horizontal rules thus offer sufficient space to the groups to decide how they want to operate, in a flexible way, in light of specific circumstances. We believe that

• the confidentiality of expert group deliberations, and provide that, as a general rule, these deliberations should be transparent and that only in exceptional cases, following a majority vote within the group and with the consent of the Commission, would an expert group's deliberations be confidential. Transparency in this context requires, as a minimum, prior publication of the agenda and of the background documents followed by timely publication of adequate minutes of the particular expert group meeting.

The Ombudsman's wording not replicated; however, the new rules together with the Commission's implementation measures comply with the spirit of the Ombudsman's recommendation.

The Commission's new rules implement what the Ombudsman identified as the 'minimum transparency requirements': the rules now provide for the prior publication of the agenda and other background documents and the timely publication of minutes.

Under the new rules, the Commission has done away with the notion of confidential deliberations; minutes will always be published. If an expert group decides to deliberate publicly, the meeting may be web streamed or the public may be invited to attend in person.

The Ombudsman's full assessment is set out in the decision closing her strategic inquiry.

with this set of provisions, a reasonable balance is struck between transparency and confidentiality needs."

General assessment of the Commission's implementation of the Ombudsman's suggestions:

The Commission has satisfactorily implemented the vast majority of the Ombudsman's suggestions.

The following five suggestions were not (fully) implemented:

- There is no stand-alone explanation of the Commission's concept of balance.
- There is no absolute balance requirement. The rule still says that the Commission shall aim at ensuring balance "*as far as possible*" (Article 10(5)).
- The Commission has not defined general criteria for the categorisation of economic and non-economic interests in expert groups.
- There is no obligation on individual experts appointed in their personal capacity to update their declaration of interests on a yearly basis (Article 11(5)).
- Documents on the work of expert groups may be published either on the register or on a dedicated website (Article 26(1)). The Commission has thus not agreed to publish on the register only (in order for the documents to be searchable).

Ombudsman suggestion	Commission implementation	Ombudsman assessment
-----------------------------	----------------------------------	-----------------------------

As regards matters on which there was **room for improvement**, the Ombudsman suggested that the Commission:

(a) Commit to always using public calls for applications for the selection of expert group members who are not public authorities;	Article 10(1)-(4) "The selection of expert group members shall be carried out via public calls for applications , except for Type D and E members and for representative bodies established by Union legislation for advice in specific areas [...]." [...]	<i>Implemented but provision for an exception.</i> <i>Overall satisfactory implementation</i>
	"The Commission may depart from provisions included in paragraphs 1 to 3, where this is deemed justified by overriding priorities or cases	

of urgency. Where the Commission decides that a public call is not a suitable instrument for the selection of members of a specific expert group, the choice of experts shall be made on the basis of objective verifiable criteria, which are published on the Register of expert groups."

Articles 7(2) and 25 + Annex
"Classification form"

"Expert groups may be composed of the following types of members:

(a) individuals appointed in their personal capacity who are to act independently and in the public interest ("**Type A members**');

(b) individuals appointed to represent a common interest shared by stakeholders in a particular policy area, who do not represent an individual stakeholder, but a policy orientation common to different stakeholder organisations ("**Type B members**'). [...]

(b) Commit to using the Transparency Register's categorisation to categorise, in the expert groups register, expert group member organisations falling within the scope of the Transparency Register;

(c) organisations in the broad sense of the word, including companies, associations, Non-Governmental Organisations, trade unions, universities, research institutes, law firms and consultancies ("**Type C members**');

(d) Member States' authorities, at national, regional or local level ("**Type D members**');

(e) other public entities, such as third countries' authorities, including candidate countries' authorities, Union bodies, offices or agencies and international organisations ("**Type E members**')."

"Commission departments **shall classify members** [...] of expert groups and sub-groups [...] **on the Register of expert groups in accordance with the provisions included in this**

Fully implemented

Categories of organisations are clearly based on the Transparency Register's categorisation (1 additional category for the expert groups register: "Banks/Financial institutions")

Decision and its annexes, on the basis of the information provided by applications responding to a public call for applications."

Annex Classification form:

"This application is made as the following type of organisation: *(please select only one option, taking into account the definitions indicated below)*.

- a) Academia, research Institutes and Think Tanks
- b) Banks/Financial institutions
- c) Companies/groups
- d) Law firms
- e) NGOs
- f) Professionals' associations
- g) Professional consultancies
- h) Trade and business associations
- i) Trade unions
- j) Other (please specify)"

Reply

"[...] the Commission does not deem it appropriate to fully replicate the Transparency Register's categorisation to categorise members of expert groups. However, many categories currently used in the Transparency Register will be used also in the new Register of expert groups, thus ensuring a high degree of harmonisation."

Outside the scope of the Commission Decision

(c) See to it that the Joint Transparency Register Secretariat further improves and intensifies its systematic checks of incoming new registrations as regards the correct section of registration;

Reply

"The current Inter-institutional Agreement does not foresee formal ex-ante vetting of new registrants. All organisations on the Transparency Register are, however, bound by the Transparency Register's Code of Conduct [...]. [...] All new

Satisfactory reply

incoming registrations are subject to an eligibility check which, inter alia, assesses the appropriateness of the section chosen by the registrant based on their profile and activities. Efforts to improve the data quality will continue to intensify. The ongoing public consultation on a mandatory transparency register will also allow stakeholders to express their view on how to improve the user-friendliness and the overall quality of the data included in the Register."

Article 11(5)

"Type A members shall be required to promptly inform the competent Commission department of any relevant change in the information previously provided, including as regards upcoming activities, in which case they must immediately submit a newly completed DOI form describing the change, in order to enable the Commission departments to assess it in due course. **The chair of each expert group or sub-group shall, at the first meeting each calendar year, remind all Type A members of this obligation."**

(d) Require that individual experts appointed in their personal capacity update their declarations of interests on a yearly basis;

Reply

"[...] the Commission considers it disproportionate for DGs to deal with annual updates of the declarations of interest where no changes occurred in the expert's situation."

[Followed by explanation of the 'substitute measures'.]

No corresponding provision

Reply

"The revised horizontal rules reconfirm the Commission's strong commitment to strive for a balanced composition of expert groups. In their selection of

(e) Explain, in the horizontal rules governing expert groups, what the Commission means by 'balance';

Not implemented exactly as requested (no automatic annual exercise of updating DOIs).

However, obligation on individual experts to promptly inform the Commission of any relevant change

+ obligation on the chair of the group to remind members of their obligation on an annual basis.

Satisfactory overall.

Not fully implemented (no stand-alone provision on what 'balance' means).

Some elements of what 'balance' means for the Commission can - as was the case under the old rules - be deduced from Article

members of expert groups the Commission departments must aim at ensuring not only a high level of expertise but also a geographical balance, a balanced representation of relevant know how and areas of interest and a gender balance. The revised horizontal rules make clear that such balanced composition must be ensured by taking into account the specific tasks of the expert groups and the type of expertise required in view of the mandate of the group. [...]"

10(5) on a balanced composition. See below.

Article 10(5) and (6)

"When selecting the members of groups, Commission departments shall aim at ensuring, **as far as possible**, a high level of expertise, a geographical balance, as well as a balanced representation of relevant know how and areas of interest, taking into account the specific tasks of the expert group, the type of expertise required and the response received to calls for applications."

Not implemented.

(f) Require that expert groups have a balanced composition. The Commission may allow for an exception from the balance requirement in duly justified cases;

"When appointing individual experts, either in their personal capacity or to represent a common interest, the Commission departments shall strive to achieve a gender balance in the composition of the expert group. The medium-term aim shall be at least 40% of representatives of each gender in each expert group."

The Ombudsman asked the Commission to provide for an absolute balance requirement combined with the possibility for an exception in duly justified cases (as the Commission agreed to do for calls for applications - see suggestion (a) above).

Reply

"As public calls give equal opportunities to all parties concerned, the Commission cannot subscribe to the Ombudsman's view that if the Commission faces difficulties in achieving a fully balanced composition, it should consider modifying the mandate of the group, reducing its size or even deciding not to set it up at all. This would, in fact, significantly diminish the Commission's

The Commission has kept the exact same wording as used in the old rules: balance is required only "as far as possible".

capacity to have access to the expertise and view that it really needs, which goes against the very purpose of setting up expert groups."

Articles 5(1) and 10(2)

"When setting up an expert group the Commission or its departments **shall clearly define its mandate**, in accordance with the role of expert groups set out in Article 3, **as well as the tasks of the expert group as precisely as possible, while also indicating its area of activity and the type of advice required.**"

(g) Set out and explain, with primary reference to the mandate of a group to be established, which composition is sought and why, taking into account the following criteria: the objective/tasks of the group and the expertise required, which stakeholders would most likely be affected by the matter, how those groups of stakeholders are organised, and possibly what the ratio of the represented economic and noneconomic interests should be;

"[...] **Calls shall clearly outline the selection criteria, including the required expertise and, where existing, the interests to be represented in relation to the work to be performed.** [...]"

Reply

"[...] calls for applications should clearly outline the selection criteria including the required expertise and, where existing, the interests to be represented in relation to the work to be performed. These requirements give adequate guidance to the Commission's departments in ensuring a balanced composition for their expert groups, without there being any need for laying down more specific ex ante requirements for individual groups. [...] Ultimately, the Commission wishes to underline that the final balance achieved in expert groups also depends on the number and quality of responses which it receives to its calls for applications. In contrast, the composition of expert groups should not be designed by introducing a cap or quota for each interest category, irrespective of the concrete circumstances in which these

Fully implemented

While the provision as such is not new, it is much more detailed than before and, for the first time, uses the term "mandate" of a group.

The Commission has committed itself to defining the group's mandate in relation to the tasks to be performed, the area of activity of the group and the type of advice required. In addition, calls for applications will also outline the interests to be represented in relation to the work to be performed.

*The new wording **comes close enough to the Ombudsman's idea of an "individual definition of balance"**.*

groups operate and of the interest shown by stakeholders concerned during the selection procedure, because this would often result in an artificial composition of groups, which would then be incapable of providing the Commission with the added value it needs and why the group is set up. In light of this, the Commission also maintains that it is neither appropriate nor useful to draw up a theoretical definition of balance or a definition of balance for every group [...]."

No corresponding provision

Reply

"In light of experience gained, the Commission does not deem it appropriate to define general criteria for the categorisation of economic and non-economic interests in expert groups. As indicated in the Commission's reply to the Ombudsman in relation to her own-initiative inquiry OI/7/2014/NF concerning the composition of the Civil Dialogue Groups (CDGs), it proved to be impossible to establish a reliable classification method. Again, the nature of the interests represented should be assessed on a case-by-case basis in the framework of calls for applications."

(h) Define general criteria for the categorisation of economic and non-economic interests in expert groups;

Not implemented but helpful explanation provided.

(i) Provide for the systematic and timely publication, on the expert groups register, of all documents on expert groups' and their subgroups' work (including minutes of meetings), except for those documents, or parts of documents, covered by one of the exceptions laid down in Regulation 1049/2001 to the extent that a relevant exception applies.

Article 26

"The competent Commission departments **shall make available all relevant documents** of expert groups and sub-groups, including the agendas, the minutes and the participants' submissions, **either on the Register of expert groups or via a link from the Register to a dedicated website where this information can be found.** [...] In particular, departments shall ensure publication of the agenda and

Fully implemented as regards the content: *systematic and timely publication of documents except for those documents, or parts of documents, which fall under one of the exceptions of Regulation 1049/2001.*

Not implemented as regards where documents will be published. *The Ombudsman asked the Commission to publish documents directly on the register only, given that the documents can then be searched.*

other relevant background documents **in due time ahead of the meeting**, followed by **timely** publication of minutes."

"Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of any public or private interest **as defined in Article 4 of Regulation (EC) N° 1049/2001.**"

Reply

"The Commission cannot agree with the Ombudsman's view that transparency is guaranteed only if all documents are uploaded on the Register of expert groups so that they are accessible in one place. For the sake of proportionality and in order to avoid unnecessary administrative workload, the Commission maintains that the above-mentioned flexible arrangements currently used concerning the publication allow the general public to be adequately informed and are therefore justified."

The Commission maintains the current situation where documents can be published either on the register or on a dedicated website.

Overall, the implementation can be seen as satisfactory.

General assessment of the Commission's implementation of the commitments already made:

The Commission has translated the commitments made in its opinion to the Ombudsman (dated May 2015) into the provisions of the new Expert Groups Decision.

General comment of the Commission, in its reply to the Ombudsman's recommendation, on the commitments it made in its opinion:

"[...] the revised horizontal rules fully deliver on the commitments taken by the Commission in its reply to the Ombudsman of 29 May 2015 by:

- making it mandatory for Commission departments to select expert group members through public calls for applications, under certain conditions;*
- significantly improving conflict of interest management in relation to individuals appointed in a personal capacity;*
- foreseeing that a new version of the Register of Commission expert groups and other similar entities ('the Register of expert groups') reflecting the revised horizontal rules should be put in place, and ensuring for the first time synergies between the Register of expert groups and the Transparency Register, and*
- streamlining the classification of group members in order to bring more clarity and transparency with respect to the membership of expert groups."*

**Commission
commitment**

Commission implementation

(Commission Expert Groups
Decision and reply to the
Ombudsman's recommendation)

Ombudsman assessment

Before proceeding to her recommendation, **the Ombudsman took note of, and very much welcomed, the Commission's commitment to:**

	Recital (5) and Article 27	
	"Transparency should be enhanced by releasing a new version of the Register of Commission expert groups and other similar entities ('the Register of expert groups'), reflecting the revised horizontal rules. [...]"	
i. Enhance the visibility of calls for applications by creating, on the expert groups register, a section exclusively dedicated to them;	"Migration towards the new version of the Register of expert groups: Migration tools ensuring automatic transfer of existing data, when technically possible, shall be put in place. Commission departments shall manually encode data which cannot be automatically migrated as well as additional data required as a result of these horizontal rules, by the end of 2016. "	Fully implemented
	Article 10(2) and (3)	
ii. Use a standard minimum deadline of four weeks for all calls for applications, with the possibility to deviate from this period in duly justified cases or to use continuously open calls for applications;	"[...] The minimum deadline for applications shall be four weeks. " "Commission departments may select the members of expert groups via a continuously open call , to be published on the Register of expert groups, in which case a specific call would not be necessary."	Fully implemented
iii. Require registration in the Transparency Register for appointment to expert groups of organisations falling within the scope of the Transparency Register and self-employed	Article 8 "Type B and Type C members shall only be appointed if they are registered in the Transparency Register."	Fully implemented

individuals representing a common interest shared by stakeholders;

Article 24

"Synergies between the Register of expert groups and the Transparency Register

iv. Link organisations falling within the scope of the Transparency Register and self-employed individuals appointed as representatives of a common interest shared by stakeholders, who are members in expert groups, to their profile in the Transparency Register;

Commission **department shall ensure that a link is provided from Type B and C members and alternate members of expert groups and sub-groups registered in the Register of expert groups to the profile of those members in the Transparency Register."**

Fully implemented

Reply

"Through the new version of the Register of expert groups synergies are ensured between this Register and the Transparency Register for the first time, in particular by linking organisations and individuals representing a common interest published on the Register of expert groups to the profile of these members in the Transparency Register."

Articles 2(4) and 11 and Annexes 4, 5, 6 and 7

v. Adopt a new conflict of interest policy for individual experts appointed in their personal capacity;

"'Conflict of interest' means any situation where an individual has an interest that may compromise or be reasonably perceived to compromise the individual's capacity to act independently and in the public interest when providing advice to the Commission in relation to the subject of the work performed by the expert group or sub-group in question".

Fully implemented

See Article 11 for the detailed rules on how to process DOIs and manage conflicts of interests

Annexes:

- Standard declaration of interests

- Guidance for filling in the declaration of interests

Article 25(2) + Annex 8

"Commission departments **shall classify members [...] appointed before the adoption of this Decision in accordance with the provisions included in this Decision and its annexes by the end of 2016.** In case of doubt on the appropriate classification of Type B and C members, departments may request these members to fill in a classification form, as set out in Annex 8.

Fully implemented

vi. Review the classification of expert group members in the register in order to avoid inconsistent treatment of organisations;

Articles 23(1)(e) and 24(3) + Annex "Classification form"

"Publication by Commission departments of data related to the composition of expert groups on the Register of expert groups is subject to the following provisions:

(e) the interest represented by Type B and C members shall be identified.

"[...] Departments shall also request Type B members and alternate members to state in the Transparency Register the common interest that they represent."

vii. Provide, on the expert groups register, more information on the interest represented by individual experts appointed to represent a common interest shared by stakeholders.

Annex Classification form:

Implemented

"The applicant shall represent the following interest: *(please select one or more options, taking into account the definitions indicated below)*:

a) Academia/Research

b) Civil society

c) Employees/Workers

d) Finance

e) Industry

f) Professionals

g) SMEs

h) Other (please specify)"

[1] Strategic inquiries are conducted on the Ombudsman's own initiative and look into issues of significant public interest. They enable the Ombudsman to investigate what appear to be systemic problems in the EU institutions and promote positive developments in key areas of activity.

[2] All correspondence in this strategic inquiry is available here:

<https://www.ombudsman.europa.eu/en/cases/case.faces/en/43789/html.bookmark>

[3] At the end of 2013, the Ombudsman closed her inquiry into complaint 1682/2010/BEH, concerning the transparency and balanced composition of Commission expert groups. The Ombudsman's decision is available here: <http://www.ombudsman.europa.eu/cases/decision.faces/en/52942/html.bookmark>

[4] See the then applicable general rules governing expert groups: Communication to the Commission, Framework for Commission Expert Groups: Horizontal Rules and Public Register, 10 November 2010, (C(2010) 7649 final, SEC(2010) 1360), Annex.

[5] The inquiry covered 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. The inquiry did not look into Commission expert groups which are composed of Member State authorities only.

[6] These initiatives included requiring that Members of the Commission must not meet organisations or self-employed individuals which are not registered in the Transparency Register; the publication of meeting agendas of Commissioners, their cabinet members, and of Directors-General; and the Commission's commitment to come forward with a proposal for a mandatory Transparency Register.

[7] Different civil society organisations and the European Parliament had, for a number of years, raised concerns about the composition and functioning of the Commission's expert groups. In 2014, the European Parliament proposed the freezing of the Commission's budget for expert groups because of the perceived continued violation of standards regarding balanced composition and transparency of expert groups.

[8] Information on the public consultation is available here:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54300/html.bookmark>

[9] The register of Commission expert groups and other similar entities is available here:

<http://ec.europa.eu/transparency/regexpert/>

[10] See the letter to the European Commission requesting a reply:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58861/html.bookmark>

[11] The Commission's reply is available here: <https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/60019/html.bookmark>

[12] The EU Transparency Register is a public register run jointly by the Commission and the

European Parliament and that seeks to provide information on the organisations and interest representatives which interact with the institutions. While registration is currently not mandatory, all organisations and self-employed individuals engaged in activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions are, with some exceptions, expected to register in the Transparency Register. See Interinstitutional Agreement between the European Parliament and the European Commission on the transparency register, OJ 2014 L 277, p.11.

[13] See the Ombudsman's recommendation: <https://www.ombudsman.europa.eu/en/cases/recommendation.faces/en/63441/html.bookmark>

[14] See the Ombudsman's recommendation, in particular points 52 to 62.

[15] Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups, 30 May 2016, C(2016) 3301 final.

[16] The Commission's reply to the recommendation is available here: <https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/68227/html.bookmark>

[17] The request for documents and information as well as for a meeting is available here: <https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/78385/html.bookmark>

[18] The report on the meeting is available here: <https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/81083/html.bookmark>

[19] Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups, 30 May 2016, C(2016) 3301 final:

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

[20] http://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_ANNEX_EN.pdf

[21] Communication to the Commission, Framework for Commission expert groups: horizontal rules and public register, 30 May 2016, C(2016) 3300 final:

http://ec.europa.eu/transparency/regexpert/PDF/C_2016_3300_F1_COMMUNICATION_TO_COMMISSION_EN.pdf

[22] The Commission explicitly acknowledges the contributions made by the European Parliament, civil society organisations, and the Ombudsman in recital (2) of its Expert Groups Decision.

[23] In the Ombudsman's view, it is clearly preferable for the Commission to have in place a relatively formalised system of expert groups rather than allowing the proliferation of ad hoc task forces and working groups that escape the expert group rules.

[24] See the Commission Communication, p. 3.

[25] The requirement to be registered in the Transparency Register to be eligible for expert group membership applies to those types of members that fall within the scope of the Transparency Register, namely organisations and self-employed individuals appointed to represent a stakeholder interest. If an individual expert appointed to represent a stakeholder interest is not self-employed, his/her employer organisation is required to be registered in the Transparency Register.

[26] See the report on the Ombudsman's and the Commission's meeting.

[27] As part of their application, individuals applying to be appointed as experts in their personal capacity need also to submit an up-to-date CV.

[28] See points 34 and following of the Ombudsman's recommendation.

[29] See European Parliament resolution of 14 February 2017 on control of the Register and composition of the Commission's expert groups (2015/2319(INI), P8_TA(2017)0021, point 10: *"Points out, in this context, and with regard to paragraphs 34-45 of the Ombudsman's aforementioned opinion, that, although the Commission has not yet formally defined its concept of 'balance', the latter is not to be understood as the result of an arithmetic exercise, but rather as the result of efforts to ensure that the members of an EG, together, possess the necessary technical expertise and breadth of perspectives to deliver on the mandate of the EG in question; considers that the concept of balance should, therefore, be understood as tied to the specific mandate of each individual EG; considers that the criteria to assess whether an EG is balanced should include the tasks of the group, the technical expertise required, the stakeholders who would be most likely affected by the matter, the organisation of groups of stakeholders, and the appropriate ratio of economic and non-economic interests;"*

[30] See the report on the Ombudsman's and the Commission's meeting:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/81083/html.bookmark>

[31] The Commission has informed the Ombudsman that the purpose of this heading is to make its DGs, and the expert groups themselves, reflect upon whether a particular meeting could possibly be opened up to the public, depending on the subject matter. The decision to make a particular meeting public necessarily needs to be taken in advance of the meeting, to allow for the relevant practical arrangements, such as booking a suitable meeting room or setting up web streaming.

[32] See the Ombudsman's recommendation point 57.

[33] See for example: <https://webcast.ec.europa.eu/6th-meeting-of-the-structured-dialogue-with-european-structural-and-investment-funds-partners-group-of-experts>;
<https://webcast.ec.europa.eu/inaugural-meeting-of-the-platform-on-animal-welfare>