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Contribution to European Ombudsman Public Consultation on Expert Groups

The European Ombudsman has invited comments on a series of questions related to the process of selection and composition of European Union Expert Groups.

Access Info Europe is a specialist access to information organisation and as such has approached the European Ombudsman's questions from the perspective of transparency and greater openness around expert groups.

Overall, we believe that it is important for European Union bodies to supplement their policy making with input from experts and stakeholders, but that great care should be taken to ensure that such bodies are broadly representative of different sectors of European society. We note that "expertise" on a particular matter comes not only from a specific technical expertise but also from, for example, a perspective on the impact of different measures the public, consumers, households, patients, etc. The onus is upon European Union officials to ensure that such broad considerations are taken into account and that the perspectives of all stakeholders are incorporated into all its decision-making processes.

QUESTION 1

Which specific Commission expert groups do you consider to lack a balanced representation of relevant areas of expertise and interest in their membership? What, according to you, is the root cause of the unbalanced composition of the Commission expert groups identified by you?

Access Info Europe notes that research by other members of the ALTER-EU coalition, of which we are a Steering Committee member, has found a lack of balance in working groups [1] and we understand that this is one of the reasons for the European Ombudsman's enquiry into this matter.

It is hard to evaluate accurately the reasons for imbalances in Expert Groups but it is likely that factors include the fact that business representatives are better placed to

apply for participation, are better-resourced to participate than other stakeholders, and hence are better able to press for their perspectives and interests to be taken into account.

The European Commission has in the past acknowledged imbalances in the composition of expert groups, putting it down to lack of applications from NGOs [2].

Proactive measures to address and prevent any imbalances should include:

- » Defining in advance the numbers of representatives of different stakeholders to be included in expert groups and ensuring an appropriate balance between them;
- » Ensuring that the criteria for participation in expert groups are sufficiently broad to bring in all relevant stakeholders;
- » Ensuring broad communication about the possibilities of participating and working to ensure that this reaches potential stakeholders, not only those based in Brussels but at the national level across the EU 28;
- » Thorough checking of applicants to / current participants of expert groups to ascertain which interests they represent and to verify that independent experts are indeed independent (using mechanisms such as conflict of interest declarations).

To permit adequate public and civil society monitoring of the selection of participants and the composition of expert groups, as well as of the workings of, discussions in, and impact of such groups, full transparency is needed.

Such transparency should include making public on a proactive basis information such as the applications and declarations of participants, particularly of those who have been selected for participation.

In terms of data protection concerns, the European Commission should have a proactive policy where it makes clear to all participants in expert groups that their names, interest declarations, meeting participation and other material directly related to the workings and accountability of the expert groups will be made public. Participation should be conditioned upon agreeing to such publicity which is essential for adequate compliance by EU bodies with the right of access to documents as set out in the EU treaties. The treaties along with the jurisprudence of the European Court of Justice make clear that this right has as its aim ensuring open, participatory, and accountable decision-making processes within the EU.

QUESTION 2

The Commission's horizontal rules on expert groups allow for the Commission to appoint individual experts in their personal capacity. In your experience,

does this possibility give rise to concern in terms of the balanced composition of expert groups and/or conflicts of interest?

The Commission's rules on expert groups aim to appoint some of the members based on their "personal capacity" or "common interest", meaning that they act "independently and expressing their own personal views" as described by the Commission's website. Experts acting on their personal capacity are presumed to be unbiased to an agenda or an interest, as oppose to experts sent by organisations [3].

Appointing an expert in a personal-capacity-base can be problematic if the person appointed is in fact linked to a particular interest. Independence can only be ascertained via thorough background checks.

Access Info Europe supports a verification mechanism which includes:

- » The mandatory declaration of interests when applying for participation and, where relevant, a position statement. We note that the system of verification of conflicts of interest has been strengthened since 2012.
- » A requirement that there be periodic (at least annual) resubmission of the declarations of interest, along with a requirement for an immediate proactive declaration by the expert should his or her position in some way change.

There should be a standard minimum protocol for verification of the claims made in the declarations, including but not limited to verification using the Transparency Register (register of lobbyists, which in the future should be mandatory).

The publication of these documents in a single searchable expert group database should be made in order to ensure that there can be monitoring by civil society organisations and members of the public. It should be possible to download this database and all relevant related information in a machine readable format.

There should also be a protocol for investigating any concerns when raised by CSOs or members of the public.

QUESTION 3 Do you consider that the current level of transparency regarding the composition of Commission expert groups, in particular through the Register of Commission Expert Groups and Other Similar Entities, is sufficient? In particular, does the information made available by the Commission allow you to ascertain which interests are represented by the members of Commission expert groups? If not, where do you see room for improvement? Do you consider that the current level of transparency regarding the work of expert groups, in particular through the publication of agendas and minutes, is sufficient?

Current levels of transparency around the composition and work of expert groups is still insufficient, in spite of some improvements to the register of expert groups in the recent period.

The lack of proactive publication on expert groups is evidenced by the fact that researchers have needed to file a number of access to documents requests with the Commission, some of which can be found on AsktheEU.org, along with the exchanges with officials, confirmatory applications and documents released. [4]

The requests have been for information which has included Information on the new members added to expert groups, which had not been published in the register.

Other requests included one for the refusal letters to applicant to be members of expert groups, along with the justification for not being granted membership;

A further request was for a review of expert groups conducted by each DG in response to the European Parliament budget reserve of November 2011. The Secretariat General responded that it did not have such information. Access Info Europe note that it would be useful to carry out this kind of analysis in the future and to make it public.

The analysis contained in various reports as well as Access Info Europe's analysis of the data available and that which has been sought via access to documents requests, makes clear that there needs to be more comprehensive and timely proactive publication of information relating to the working groups.

The improvements which could be made to the Commission's register of expert groups, include:

- » More comprehensive proactive publication of all information relating to the membership and workings of expert groups. Updating of this information should be done in a timely manner;
- » Historical information should be retained and be available to permit tracking over time;
- » All data should be fully searchable and should be downloadable in a machine-readable format;
- » Permitting members of the public to subscribe to or follow certain groups or themes so that they can be provided with automatic email updates would be an interesting idea to consider and works well in other contexts such as following legislative files in some countries;
- » Increasing user-friendliness with a Q&A or Frequently Asked Questions section.

Furthermore, the information contained in the register needs to be correctly labelled according to a standard stylebook or protocol. This would help avoid problems which have occurred in the past such as mislabelling business interests as "associations".

- » Accurate labelling of affiliations / categories
- » Unique identifiers for both companies and individual experts

QUESTION 4

Where the Commission publishes calls for application for membership in expert groups, do you consider that these calls provide for selection criteria which sufficiently take into account the need for a balanced composition of expert groups? If not, where do you see room for improvement? In your view, could the Commission do more to raise awareness about these calls, with a view to encouraging applications? If so, what concrete steps could it take in this regard?

Access Info Europe has not analysed the calls for proposals and so cannot comment on the content of them.

We do however believe that there may be issues of levels of awareness. We believe that many civil society organisations across Europe may not be aware of the possibility. We suspect that the same is true for other experts, such as academics and individuals expert in particular areas.

Therefore, we recommend that there be research by the Commission into levels of awareness among CSOs and that this be used to plan communication strategies.

We recommend that all calls for participation in expert groups be placed in one location, and that all be made public, even when on matters of very particular expertise.

QUESTION 5

Do you have any experience in applying for membership in a Commission expert group? If so, did you face any problems in the application process? If not, are you aware of any such problems faced by civil society organisations? Based on your experience, do the costs inherent in participation/the lack of comprehensive reimbursement schemes discourage civil society organisations from applying for membership?

No, Access Info Europe has not applied. Indeed, as noted above, until recently (until working on this issue with ALTER EU) we were not in fact aware that it was possible and we believe that this may be the case for many CSOs across the EU.

Ensuring that expenses are covered for participation is always important for CSOs, who of course still have to cover the salaries of people participating in any consultation or expertise process.

QUESTIUON 6

Please give us your views on which measures could contribute to a more balanced composition of Commission expert groups.

A proactive approach to ensuring balance must be fully integrated into the European Commission's approach to working groups. This should be clearly and precisely regulated, with clearly guidelines on matters such as the permissible percentages of any type of stakeholder in a particular expert group.

The Commission should be vigilant and conduct its own monitoring of the composition of expert groups and take remedial measures, both *ex officio* and when alerted by civil society and/or members of the public.

Ensuring the existence of and compliance with mandatory mechanisms such as declarations of interest is an essential part of this. There should be some form of sanctions which can be applied where misleading or incomplete information is provided by the participants in expert groups.

Even when the basic measures such as those outlined above are in place, an adequate level of transparency is absolutely essential to permit public scrutiny. The categories of information to be made public should at a minimum include those listed in this document. Timeliness and open, searchable, downloadable formats are also essential. The proactive approach to personal data outlined above is also important.

Creating a more transparent and accessible register can help journalists and the civil society to find track the composition of expert groups. Transparency can also contribute to exposing hidden interests by uncovering any discrepancies between the information declared in the register's web site and the behaviour of the different experts during their discussion sessions.

Last but not least, transparency is part of the key to solving the problem of imbalance in the expert groups. By making public in an easily accessible format more and more comprehensive information about expert groups, this will contribute to raising public awareness of their existence and role. This cannot be achieved by publication on a website along but must be accompanied by a proactive outreach, communication, and information strategy directed at European civil society.




The Commission has acknowledged low levels of application from civil society to participate in expert groups and has indicated that it believes this is one of the reasons for imbalance. The onus is on the Commission to work to solve this problem by identifying and reaching out to relevant stakeholders across Europe at the national and local level. To the extent that resources for participation are an obstacle, there should be further work done to evaluate the most appropriate mechanisms for overcoming this. The goal must be to ensure that all stakeholders are adequately represented in expert groups and that there is full transparency surrounding both their composition and their work.

Footnotes

- [1] Examples include the expert group on agricultural commodity derivatives and spot markets, High Level Group on Business Services, Expert Group for Bio-based Products and Expert Group on Intellectual Property Valuation. Some of which had up to 94 per cent corporate interests. This data taken from ALTER-EU Draft Response to Public Consultation on the Ombudsman own inquiry into expert groups.
- [2] EU Observer (06 Nov 2013) “Corporate interest dominates EU 'expert groups,' transparency NGO says”, article [Online] via:
<<http://euobserver.com/institutional/122007>> [Accessed 12 August 2014]
- [3] European Commission (22 Sept 2012) “Expert Groups explained”, web site. [Online] via:
<<http://ec.europa.eu/transparency/regexpert/index.cfm?do=faq.faq&aide=2>> [Accessed 29 July 2014]
- [4] AsktheEu.org access to information request portal:
 - a. AsktheEu.org (30 April 2013) “Who has applied to Expert Groups and been”, access to information request to Secretariat General (SG) [Online] via:
<http://www.asktheeu.org/en/request/who_has_applied_to_expert_groups#incoming-1710> [Accessed on: 13 Aug 2014]
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<http://www.asktheeu.org/en/request/review_of_expert_groups#incoming-1328> [Accessed on: 13 Aug 2014]
 - c. AsktheEu.org (30 April 2013) “Modified Expert Groups and new members”, access to information request to Secretariat General (SG) [Online] via:
<http://www.asktheeu.org/en/request/modified_expert_groups_and_new_m#incoming-1688> [Accessed on: 13 Aug 2014]

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- Rules for Commission Expert Groups [C\(2010\) 7649 final](#), [SEC\(2010\) 1360 final](#)
- Conditions for granting a special allowance [C\(2014\) 2220 final](#) 
- Guidelines on the collection and use of expertise by the Commission [COM \(2002\) 713](#) 
- Standards for consulting interested parties [COM \(2002\) 704](#) 
- White Paper on European Governance [COM \(2001\) 428](#) 