

Decision of the European Ombudsman closing her own-initiative inquiry OI/7/2014/NF concerning the composition of Civil Dialogue Groups brought together by the European Commission's DG Agriculture

Decision

Case OI/7/2014/NF - **Opened on** 12/05/2014 - **Decision on** 07/09/2015 - **Institution concerned** European Commission (No maladministration found) |

Civil Dialogue Groups ('CDGs') provide a forum for *dialogue with representative associations and civil society on matters relating to the common agricultural policy ('CAP');* they also provide *advice and expertise to DG Agriculture and Rural Development ('DG AGRI') on all CAP matters.* This Ombudsman inquiry looks at the 2014 selection process for the CDGs with special emphasis on the legal requirement of a balanced representation of all interests and in particular of economic and non-economic interests.

It is clear from this inquiry that the task facing DG AGRI was a complex and challenging one. The inquiry has established that DG AGRI drew up and applied a clear procedure for assigning seats, and that it made considerable efforts to improve the situation of balance when compared with the past. The CDGs have been re-designed to reflect the current CAP; their overall size has been reduced; more than 40 out of the 68 qualifying organisations are new to the system; the most powerful economic stakeholders, which have long had a strong position, have lost strength in the Groups; and the overall proportion of non-economic interests in the Groups has improved, albeit marginally.

However, the Ombudsman found a lack of clarity regarding what constitutes balanced representation of the various interests. The Ombudsman found that the documents, which should spell out the purpose and compositional nature of the CDGs, are lacking in detail both as regards what DG AGRI wished to achieve, in terms of balanced representation within the Groups, and how. The final weighted average ratio of economic to non-economic interests in the 13 CDGs is roughly 80% to 20%; but there is nothing to establish if this outcome is what was intended. The Ombudsman draws the following conclusions from these figures:

First, DG AGRI must assume responsibility for communicating with the public regarding the overall process. Specifically, it needs to clarify what constitutes a balanced representation of all interests, in particular as between economic and non-economic interests. Failing this, the public is likely to be sceptical about the end result. It should, in the future, set out and publish an individual definition of balance for each of its CDGs.



Second, if it is the Commission's intention to strive to achieve a higher relative representation of non-economic interests, it may need to consider limiting the size of groups or take other structural measures that go beyond the scope of this inquiry.

Finally, it has been impossible for the public to understand the CDG selection process because of a lack of publicly available information. These transparency shortcomings restrict outside review of the CDGs' composition.

The Ombudsman has made ten proposals to DG AGRI, and the Commission, which she believes will improve the overall CDG process.

Background

1. This inquiry concerns the selection process for, and the composition of, the Civil Dialogue Groups ('CDGs') brought together by the European Commission's Directorate-General for Agriculture and Rural Development ('DG AGRI'). In very general terms, the CDGs enable the Commission to maintain a regular dialogue with representative associations and civil society on CAP matters. They also provide advice to DG AGRI on matters relating to the common agricultural policy ('CAP').
2. The Commission has had an advisory system on CAP matters since 1962. The current system of CDGs was put in place by Commission Decision 2013/767/EU [1] ('the 2013 Decision'). Following a selection process, the Commission appoints a range of organisations to sit on these Groups. The organisations, in turn, nominate their own representatives and these representatives may vary from one meeting of a Group to another. Article 4(3) of the 2013 Decision requires a " *balanced representation* " of interests in the Groups and, in particular, balanced representation as between " *economic and non-economic interests* ".
3. On 18 July 2014, DG AGRI's Director-General made a formal decision on the membership and overall composition of the current CDGs. [2] In all, there are 13 Groups in place at present.

The inquiry

4. In opening this inquiry, the Ombudsman informed [3] the Commission of her intention to review carefully the selection process and final composition of the current Groups [4] . She explained that the review was intended to strengthen citizens' trust in the selection process and in the work of the Groups generally. The Groups are involved with CAP matters, a highly sensitive policy area and one absorbing a very significant share of the overall EU budget - 39% of the overall EU budget in 2013. In this context, and given the capacity of these Groups to influence CAP matters to some extent, it is clear that the Commission in putting these Groups together should make every effort to give effect to the legal requirement of a balanced



representation of interests.

5. The Ombudsman inspected the relevant Commission files as part of this inquiry. This Decision takes that material into account as well as other relevant publicly available information, in particular the Joint Commission-Parliament Transparency Register. It was also relevant to look at how DG AGRI's CAP advisory system operated prior to 2013.

6. The information made available by the European Commission was very extensive. Using this information, the Ombudsman has attempted to reproduce in Excel spreadsheets the process followed by DG AGRI in allocating seats in the Groups to the applicant organisations. The Excel tables set out the ratios of economic to non-economic interests, both in absolute numbers (numbers of seats) and in relative terms (percentage share), from the application stage to the various stages of the selection procedure. These tables provide the basis for the Ombudsman's analysis and assessment. [5] Annex I of this decision describes the various stages of the procedure in some detail, along with further explanatory information. Annex II contains figures, compiled by the Ombudsman, which give an overview of the selection process.

The Ombudsman's assessment

A. The legal framework

7. The Ombudsman has found it difficult to acquire a clear understanding of the intention of the Commission in establishing CDGs. This is because of a lack of clarity in some of the foundation instruments and because of some uncertainty as to the extent to which CDGs, with a primary focus on civil dialogue, should be seen also as expert groups. While the Commission has set up, and treats CDGs as expert groups, the Ombudsman understands that, following the Commission's reform of its CAP advisory system, the CDGs' primary function is to provide a forum for dialogue on CAP matters. The Ombudsman has therefore formed the view that CDGs are a specific type of expert group.

8. CGDs were established on the basis of the 2013 Decision which lists the tasks of the Groups as:

- enabling dialogue with representative associations, socioeconomic interest groups, civil society and trade unions in relation to the CAP;
- facilitating an exchange of experience and good practice;
- assisting the Commission with advice and opinion on the CAP and agriculture matters generally;
- monitoring policy developments in relation to the CAP and agriculture generally.

Article 1 of that Decision provides that the CDGs are to be referred to " *as 'groups' set up by the Director-General for Agriculture and Rural Development [] under the (2010) framework for Commission expert groups* ". [6] This framework (the '2010 Communication') provides for the creation of consultative entities set up by the Commission for the purpose of providing it with



advice and expertise in relation to:

- the preparation of legislative proposals and policy initiatives in the framework of the Commission's right of initiative;
- the preparation of delegated acts; and
- the implementation of existing Union legislation, programmes and policies as well as coordination and cooperation with Member States and stakeholders in that regard. [7]

9. While CDGs have been set up under the framework for Commission expert groups, their objectives (under the 2013 Decision) and those of expert groups (under the 2010 Communication) partly overlap. The Ombudsman's analysis suggests that the primary purpose of CDGs is to facilitate dialogue with relevant representative interests. CDGs are also intended to provide advice and expertise but that is a secondary purpose. The primary purpose of expert groups, on the other hand, is to provide high-level technical advice and expertise to the Commission; they are specifically not intended to facilitate the representation of relevant interests [8]. While similar considerations can be applied to both CDGs and expert groups, as far as their functions overlap, [9] this distinction is important for purposes of the Ombudsman's overall analysis of the functioning of the CDG system.

B. The concept of 'balance'

10. Whether or not the Commission has achieved a 'balanced representation of all expressed interests' in the composition of the current CDGs depends very much on what we understand by the term 'balanced representation'. Unfortunately, the provisions of the 2013 Decision in this regard are not very helpful.

11. The 2013 Decision does not define the meaning of balance. Nor has the Commission otherwise set out its concept of balance with regard to the composition of its expert groups generally. In the absence of any further definition of the term 'balanced representation', and if interpreted on the basis of its plain meaning, each interest would be entitled to an equal representation. The Oxford English Dictionary defines 'balanced condition' as "*a condition in which two (or more) opposing forces balance each other; equilibrium*". The Ombudsman understands that it was not the intention of the Commission to provide for equal representation for each interest. [10] Yet, taken literally, this is what it has provided for. The Commission may therefore wish to consider whether balance is the appropriate term in this context.

12. There is also some uncertainty regarding the entities between which a balanced representation is required. It is clear that there must be a balance achieved between 'economic and non-economic interests'. But Article 4(3) of the 2013 Decision also requires "*a balanced representation of all expressed interests referred to in paragraph 2*". Paragraph 2, for its part scarcely refers to specific interests; rather, it refers to 'organisations' ("*non-governmental organisations, including representative associations, socioeconomic interest groups, civil society organisations and trade unions that are registered in the Transparency Register*"). It may be that what is intended here is that balanced representation is necessary not only between different categories of interest (for example, economic and non-economic interests) but also within any



individual category. Thus, for example, within the economic category of interest there would be a need for a balanced representation as between interests active at different levels of the production chain, namely producers, traders, industry, cooperatives, workers' and trade unions. As regards the non-economic category - which is distinguishable only in the negative (by what it is not) - there might be quite different interests captured within that category, including for example, environmental and consumer interests.

13. The Ombudsman believes it is essential that DG AGRI should set out clearly, and at a level of generality, what it intended in referring to a 'balanced representation'. If necessary, this should be done by way of an amendment to the 2013 Decision. Such a generalised definition could then be applied in the case of each individual CDG. However, for the purposes of this inquiry, and in the absence of official clarification, it is necessary for the Ombudsman to put forward her own view on the meaning of balance. [11] Hopefully, the Commission will find the following considerations useful in defining its concept of balance both in the case of DG AGRI's composition of CDGs and, more generally, in the case of its expert groups.

14. The Ombudsman accepts that, in the present context, the concept of balance should not be simply a matter of achieving equilibrium between different categories of interest or, indeed, within any one category of interest. The Ombudsman has already addressed this issue, to some extent, as it relates to expert groups generally. In her Decision in an earlier inquiry [12], the Ombudsman commented that achieving a balanced representation in the case of an expert group is "*not simply an exercise in arithmetic*"; rather, it is necessary to have regard (i) to the specific tasks of the particular expert group, (ii) to the type of advice or expertise being sought, (iii) to how the expert group is actually expected to function and (iv) to how the different relevant interests are organised. More recently the Ombudsman re-stated this approach, in the context of her on-going inquiry in relation to expert groups generally [13], and added the additional consideration of the need to find an appropriate balance between economic and non-economic interests.

15. This approach leads to the conclusion that the definition of balance depends on the particular expert group in question and on certain variables which must be considered in reference to that particular group. The Ombudsman believes that this approach is relevant also in the case of the CDGs, the specific subject of this present inquiry. In this mandate-oriented concept of balance, the composition of a particular CDG must, in particular, take proper account of all of the interests required to be represented and seek to match those interests with the subject matter of the Group and with the tasks assigned to it. Following this approach, 'balance' refers not only to ensuring that all of the relevant interests are represented but also to ensuring that the allocation of seats to each interest is appropriate. Where the number of seats in a CDG assigned to one interest is substantially greater than the number of seats assigned to another interest, then this must be justified objectively with regard to the mandate of the Group.

16. It is clear that the intention of the 2013 Decision is that all relevant interests should, ideally, be represented on any particular CDG. At the same time, it is a matter for each relevant interest to seek representation on a CDG by responding to DG AGRI's call for applications. Where a particular interest is not represented in the responses to the call for applications, the



Director-General is confined to choosing from among those interests which have responded. It is also possible that responses will be received from interests which have no relevance to the business of the particular Group. In such cases, there is no advantage in having that interest represented on the Group.

17. Moreover, there is a linguistic inconsistency in sentence three of Article 4(3) of the 2013 Decision which (in the English version) requires " *a balanced representation of all expressed interests referred to in paragraph 2* " (our emphasis). The Ombudsman suggests that this wording [14] be amended, in all language versions, to provide: **"The Director-General shall ensure a balanced representation of all relevant interests referred to in paragraph 2, provided that they have been expressed."**

18. In summary, therefore, the Commission should seek to achieve a 'balanced representation' of interests on a case by case basis, having regard to the business of the particular CDG and to the responses received from relevant interests. Balanced representation requires also that proper attention is paid to the number of seats allocated to each of the various interests. Finally, care must be taken in the allocation of seats within any one interest in order to achieve a reasonable balance between any sub-interests. [15]

C. Economic and non-economic interests

19. The 2013 Decision requires that the CDGs be balanced " *in particular* " as between economic and non-economic interests. There is an implicit assumption that all interests can validly be accommodated in one or other of these two catch-all categories. It is worth adverting again to the fact that there can be major differences of actual interest between organisations treated as belonging to the same catch-all category (see point 14. above).

20. The 2013 Decision does not contain any definition of economic and non-economic interests, nor does it lay down any criteria for distinguishing between these two categories. However, if DG AGRI is to meet the legal requirement of balance as between these two interests then it must classify applicant organisations as belonging to one or other of the two interest categories.

21. The Ombudsman has already made some suggestions in this regard in the specific context of Commission expert groups. She has suggested that " *the Commission should, in order to allow for a review of the ratio of economic and non-economic interests represented in an expert group, develop general criteria for the delimitation of economic and non-economic interests. [] The establishment of such criteria would primarily entail that the Commission states which groups of stakeholders it deems to represent economic interests and which groups of stakeholders it deems to represent non-economic interests. In undertaking this exercise, the Commission should rely on the sections and sub-sections of the Transparency Register* ". [16] In broad terms, these suggestions may reasonably be made also in the case of CDGs.

22. In its " *Internal Guidelines for Selection Panels for the selection of member organisations and the allocation of expert seats in civil dialogue groups* " ('internal guidelines') DG AGRI itself



set down a criterion for distinguishing between economic and non-economic interests. According to this criterion, all organisations registered in section II (covering "*In-house lobbyists and trade/business/professional associations*") of the Transparency Register were deemed to represent economic interests, while organisations registered in any of the other five sections of the Transparency Register were deemed to represent non-economic interests. As it happens, of the eligible organisations which applied for membership of a CDG, all were registered in either section II of the Register or in section III (covering "*non-governmental organisation, platforms and networks and similar*").

23. According to Annex I of the revised Interinstitutional Agreement ('IIA') on the Transparency Register [17], section II is divided into the following sub-sections: companies and groups; trade and business associations; trade unions and professional associations; certain other organisations. With regard to trade and business organisations, the following clarification is provided: "(*either profit or non-profit making themselves*) *representing profit-making companies or mixed groups and platforms*". Section III of the Transparency Register covers not-for-profit organisations which are independent from public authorities or commercial organisations. The IIA provides that "*[a]ny such entity including profit-making elements among its membership must register in Section II*".

24. The Ombudsman is satisfied that the criterion chosen by DG AGRI meets her earlier suggestion (see point 21. above) that is, it relies on the relevant sections and sub-sections of the Transparency Register in order to identify which organisations represent economic interests and which organisations represent non-economic interests. Regrettably, however, the Ombudsman notes that DG AGRI has not been consistent in its application of this criterion.

25. In fact, DG AGRI has not relied solely on the Transparency Register sections and sub-sections in order to categorise applicant organisations. has at times used a third category: organisations that are registered in section II of the Transparency Register but appear not to undertake any gainful activities / organisations that are registered in section III of the Transparency Register but do appear to have some profit-making elements. The Ombudsman believes that DG AGRI's use of this additional category is problematic. While there may be some problems regarding the accuracy, and the correct categorisation, of Transparency Register entries, it is questionable whether this practice conforms with Article 4 of the 2013 Decision. The Ombudsman therefore proposes that, when establishing CDGs in the future, DG AGRI should use the categories of economic and non-economic as reflected by inclusion in sections II and III, or some other section, of the Transparency Register.

D. The design of the CDGs

26. Unlike earlier Commission Decisions governing the CAP advisory system [18], the 2013 Decision does not list the Groups to be established or specify the number of seats to be allocated to each Group. Instead, Article 4(1) and (3) of the 2013 Decision provide for flexibility in this regard. The Director-General of DG AGRI is authorised to decide on the number of Groups, their size, and their composition. Prior to the 2013 Decision, the CAP advisory system



comprised 30 advisory groups [19] which were heavily product-specific. The 30 advisory groups had 943 seats. [20] Under the current arrangements, DG AGRI's Director-General has limited the number of CDGs to 13 and assigned them mandates which cover, for the most part, wider product groups or deal with cross-cutting issues. The individual group size is either (i) 53 seats (standard size), (ii) 57 seats, or (iii) 72 seats. In total, the current CDG system comprises 773 seats, a reduction of about 20% over the number of seats previously. The number of CDGs and their mandates appear to reflect the 2013 CAP reform.

27. As regards the relative sizes of the 13 CDGs, they appear to correlate to the sizes of the former advisory groups with the relevant corresponding mandates. A slightly higher number of seats assigned to some CDGs does not appear disproportionate in light of the development of the CAP, the opening up of membership to all relevant interests, and the overall reduction of seats in the system.

28. The Ombudsman is mindful of the fact that DG AGRI enjoys a wide margin of discretion as regards the total number of seats per CDG and that it is not her role to seek to impose her own view regarding the establishment of the Groups. At the same time, the Ombudsman stresses that it is very important that DG AGRI should explain fully the reasons underlying the choices it has made. This is particularly the case where, for example, a decision to increase the size of a Group is likely to benefit the category of economic interests over non-economic interests. Given that organisations in the category of economic interests are likely to be better-resourced than their counterparts in the non-economic category, they are more likely to be in a position to take up additional seats should they become available. Thus, the decision on the overall number of seats to be assigned to a particular Group can be very significant in terms of the balance between interests represented on that Group. [21]

29 . While the Ombudsman has not identified any maladministration as regards the design of the new CDGs, she underlines the importance of explaining clearly any decision to increase the size of any particular Group. Furthermore the Ombudsman believes that, in future calls for applications, the Commission should outline clearly the relevant types of interest representation. In addition, the Commission should at the outset state the overall number of seats it intends to fill on each Group and how it proposes that the seats will be distributed between the various relevant interests. By doing so, interested parties will be in a position to seek a number of seats commensurate with what it feels is its relevance to the overall business of the Group. Taking all of these together, the Ombudsman believes that DG AGRI should, from the beginning, set out an individual definition of balance for each Group.

E. Seat allocation - transparency shortcomings

30. The Director-General of DG AGRI was assisted by selection panels in the task of establishing the current CDGs. The procedure followed by the selection panels was set out by DG AGRI in internal guidelines for selection panels. In practice, for each CDG being established, there were three stages in the allocation of CDG seats amongst the qualifying organisations. This process is described in more detail in Annex I. The first stage was the



allocation of one basic seat to each qualifying organisation. In the second stage, there was the possibility (subject to conditions described in Annex I) that an organisation could be allocated one top-up seat on a geographical basis. In the third stage, DG AGRI allowed itself the option of allocating some additional seats to organisations at its own discretion.

31. The Ombudsman notes that the first two stages of the allocation procedure, (one basic seat and, in some cases, one geographical top-up seat) are characterised by equal treatment of all qualifying organisations, whether representative of economic or non-economic interests. However, at the third stage DG AGRI allowed itself very considerable discretion to add a number of additional seats and to allocate those seats at its own discretion.

32. The Ombudsman has not found that DG AGRI exercised this discretion in an arbitrary way. Rather, it appears to have used that discretion with a view to establishing a particular balance of representation having regard to the actual mandate of the CDG in question. However, any doubt in this regard would be readily dispelled had DG AGRI set out, in advance of the application and selection process, its own definition of balance for each particular Group. Transparency would be further enhanced if, at the stage of preparing the Decision on the composition of the CDGs, DG AGRI itself [22] recorded its reasons for the choices made. This would be particularly important as regards DG AGRI's exercise of its discretion in allocating additional seats at the third stage of the process. The Ombudsman encourages DG AGRI to take this approach in the future.

33. On a more general note, the Ombudsman believes that DG AGRI needs to assume responsibility for communicating to the public in a transparent manner the process of establishing the CDGs as well as the final outcome.

34. In the Ombudsman's view, the Decision [23] of DG AGRI's Director-General on the composition of the CDGs raises a number of concerns in this regard. The Decision fails to state (i) the total number of seats per CDG and (ii) the ratio of economic and non-economic interests represented in each Group. What is more, the spelling of the names or acronyms of a number of CDG member organisations is inaccurate and/or deviates from that in the Transparency Register. As a consequence, it is not possible for the public to clearly identify the CDG member organisations. Even though the 2013 Decision requires registration in the Transparency Register, the electronic version of the Director-General's Decision does not link the CDG member organisations to their respective profiles in the Transparency Register. Neither does the Director-General's Decision state the date on which it was made, namely 18 July 2014.

35 . On the basis of this Decision of the Director-General, and in the absence of more complete information, EU citizens are unable to form an opinion on the probity of the process followed in establishing the current 13 CDGs. Given that these CDGs have almost six years remaining in their terms of office, it would still be helpful for the public to be able to acquire a fuller understanding of the process followed by DG AGRI in establishing the current Groups. The Ombudsman therefore urges the Director-General of DG AGRI to publish a revised version of his Decision on the composition of the CDGs, in line with the Ombudsman's comments above .



36. To date neither the public in general, nor the organisations which applied for CDG seats, have any specific information regarding the basis on which Groups were established and seats allocated. The Director-General's Decision on the composition of CDGs contains a one-paragraph summary description of the system of seat allocation. While the summary description adequately reflects some aspects of the internal guidelines for the selection panels, this information was made available publicly only after the selection had been completed. What has not been disclosed so far is the criterion, contained in the selection guidelines, for distinguishing economic and non-economic interests. Even at this late stage, it would serve the interests of transparency to make public the fullest possible information, including the basis on which economic and non-economic interests were distinguished. The Ombudsman therefore asks that DG AGRI publish the document '*Internal Guidelines for Selection Panels for the selection of member organisations and the allocation of expert seats in civil dialogue groups*' in order to render the overall process of establishing the CDGs more transparent.

F. The outcome of the selection process

37. In any Ombudsman inquiry, a key test is whether the institution in question has acted both lawfully and in accordance with the principles of interests in the Groups and, in particular, balanced representation as between principles of good administration. In this inquiry, therefore, a key test is whether DG AGRI acted lawfully, and also in accordance with the principles of good administration, in its allocation of seats in the 13 CDGs.

38. Article 4(3) of the 2013 Decision requires that the Director-General of DG AGRI "*shall ensure a balance between economic and non-economic interests*". The Ombudsman therefore has carried out her inquiry on the premise that any qualifying organisation must be deemed to represent either economic or non-economic interests. This does not preclude a variety of more specific interests being captured by the catch-all categories of 'economic' and 'non-economic'.

39. Unfortunately, this inquiry has been hampered by the absence of an individual definition of balance for each of the CDGs, against which the Ombudsman could have assessed their final composition. In the absence of a detailed prior description of the types of representation being sought for each proposed CDG, [24] the Ombudsman was restricted in what she could do. In effect, this inquiry has had to focus simply on whether DG AGRI, in applying the seat allocation system, committed any manifest error. The Ombudsman assessment which follows is based on her own reproduction of the different stages of the selection process. The factual considerations underpinning her assessment are set out in Annex I to this decision (see the heading 'The outcome of the selection process - facts and figures').

40. First, the Ombudsman considers that overall DG AGRI has applied the system of seat allocation, as established in the internal guidelines for the selection panels, in a consistent manner.

41. The Ombudsman has not found any evidence to suggest that DG AGRI's assessment and/or re-assessment of the applicant organisations' eligibility and qualification was flawed or



inconsistent. Where DG AGRI changed the status of applicant organisations in the course of the selection process, this was done in order to resolve or prevent inconsistencies in the treatment of organisations across the CDGs generally. Where an organisation was treated differently with regard to its eligibility and/or qualification in different CDGs, DG AGRI justified such decisions on the grounds of the respective Groups' mandates and/or the sector(s) dealt with by the Groups.

42. The Ombudsman considers that the re-classification by DG AGRI of some qualifying organisations, as to their representing economic or non-economic interests, appears to have been justified in most cases. Re-classification in this context refers to DG AGRI having deemed some organisations, actually registered in section II of the Transparency Register, as nevertheless representing non-economic interests. It refers also to the deeming of some organisations, actually registered in section III of the Transparency Register, as representing economic interests.

43. However, it appears that DG AGRI failed to draw the proper conclusions from its finding that some organisations needed to be re-classified. In all instances where the need for re-classification was established - following the internal guidelines for selection panels - it would appear that the organisation in question was registered in an incorrect section of the Transparency Register. The revised IIA on the Transparency Register, which has applied since 1 January 2015, is clear about the correct section for registration of organisations in the presence or absence of profit-making activities. The Ombudsman thus urges the Commission, in its role as member of the Joint Transparency Register Secretariat, to approach the organisations concerned and, if its findings as to the existence/non-existence of profit-making activities cannot be disproved, request that they re-register in the correct section of the Transparency Register. [25]

44. In some specific instances, however, the Ombudsman doubts that re-classification was correct. This is the case with the re-classification of the organisations EFNCP [26] , EFFAT [27] , FESASS [28] , and UEF [29] . Assuming that these re-classifications were not correct, the ratio of economic and non-economic interests represented in the CDGs changes. For this reason, the Ombudsman has calculated relevant alternative ratios of economic and non-economic interests in her reproduction of the selection process. According to the Commission's classification, the final weighted average ratio of non-economic to economic interests represented across the CDGs is **21% to 79%** . Not re-classifying the organisations EFNCP, EFFAT, FESASS and UEF would result in a reduction in the proportion of non-economic interests represented from 21% to 18% across all CDGs. The difference would, more precisely, amount to 2.7 percentage points. The impact in individual CDGs would range from none to a difference of up to 6 percentage points to the detriment of non-economic interests. The impact of an incorrect re-classification of these organisations, on the ratio of non-economic to economic interests, while small, is nevertheless tangible. The Ombudsman therefore asks DG AGRI to justify its decision to re-classify EFNCP, EFFAT, FESASS and UEF. In the event that the Commission's re-classification should prove erroneous, it would be appropriate for DG AGRI to reflect on whether a re-allocation of seats is required. Any such re-allocation would provide DG AGRI with the opportunity to articulate, and publish, its definitions of balance for each of the individual



CDGs concerned.

45. On the basis of her inquiry, the Ombudsman does not find any maladministration in the process followed by DG AGRI in allocating CDG seats to qualifying organisations or in establishing the number of seats for each Group. However, the Ombudsman cannot definitively state whether this process was best suited to achieving a balanced representation of economic and non-economic interests. This is because DG AGRI has not explained what constitutes a balanced representation of all interests (in particular economic and non-economic interests); nor has it provided an individual definition of balance for each of the 13 CDGs.

46. The Ombudsman notes that the CDGs have been re-designed to reflect the current CAP [30]. In comparison to the previous advisory groups, the CDGs' overall size has been reduced; more than 40 new organisations are now represented; and the most powerful economic stakeholders have lost some strength in the Groups. The overall proportion of non-economic interests in the Groups has improved, albeit marginally. The qualifying non-economic organisations obtained almost all (about 95%) of the seats they had requested. However, this fact must be treated with some caution. In the absence of information on the overall number of seats being allocated to each Group, any qualifying organisation would not know what number of seats it should request in order to give it the level of representation it felt it should have in that Group.

47. Notwithstanding these changes, it is for DG AGRI to explain why it believes it has achieved a balanced representation of interests in the composition of individual Groups. The Ombudsman notes with concern that, as shown in Annex II, non-economic interests account for only 4% in the CDG Milk, 8% in the CDG wine and 11%, respectively, in the CDGs Arable Crops and Horticulture, Olives, and Spirits. [31] In these cases in particular, the onus is on DG AGRI to justify why it considers these CDGs to be balanced, having regard in particular to their respective mandates.

48. For the future, DG AGRI should seek to explain and justify in a transparent manner the decisions it makes in establishing CDGs. The Ombudsman therefore invites DG AGRI, for the future, to set out and publish an individual definition of balance for each CDG. The individual definition of balance should be contained in the calls for application and reflected also in the subsequent Director-General decision establishing the Groups. The individual definition of balance should be preceded by the development and publication of general criteria for the purposes of distinguishing economic and non-economic interests. [32] In the event that DG AGRI decides to amend the composition of any of the current CDGs, in the course of the seven year term, the Ombudsman proposes that these new steps be taken.

49. The Ombudsman has one other concern in relation to the composition of the current CDGs. This relates to the representation for the organisations European Farmers (COPA) and European Agri-cooperatives (COGECA). In her opinion request in the separate inquiry (OI/6/2014/NF) dealing with Commission expert groups generally, the Ombudsman invited the Commission to explain its inconsistent treatment of COPA and COGECA, sometimes treating them as the one organisation while other times treating them as two separate organisations.



[33] The Ombudsman regrets that the Commission has not clarified this matter in its opinion in OI/6/2014/NF. [34] In the CDGs, COPA and COGECA are treated as two separate organisations, each with its own allocation of seats. On this basis, COPA/COCEGA jointly hold 200 of the 773 seats available (26%) across all the Groups. [35] Were the Commission to conclude that COPA and COGECA should be considered one single organisation for the purposes of membership of expert groups and CDGs, the Ombudsman is of the view that DG AGRI would be obliged to re-allocate the number of seats falling vacant in the CDGs due to COPA and COGECA's change in status. The Ombudsman notes, in this regard, that the Commission has not followed her advice, set out in her opening letter in this inquiry, to inform the CDG member organisations of the possibility that their appointment might have to be reviewed in light of her findings.

50. Finally , if it is the Commission's intention to strive to achieve a higher relative representation of non-economic interests in the future, it may need to consider limiting the size of Groups or take other structural measures that go beyond the scope of this inquiry.

Conclusion

The Ombudsman welcomes DG AGRI's efforts to improve the situation as regards the balance of representation in its Civil Dialogue Groups. Arising from this inquiry, the Ombudsman makes a number of proposals, some directed at improving the situation as regards the 13 Groups in place at present and some directed at the establishment of Civil Dialogue Groups in the future .

As regards the process whereby 13 Civil Dialogue Groups were established in July 2014, the Ombudsman believes that, in order to further enhance the transparency of that process, DG AGRI should now :

- **Publish the 2014 ' Internal guidelines for selection panels for the selection of member organisations and the allocation of expert seats in civil dialogue groups '.**
- **Justify its decision to re-classify the organisations EFNCP, EFFAT, FESASS and UEF as to their representing non-economic or economic interests.** In case of erroneous re-classification, DG AGRI should reflect on whether a re-allocation of seats is necessary.
- **In the event of COPA and COGECA being found by the Commission to be one single organisation, consider seriously the need to re-allocate seats falling vacant in the Groups as a consequence of this development.**
- **Publish a revised version of the Director-General's decision of July 2014 on the composition of the Civil Dialogue Groups making sure to state (i) the total number of seats per Group; and (ii) the ratio of economic to non-economic interests represented in each Group.**
- **In the revised version of the Director-General's decision of July 2014 on the composition of the Civil Dialogue Groups, (i) correctly identify the member organisations of each Group [36] ; (ii) link the member organisations of each Group to their respective profiles in the Transparency Register; and (iii) state the date of the Decision.**
- **Remove the linguistic inconsistency in sentence three of Article 4(3) of Commission Decision 2013/767/EU.**



As regards the establishment of Civil Dialogue Groups in the future (and bearing in mind that the current Groups have a further six years to run), DG AGRI should:

- **Define in general terms its concept of balanced representation as regards the composition of its Civil Dialogue Groups.**
- **Set out, in any future calls for applications, an individual definition of balance for each Civil Dialogue Group. At the same time it should state the overall number of seats it intends to fill on each Group and how it proposes that the seats will be distributed between the various relevant interests.**
- **Work with the over-arching categorisation of economic and non-economic interests when establishing Civil Dialogue Groups.**
- **Justify objectively and record in writing, at the stage of preparing the decision on the composition of the Civil Dialogue Groups, how it exercised its discretion in allocating seats.**

The Commission will be informed of this decision. The Commission should say how and when it will implement each measure that has been suggested. It would be helpful if the Commission could follow-up by 29 February 2016 at the latest.

Emily O'Reilly Strasbourg, 07/09/2015

Annex I to the decision of the European Ombudsman closing her own-initiative inquiry OI/7/2014/NF

The purpose of this Annex is to set out some more detailed information in relation to the composition of DG AGRI's CDGs with a view to enabling the reader to better understand the factual considerations underpinning the Ombudsman's decision.

The background of the CDG reform

1. The following two considerations appear to have underpinned the CAP advisory system's latest reform.
2. First, the CAP underwent a series of reforms since the advisory system's previous legal framework [37] was adopted in 2004. Essentially, the CAP has been modernised and made more market-oriented. The 2013 CAP reform abolished product specific regulations, introduced a new system of direct payments partly linked to greening requirements, and strengthened instruments for quality and promotion. [38]



3. Second, in November 2011, the budget authority decided to hold EUR 2 million of the general budget of the EU for the financial year 2012 in reserve. The relevant budget item concerned expenses in relation to Commission expert groups and was frozen due to perceived problems with the composition of the groups. Specific conditions were set for the release of the reserve, including the requirement of a balanced composition of expert groups and the carrying out of an open selection process for members with a public call for applications and the publication of a group's mandate. [39] After the Commission entered into a dialogue with the European Parliament, the budget reserve was released in September 2012.

4. Recital (3) of Commission Decision 2013/767/EU acknowledges both of the above considerations by providing that " *[w]ith a view to increase transparency and provide for a better balancing of represented interests it is necessary to review the dialogue in the advisory groups dealing with agriculture issues and to provide for the framework of a civil dialogue in the field of agriculture and rural development, including the international aspects thereof, and to define their tasks and structure* ".

The system of seat allocation - description

5. DG AGRI's Director-General was assisted in selecting the CDGs' members by 14 selection panels, one for each of the 14 planned CDGs. 13 CDGs were finally established, while one CDG was cancelled [40]. The panels were composed of DG AGRI staff and had the task of giving their recommendations on the composition of the groups, in full autonomy, to the Director-General. The procedure to be followed in allocating seats was set out by DG AGRI in the internal guidelines for selection panels. The internal guidelines reminded the selection panels of the need to ensure a balance of represented interests, pursuant to Article 4(3) of Commission Decision 2013/767/EU.

6. Applicant organisations needed to fulfil certain eligibility and qualification criteria to be entitled to membership in the CDGs. The eligibility criteria were the following: organisation; non-governmental; European-level; registered in the Transparency Register. The qualification criteria were the following: umbrella organisation; capacity; stability; interest in the CAP; expertise. The criteria were also set out in the calls for applications. The selection panels enjoyed discretion as regards the criteria European-level, administrative capacity, stability, interest in the CAP, and expertise.

7. The allocation of seats to applicant organisations which the selection panels deemed to fulfil the eligibility and qualification criteria ('qualifying organisations') followed a three-step system. Based on the premise that the number of seats allocated to one organisation must never exceed the number of seats it requested, and within the limits of the total number of seats available per CDG, the following types of seats were subject to allocation: (i) one basic seat, (ii) possibly one geographical top-up seat, and (iii) possibly a discretionary number of further seats.

8. Every qualifying organisation automatically received one basic seat and was thus guaranteed representation in a given CDG. Qualifying organisations with members in more than



20 Member States could be allocated one geographical top-up seat. If more seats were available, the selection panels could allocate a discretionary number of further seats " *according to a proven need for the qualifying member organisation's delegation to represent a diversity of voices* ". This possibility was available under the caveat that the need to represent a diversity of voices had to go beyond the simple fact that a qualifying organisation is represented in different Member States and must not lead to an overall imbalance between the economic and non-economic sector. The internal guidelines set out a non-exhaustive list of reasons, linked to a CDG's mandate, that were deemed to demonstrate an organisation's need to represent a diversity of voices. The reasons listed allude to the need to ensure a balance also within the two categories of economic and non-economic stakeholders in light of the requirement of a balanced composition.

The outcome of the selection process - facts and figures

9. In response to the calls for applications, 103 organisations submitted applications in which they requested a total number of 1 342 seats. Out of the 103 applicant organisations, 68 were deemed to meet the eligibility and qualification requirements. 773 seats were finally allocated among the 68 qualifying organisations in the 13 established CDGs. The organisations were appointed for seven years, as provided for in Article 4(5) of Commission Decision 2013/767/EU. It appears that more than 40 of the 68 qualifying organisations are new to DG AGRI's CAP advisory system.

10. From the 68 qualifying organisations, about one third represented non-economic interests while about two thirds represented economic interests (see Annex II to this decision). It was on the basis of these numbers that the Commission had to ensure a balanced composition of the CDGs.

11. The selection panels deliberated twice on the composition of the CDGs. As a result of their first deliberations, the selection panels recommended allocating a certain number of seats in each of the planned CDGs which, in most CDGs, was lower than the envisaged 53 seats standard group size. In order to fill up the groups in which not all available 53 seats had yet been allocated and to increase the size of the four horizontal CDGs [41] , owing to the strong interest in participation expressed by applicant organisations, the Commission asked the selection panels to allocate a specific number of additional seats to the relevant CDGs. At the same time, it proposed to the selection panels to abolish the CDG Women in Rural Areas, given the low number of applications received. The selection panels then deliberated a second time. DG AGRI's Director-General then adopted what were essentially the selection panels' cumulative recommendations in the form of his decision on the composition of the CDGs dealing with matters covered by the Common Agricultural Policy.

12. At different stages, the status of several applicant organisations was changed as regards their eligibility and qualification, essentially in order to resolve or prevent inconsistencies in the treatment of organisations in different CDGs. Where an organisation was treated differently with regard to its eligibility and/or qualification in different CDGs, the selection panels duly justified



their decisions on the grounds of the respective groups' mandates and/or the sector(s) dealt with by the groups.

13. Furthermore, a non-negligible number of qualifying organisations were re-classified as to their representing economic or non-economic interests at different stages of the process of seat allocation. This means that, notwithstanding the criterion of delimitation of economic and non-economic interests on which it based itself, the Commission deemed some organisations registered in section II of the Transparency Register to represent non-economic interests, while it deemed some organisations registered in section III of the Transparency Register to represent economic interests. The Commission based such re-classification on an organisation and its members carrying or not carrying out gainful activities.

14. As a matter of fact, non-economic interests would have had a stronger relative representation across CDGs according to the panels' recommendations after their first deliberations than they do according to the final outcome of the allocation of seats, which is based on the panels' recommendations following their second deliberations. However, the following considerations are of relevance in this regard.

15. In absolute terms, the organisations representing non-economic interests in 7 CDGs [42] were allocated the full number of seats they had requested at the stage of the panels' first deliberations. The panels did not, under the applicable system of seat allocation, have any discretion to allocate any more seats to the non-economic organisations in the 7 CDGs at the stage of their second deliberations. The fact that additional seats were allocated in 5 [43] of those 7 CDGs thus diminished the relative weight of the non-economic organisations in those groups. In 3 other CDGs [44], it was due to the allocation of additional seats in the course of the panels' second deliberations that the non-economic organisations obtained the full number of seats requested. There are thus only 3 CDGs, namely those on CAP, Environment and Climate Change, and Rural Development, in which the organisations representing non-economic interests have not obtained the full number of seats they requested. In total, they fall short 5 [45] / 8 [46] seats. Importantly, however, it is in those same 3 CDGs that non-economic organisations have the strongest relative representation, namely 28% / 32% of seats in the CDG CAP, 32% / 34% of seats in CDG Environment and Climate Change, and 32% / 31% of seats in CDG Rural Development. [47] Overall, non-economic organisations were allocated about 97% [48] / 95% [49] of the seats they requested. If compared with the situation in the previous advisory groups, the relative representation of non-economic organisations across all groups has improved from 15% to 18% [50] / 21% [51] in the CDGs. In addition, in all CDGs the final ratio of non-economic interests represented - based on the total number of seats allocated - is higher than the ratio of seats requested by qualifying non-economic organisations with reference to the total number of seats requested by all qualifying organisations at the application stage. By way of example, in the CDG CAP, qualifying non-economic organisations requested 21% of seats but hold 32% of seats; in the CDG Direct Payments and Greening, qualifying non-economic organisations requested 14% of seats but hold 17% of seats, and in the CDG Organic Farming, qualifying non-economic organisations requested 15% of seats but hold 25% of seats. [52]



16. The lowest relative representation of non-economic interests is to be found in CDGs which deal with heavily market-oriented mandates, that is, a particular agri-foodstuffs sector or a group of such sectors. [53] In line with this, non-economic organisations have the highest relative representation in CDGs whose mandates include matters which are not predominantly related to market issues but underpinned also by non-economic considerations. [54] The relative representation of economic organisations appears determined by the inverse correlation: their representation is strongest in CDGs with a heavily market-oriented mandate while it is weakest in CDGs whose mandates cover issues which are underpinned also by non-economic interests.

17. As concerns, more specifically, the selection panels' second deliberations, the rationale for the allocation of additional seats was that of the allocation of further seats in step three of the allocation system, namely 'a proven need to represent a diversity of voices'. Given the respective number of seats requested by economic and non-economic organisations, the nature of the CAP and the mandates of the CDGs, it was mainly economic organisations that benefited from the allocation of additional seats. According to the minutes of the panels' deliberations, the criterion of 'a proven need to represent a diversity of voices' was essentially used, in practice, so as to arrive at a balanced representation, within the economic interests category, of organisations active at different levels of the supply chain.

18. On a general note, the large economic organisations that have long had a particularly strong position in the CAP advisory system have lost significant strength in relative terms. This is true, for example, for COPA and COGECA which, together, held 443 seats (or 47% of seats) in the previous advisory group system. Across all CDGs, they now together hold 200 seats, which is a relative representation of 26%. The same is true for the two main organisations representing traders. CELCAA and SACAR, together, held 150 seats in the previous advisory groups while they have been allocated 68 seats in the current CDGs. [55] This means that CELCAA and SACAR's cumulative relative representation went down from 16% in the advisory groups to 9% in the CDGs. As a consequence, the qualifying non-economic organisations have a higher final relative representation in the CDGs than they would have had given their requests for seats at the application stage.

Annex II to the decision of the European Ombudsman closing her own-initiative inquiry OI/7/2014/NF

The purpose of this Annex is to set out some of the figures displaying the process of selecting member organisations to DG AGRI's CDGs with a view to enabling the reader to better understand the facts underpinning the Ombudsman's decision.

Number of applicant organisations, by interests, that met the eligibility and qualification criteria ('qualifying organisations'):



Classification DG AGRI

Classification

Ombudsman

Non-economic interests

25

23

Economic interests

43

45

In total: 773 seats allocated to 68 organisations

The Ombudsman's classification is based on the premise that the organisations EFNCP, EFFAT, FESASS and UEF were potentially wrongly re-classified by the Commission as to their representing economic or non-economic interests.

The selection panels' first deliberations - number of seats per planned CDG:

As a result of their **first deliberations**, the selection panels recommended allocating the following number of seats to the planned CDGs:

- Animal Products: 57 seats
- Arable Crops: 58 seats
- CAP: 53 seats
- Direct Payments and Greening: 44 seats
- Environment and Climate Change: 49 seats
- Forestry and Cork: 35 seats
- Horticulture, Olives and Spirits: 43 seats
- International Aspects of Agriculture: 40 seats
- Milk: 39 seats
- Organic Farming: 36 seats
- Quality and Promotion: 35 seats
- Rural Development: 43 seats
- Wine: 39 seats
- Women in Rural Areas: 11 seats



Instructions by DG AGRI to fill up / increase in size some of the CDGs:

In order to fill up the groups in which not all available 53 seats had yet been allocated and to increase the size of the four horizontal CDGs [56] , owing to the strong interest in participation expressed by applicant organisations, the Commission, on 25 June 2014, asked the selection panels to allocate a specific number of additional seats to all CDGs, except for the CDGs on Animal Products and Arable Crops:

- CAP: 20 seats
- Direct Payments and Greening: 30 seats
- International Aspects of Agriculture: 32 seats
- Rural Development: 31 seats
- Environment and Climate Change: 5 seats
- Forestry and Cork: 21 seats
- Horticulture, Olives and Spirits: 10 seats
- Milk: 14 seats
- Organic Farming: 18 seats
- Quality and Promotion: 15 seats
- Wine: 14 seats

The final outcome of the selection process - number of seats per established CDG:

By **decision of 18 July 2014** , DG AGRI's Director-General decided to set up the following **13 CDGs** :

- Animal Products: 57 seats
- Arable Crops: 57 seats
- CAP: 72 seats
- Direct Payments and Greening: 72 seats
- Environment and Climate Change: 53 seats
- Forestry and Cork: 53 seats
- Horticulture, Olives and Spirits: 53 seats
- International Aspects of Agriculture: 72 seats
- Milk: 53 seats
- Organic Farming: 53 seats
- Quality and Promotion: 53 seats
- Rural Development: 72 seats
- Wine: 53 seats

The final outcome of the selection process - final weighted average ratio of non-economic to economic interests



represented in the established CDGs

Classification DG AGRI

Classification Ombudsman

Non-economic interests (in %)

21.03

18.38

Economic interests (in %)

78.97

81.62

Final number of seats per established CDG

Animal Products

Arable Crops

CAP

Direct Payments and Greening

Environment and Climate Change

Forestry and Cork

HOS*

Int. Aspects of AGRI

Milk

Organic Farming

Quality and Promotion



Rural Development

Wine

57

57

72

72

53

53

53

72

53

53

53

72

53

Horizontal groups

Special character

Standard size

Number of seats allocated: 773

Number of seats requested by qualifying organisations: 1 342

*'HOS': Horticulture, Olives and Spirits



Extent to which organisations representing non-economic interests obtained full number of seats requested,

Ombudsman classification

of organisations

Animal Products

Arable Crops

CAP

Direct Payments and Greening

Environment and Climate Change

Forestry and Cork

HOS*

Int. Aspects of AGRI

Milk

Organic Farming

Quality and Promotion

Rural Development

Wine

✘

✘

x

✘

x

✘

✘



■

■

■

■

x

■

By 2 seats

By 2 seats

Thanks to increase

Thanks to increase

Thanks to increase

By 1 seat

■ : Qualifying organisations representing non-economic interests obtained the full number of seats which they requested in their applications.

x : Qualifying organisations representing non-economic interests did not obtain the full number of seats which they requested in their applications.

Thanks to increase : The full number of seats requested was obtained through the allocation of additional seats, following the instructions of the Director of DG AGRI's Directorate R of 25 June 2014.

Initial ratios of organisations representing non-economic to economic interests (according to the selection panels' first deliberations),

Ombudsman classification

of organisations



Animal Products

Arable Crops

CAP

Direct Payments and Greening

Environment and Climate Change

Forestry and Cork

HOS*

Int. Aspects of AGRI

Milk

Organic Farming

Quality and Promotion

Rural Development

Wine

Weighted average

in %

☐

☐

x

☐

x

☐

☐

☐



▣

▣

▣

x

▣

in %

Non -

economic

16

10

33

29

31

25

14

30

5

28

24

39

10

23.51

26



Economic

84

90

67

71

69

75

86

70

95

72

76

61

90

76.49

Final ratios of organisations representing non-economic to economic interests,

Ombudsman classification

of organisations

Animal Products

Arable Crops



CAP

Direct Payments and Greening

Environment and Climate Change

Forestry and Cork

HOS*

Int. Aspects of AGRI

Milk

Organic Farming

Quality and Promotion

Rural Development

Wine

Weighted average

in %

☐

☐

x

☐

x

☐

☐

☐

☐

☐



■

x

■

in %

Non -

economic

16

11

28

17

32

17

11

18

4

21

17

32

8

18.38

Economic

84

29



89

72

83

68

83

89

82

96

79

83

68

92

81.62

Increase

in seats

0

-1

20

30

5

21

10

32

30



14

18

15

31

14

Initial ratios of organisations representing non-economic to economic interests (according to the selection panels' first deliberations), final

DG AGRI bipartite classification

of organisations

Animal Products

Arable Crops

CAP

Direct Payments and Greening

Environment and Climate Change

Forestry and Cork

HOS*

Int. Aspects of AGRI

Milk

Organic Farming

Quality and Promotion

Rural Development

31



Wine

Weighted average

in %

✖

✖

x

✖

x

✖

✖

✖

✖

✖

✖

x

✖

in %

Non -

economic

18

14

37

29

32



33

34

17

33

10

33

24

37

15

26.41

Economic

82

86

63

71

67

66

83

68

90

67

76

33



63

85

73.68

Final ratios of organisations representing non-economic to economic interests, final

DG AGRI bipartite classification

of organisations

Animal Products

Arable Crops

CAP

Direct Payments and Greening

Environment and Climate Change

Forestry and Cork

HOS*

Int. Aspects of AGRI

Milk

Organic Farming

Quality and Promotion

Rural Development

Wine

Weighted average

in %



✘

✘

X

✘

X

✘

✘

✘

✘

✘

✘

X

✘

in %

Non -economic

18

14

32

17

34

23

13

24

35



8

25

17

31

11

21.03

Economic

82

86

68

83

66

77

87

76

92

75

83

69

89

78.97

Increase in seats

36



0

-1

20

30

5

21

10

32

14

18

15

31

14

[1] Commission Decision 2013/767/EU of 16 December 2013 setting up a framework for civil dialogue in matters covered by the common agricultural policy and repealing Decision 2004/391/EC, OJ 2013 L 338, p. 115.

[2] See Decision on the composition of the Civil Dialogue Groups dealing with matters covered by the Common Agricultural Policy, R4-Ares(2014)2596788, available at:

http://ec.europa.eu/agriculture/civil-dialogue-groups/decision-composition_en.pdf [Link]

[3] See:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54297/html.bookmark>
[Link]

[4] The present inquiry complements the Ombudsman's own-initiative inquiry OI/6/2014/NF into systemic issues as regards the composition and transparency of Commission expert groups.

See:

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



[Link]

[5] This inquiry does not deal with how the established CDGs have carried out their work so far, that is, how their meetings have been organised and what they have achieved.

[6] Commission Communication: Framework for Commission Expert Groups: Horizontal Rules and Public Register, 10.11.2010 (C(2010) 7649, SEC(2010) 1360).

[7] See Commission Communication: Framework for Commission Expert Groups: Horizontal Rules and Public Register, 10.11.2010 (C(2010) 7649, SEC(2010) 1360), Annex Rules 2 and 3.

[8] This description is that of the Commission's Secretary-General quoted in the Ombudsman's decision closing her inquiry into complaint 1682/2010/BEH.

[9] As signalled by the Ombudsman in the course of her separate own-initiative inquiry into the composition of Commission expert groups generally, the provisions of the Commission's 2013 Decision have a number of advantages compared to the more general rules set out in the 2010 Communication. These advantages include: a mandatory call for applications, a link to the Transparency Register and, most essentially, a legal requirement to have a balanced representation of interests, in particular as regards economic and non-economic interests.

[10] See, for example, the wording used by the Commission in its general rules governing expert groups (see footnote NOTEREF _Ref428975286 \h 6 08D0C9EA79F9BACE118C8200AA004BA90B02000000080000000E0000005F0052006500660034003200380039 for full reference), where it states that a balanced representation of relevant stakeholders needs to take into account the specific tasks of the expert group and the type of expertise required.

[11] This is without prejudice to any work that Parliament may wish to do in this important area.

[12] See the Ombudsman's decision closing her inquiry into complaint 1682/2010/BEH, point 139.

[13] See suggestion 2 under the heading 'A. The (legal) nature of the horizontal rules and achieving a balanced composition' in the Ombudsman's opinion request in OI/6/2014/NF.

[14] The French language version mirrors the wording of the English version ("*les intérêts exprimés, visés au paragraphe 2*"), the word "*expressed*" is not to be found in some other language versions. The German, Spanish and Dutch language versions, for example, require a balanced representation of the interests referred to in paragraph 2 of Article 4, that is, any kind of **relevant** interests ("*Membership of the groups shall be open to those organisations representing any kind of relevant interest*"). The Ombudsman takes it that interests are "*expressed*" if they are voiced in an application for membership in a CDG. However, not all interests relevant to the mandate of a specific CDG will necessarily have been expressed in reaction to a call for applications. In other words, relevant interests and expressed interests do not necessarily coincide.



[15] See the Ombudsman's decision closing her inquiry into complaint 1966/2011/(EIS)LP against the EBA, point 25.

[16] See suggestion 3 under the heading 'A. The (legal) nature of the horizontal rules and achieving a balanced composition' in the Ombudsman's opinion request in OI/6/2014/NF.

[17] Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ 2014 L 277, p. 11.

[18] See Commission Decision 81/195/EEC of 16 March 1981, OJ L 1990 172, p. 33; Commission Decisions 87/70/EEC to 87/93/EEC of 7 January 1987, OJ 1987 L 45, pp. 1 to 68; Commission Decision 89/567/EEC of 20 October 1989, OJ 1989 L 309, p. 39; Commission Decision 90/351/EEC of 29 June 1990, OJ 1990 L 172, p. 33; Commission Decision 98/235/EC of 11 March 1998, OJ 1998 L 88, p. 59; and Commission Decision 2004/391/EC of 23 April 2004, OJ 2004 L 120, p. 50.

[19] See Commission Decision 2004/391/EC which, in its Annex I, established 30 advisory groups. In addition, DG AGRI hosted an informal advisory group on international aspects of agricultural policy, see, for example:

http://ec.europa.eu/agriculture/events/advisory-group-international-2012_en.htm [Link].

[20] See Commission Decision 2004/391/EC, Annex II.

[21] As pointed out in Annex I to this decision, the rationale for the allocation of additional seats during the selection panels' second deliberations was the criterion of 'a proven need to represent a diversity of voices'. Given the respective number of seats requested by economic and non-economic organisations, the nature of the CAP and the mandates of the CDGs, it was mainly economic organisations that benefited from the allocation of additional seats.

[22] In addition to the selection panels' explanations recorded in their meeting minutes.

[23] Decision on the Composition of the Civil Dialogue Groups Dealing with Matters Covered by the Common Agricultural Policy, R4-Ares(2014)2596788.

[24] The illustrative examples set out in Article 4(2) of Decision 2013/767/EU, namely, "*European-level non-governmental organisations, including representative associations, socioeconomic interest groups, civil society organisations and trade unions (...)*", is in no way sufficiently detailed to constitute such a prior description of the types of expertise sought.

[25] The Ombudsman pointed to the importance of carrying out systemic checks of whether registrants signed up in the correct section of the Transparency Register in her opinion request in OI/6/2014/NF, under point 3 of the heading 'C. Link to the Transparency Register'.



[26] European Forum on Nature Conservation and Pastoralism (EFNCP).

[27] European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT).

[28] Fédération Européenne pour la Santé Animale et la Sécurité Sanitaire (FESASS).

[29] Union of European Foresters (UEF).

[30] The legal framework of DG AGRI's CAP advisory system in its previous forms provided for the Commission to seek expertise essentially from economic stakeholders directly affected by agricultural policy decisions but also from consumers and environmentalists. The different categories of stakeholder appear to have reflected the design and scope of the CAP at a given moment in time, notably by increasingly embracing a wider range of stakeholders, while remaining focused on economic stakeholders active at different levels of the production chains, namely producers, traders, industry, cooperatives, workers' and trade unions.

[31] Figures according to the Ombudsman's classification of organisations.

[32] These proposals are set out in fuller detail in the Ombudsman's request for an opinion in her inquiry OI/6/2014/NF; that inquiry deals with the composition of Commission expert groups in general.

[33] See opinion request in OI/6/2014/NF, heading 'A. The (legal) nature of the horizontal rules and achieving a balanced composition', point 4.

[34] The Commission's opinion is available here:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/60019/html.bookmark>
[Link]

[35] In the previous CAP advisory groups, COPA/COCEGA held 443 seats or 47% of the available seats.

[36] In practical terms, the CDGs' member organisations should be identified both by their respective full names and, if applicable, their acronyms. The Commission should ensure that the spelling of both corresponds to the information in the Transparency Register. It should undertake the same checks as regards the CDG member organisations' listing in the Commission's expert groups register.

[37] See Commission Decision 2004/391/EC.

[38] See the four Basic Regulations on the reformed CAP: Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development, OJ 2013 L 347, p. 487; Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy, OJ L



2013 347, p. 549; Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, OJ 2013 L 347, p. 608; and Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, OJ 2013 L 347, p. 671.

[39] See ADDENDUM 5 TO "I/A" ITEM NOTE, Subject: General budget of the European Union for the financial year 2012 - Approval of the joint text: Amendments by budget line - Consolidated document (integration of agreed amendments on DB or Council's position), 17470/11, ADD 5, FIN 958, of 24 November 2011, p. 18.

[40] The planned CDG Women in Rural Areas was cancelled, given the low number of applications. See point 11 below.

[41] The Commission considers the following CDGs to have mandates of a horizontal nature: CAP; Direct Payments and Greening; International Aspects of Agriculture; Rural Development.

[42] The relevant CDGs are the following: Animal Products; Arable Crops; Direct Payments and Greening; Horticulture, Olives and Spirits; Milk; Quality and Promotion; and Wine.

[43] The relevant CDGs are the following: Direct Payments and Greening; Horticulture, Olives and Spirits; Milk; Quality and Promotion; Wine.

[44] The relevant CDGs are the following: Forestry and Cork; International Aspects of Agriculture; and Organic Farming.

[45] Figure according to the Ombudsman's classification of organisations.

[46] Figure according to DG AGRI's re-classification of organisations.

[47] The first respective figure is based on the Ombudsman's classification of organisations, the second respective figure is based on DG AGRI's re-classification of organisations.

[48] Figure according to the Ombudsman's classification of organisations.

[49] Figure according to DG AGRI's re-classification of organisations.

[50] Figure according to the Ombudsman's classification of organisations.

[51] Figure according to DG AGRI's re-classification of organisations.

[52] The figures are based on the Ombudsman's classification of organisations as regards their representing economic or non-economic interests.



[53] This finding concerns in particular the following CDGs in which the ratio of non-economic interests represented is as follows: CDG Milk, 4 % / 8%; CDG Wine, 8% / 11%; CDG Horticulture, Olives and Spirits, 11% / 13%; CDG Arable Crops 11% / 14%. The respective first figure corresponds to the Ombudsman's classification of organisations, the respective second figure to DG AGRI's re-classification of organisations.

[54] This finding concerns in particular the following CDGs in which the ratio of non-economic interests represented is as follows: CDG CAP, 28% / 32%; CDG Environment and Climate Change, 32% / 34%; CDG International Aspects of Agriculture, 18 % / 24%; CDG Rural Development, 32 % / 31%. The respective first figure corresponds to the Ombudsman's classification of organisations, the respective second figure to DG AGRI's re-classification of organisations.

[55] The number of seats and the total relative representation of COPA and COGECA as well as CELCAA and SACAR in the previous advisory groups are taken from inspected documents.

[56] The Commission considers the following CDGs to have mandates of a horizontal nature: CAP; Direct Payments and Greening; International Aspects of Agriculture; Rural Development.