

Annex III to decision 1100/2015/NF - European Commission Expert Groups

Correspondence - 16/03/2017

Case 1100/2015/NF - Opened on 18/08/2015 - Decision on 16/03/2017 - Institutions concerned European Commission (No maladministration found) | European Commission (No further inquiries justified) |

Commission expert groups [1] are consultative entities set up by the Commission or its services that provide the Commission with high-level expertise in a given policy area. The creation and functioning of expert groups are governed by the *horizontal rules for Commission expert groups*. At the time the Commission set up the European Science and Technology Network on Unconventional Hydrocarbon Extraction, the horizontal rules for expert groups were set out in an Annex to a Commission Communication [2]. In the following text, reference is made to those rules, which were applicable to expert groups until the end of May 2016 [3]. For the sake of completeness, the corresponding provisions of the Commission's new Decision [4] on the functioning of expert groups are indicated in footnotes.

According to Rule 2(1) [5] of the horizontal rules, an expert group is defined in the following way:

'Commission expert group' (hereinafter referred to as "expert group") means **a consultative entity set up by the Commission or its services for the purpose of providing them with advice and expertise as set out in Rule 3**, which comprises at least six members and is foreseen to meet more than once.

Rule 3 [6] provides that the role of expert groups shall be to **provide advice and expertise** to the Commission and its services in relation to:

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



According to Rule 8 [7] , expert groups may be composed of the **following types of members** :

- 1) individuals appointed in their personal capacity;
- 2) individuals appointed to represent a common interest shared by stakeholders in a particular policy area; they shall not represent an individual stakeholder;
- 3) organisations, in the broad sense of the word including companies, associations, Non-Governmental-Organisations, trade unions, universities, research institutes, Union agencies, Union bodies and international organisations;
- 4) Member States' authorities, at national, regional or local level.

Regarding the composition of expert groups, Rule 9 [8] ('Selection process and appointment of members') provides the following:

- 1) Where *individual experts* are appointed in their personal capacity, **they shall be chosen according to a** selection process that guarantees a high level of expertise and, as far as possible, geographical and gender balance, taking into account the specific tasks of the expert group and the type of expertise required. **In addition, the selection of experts shall be carried out in such a way as to avoid any conflict of interests** . [9] [...]
- 2) Where *individual experts are appointed to represent an interest* or where *organisations* are appointed as members of expert groups, Commission services **shall, as far as possible, ensure a balanced representation of relevant stakeholders** , taking into account the specific tasks of the expert group and the type of expertise required.

Chapter IV [10] of the horizontal rules sets out provisions on transparency, namely the requirement of registration of a group on the Commission's public expert groups register [11] where data about a group and documents in relation to a group's work are published. The transparency provisions do not only apply to expert groups but also to entities similar to expert groups. Rule 2(4) [12] defines that '**other similar entity**' is a consultative entity which was not set up by the Commission or its services , **the role of which is the same as, or similar to, that set out in Rule 3** and for which the Commission services ensure administrative and financial management.

There are currently at least two expert groups composed of representatives of the Member States (Member State authorities) and one expert group with mixed membership (individual experts appointed as representative of a common interest; organisations; Member State authorities; and other public entities) that deal with matters related to fracking: (i) Technical Working Group on environmental aspects of unconventional fossil fuels, in particular shale gas (E02671); (ii) Groupe des autorités du pétrole et du gaz en mer de l'Union européenne (E02793); and (iii) Technical Working Group for the HYDROCARBONS BREF (E03348). [13]



[1] For more background information on the matter see the Ombudsman's own-initiative inquiry OI/6/2014/NF concerning the composition and transparency of Commission expert groups: <http://www.ombudsman.europa.eu/en/cases/case.faces/en/43789/html.bookmark> [Link]

[2] Annex to the Communication from the President to the Commission: Framework for Commission Expert Groups: Horizontal Rules and Public Register, 10 January 2010, C(2010)7649 final, SEC(2010)1360.

[3] On 30 May 2016, the Commission adopted a new set of rules governing expert groups. See Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups, C(2016) 3301 final; available at: http://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_COMMISSION_DECISION_EN.pdf [Link]

[4] The Commission's reform of its horizontal rules governing the creation and operation of expert groups is based on a set of three documents: the Commission Decision setting out the revised horizontal rules, a document with Annexes to the Decision (http://ec.europa.eu/transparency/regexpert/PDF/C_2016_3301_F1_ANNEX_EN.pdf [Link]), and a Commission Communication (http://ec.europa.eu/transparency/regexpert/PDF/C_2016_3300_F1_COMMUNICATION_TO_COMMISSION_EN.pdf [Link]) explaining the main features of the reform. With its third generation rules, the Commission has largely overhauled its expert groups system and has put in place new rules which, to a big extent, follow the Ombudsman's proposals. Overall, the reform has resulted in a more robust, inclusive, transparent and legally binding system. The Commission explicitly acknowledges the Ombudsman's contribution to the new system in recital (2) of its Decision.

[5] See Article 2(1) of Commission Decision C(2016) 3301 (no more minimum number of members).

[6] See Article 3 of Commission Decision C(2016) 3301 (additional role in the early preparation of implementing acts).

[7] See Article 7 of Commission Decision C(2016) 3301.

[8] See Article 10 of Commission Decision C(2016) 3301 (Public calls for applications are now the standard means of selection of expert group members. In addition, expert group members are now, as a general rule, obliged to register in the EU Transparency Register – see Article 8).

[9] With Commission Decisions C(2016) 3301, the Commission has put in place a new conflict of interest policy for individual experts appointed in their personal capacity. The new policy includes the definition of a conflict of interest, rules for the processing of declarations of interests, rules on the management of conflicts of interest, and the publication of the



declarations of interests on the expert groups register. See in particular Article 11 of Commission Decision C(2016) 3301.

[10] See Chapter IV of Commission Decision C(2016) 3301.

[11] <http://ec.europa.eu/transparency/regexpert/index.cfm> [Link]

[12] See Article 2(2) of Commission Decision C(2016) 3301.

[13] Information about individual expert groups is available at the Commission's register of expert groups and other similar entities: <http://ec.europa.eu/transparency/regexpert/index.cfm>