

Request for Meeting and Documents into Strategic Inquiry OI/6/2014/NF

Correspondence - 12/04/2017

Case OI/6/2014/NF - Opened on 12/05/2014 - Recommendation on 29/01/2016 - Decision on 14/11/2017 - Institution concerned European Commission (Recommendation agreed by the institution) |

Dear Mr President,

On 30 May 2016, the Commission adopted a Decision establishing new horizontal rules governing expert groups (Commission Expert Groups Decision [1]). These third generation rules largely overhaul the Commission's expert groups system and, to a great extent, follow proposals made by this Office in the context of strategic inquiry OI/6/2014/NF. In addition, many concerns also previously expressed by the European Parliament have seemingly been met [2] .

Overall, the outcome of the reform is commendable and has resulted in a more robust, inclusive, transparent and legally binding system. I attach an overview of our preliminary assessment of the extent to which my proposals, suggestions and recommendations have been taken into account (Annex I). I will communicate a final, detailed assessment of the new rules and their implementation in my upcoming decision in this inquiry.

The purpose of the present letter is to request documents from the Commission and to ask for a meeting to allow my staff to gauge the extent to which my two specific recommendations (set out below) have been accepted and applied. As the Commission Decision provides that existing groups had to comply with the new rules by the end of 2016, I believe that sufficient time has now passed for us to move to this next step in the inquiry.

My two recommendations were as follows:

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

- **the content of published minutes and provide that, in the normal course , the published minutes will be as meaningful as possible and, in particular, set out the positions expressed by the members;**
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- **the confidentiality of expert group deliberations, and provide that, as a general rule, these deliberations should be transparent and that only in exceptional cases, following a**



majority vote within the group and with the consent of the Commission, would an expert group's deliberations be confidential. Transparency in this context requires, as a minimum, prior publication of the agenda and of the background documents followed by timely publication of adequate minutes of the particular expert group meeting.

As regards minutes, the Commission has bound itself to a new quality standard by requiring that minutes shall be "*meaningful and complete*". The term "meaningful" can be directly traced back to my recommendation. While the Commission has not provided for the setting out of viewpoints expressed by members, the requirement that minutes are "complete" appears to be intended to address, to some extent, my recommendation. In addition, as a new transparency feature, the Commission now allows for the publication of dissenting opinions in an annex to an opinion, recommendation or a report adopted by vote. While the adoption of a document by vote remains the exception (and is always the end product of an expert group's work), the new provision is a welcome step in the right direction. **What remains to be seen in practice is how detailed the minutes of expert group meetings now are and whether opinions, recommendations and reports include an account of diverging viewpoints.**

As regards deliberations, the Commission has implemented what I identified as the "minimum transparency requirements". The new rules provide for the prior publication of the agenda and background documents and the timely publication of minutes. The Commission has not reversed the default rule of confidential deliberations. While it has deleted the previously existing explicit statement that deliberations shall be confidential, it appears that no substantive change has taken place. Expert group deliberations are confidential also under the new rules, unless the group decides by majority vote to deliberate publicly. **Again, what remains to be seen in practice is how timely the publication of documents is and how often groups have made use of the possibility of deliberating publicly.**

To begin our assessment of these outstanding points, set out in bold above, my staff has examined the minutes, made available in the Register of Commission Expert Groups, of fifteen expert groups from eight Commission Directorates-General. They examined minutes from before and after the 30 May 2016 Commission Decision. In particular, they checked whether:

- comments made during the meeting are attributed to specific members;
- dissent expressed during meetings with the group consensus is noted;
- it is clear which expert group members participated in the meeting in question (i.e. whether a list of participants is provided);
- minutes contain the main (action) decisions or conclusions the expert group has taken or has reached;
- minutes contain enough detail to enable the public to effectively understand the process through which expert groups' decisions were taken or conclusions reached;



- every point of the agenda discussed during the meeting is recorded in the minutes.

An overview of our findings can be found in the attached MS Excel table (Annex III). Annex II to this letter describes the methodology used for this research. Our initial impression is that the quality of the minutes does not seem to have improved significantly.

In order to discuss these sample findings and to move forward with the inquiry, **I would appreciate it if**, in accordance with Article 3.2 of the Ombudsman's Statute, **the Commission would send the following documents to my Office for us to examine before the meeting** :

- Ten examples of expert group minutes adopted recently which, according to the Commission, meet the standards set out in the Commission Expert Group Decision.
- Ten examples of expert group minutes adopted recently, where the Commission believes there is still room for improvement.

It would then be useful to obtain answers to the following questions during the meeting :

1. What specific actions has the Commission taken to improve the meaningfulness and completeness of the minutes produced following expert group meetings? Have guidelines been drawn up and circulated? If so, please provide copies to be reviewed during the meeting or, if possible, along with the material requested above.
2. Could the Commission please outline any obstacles it has faced in implementing the above Ombudsman recommendations?
3. What further steps will the Commission take to improve the meaningfulness and completeness of expert group meeting minutes in the future?
4. What progress has been made as regards the timely publication of expert group meeting agendas, background documents and minutes? What steps, if any, has the Commission taken to accelerate the publication of expert group meeting agendas, background documents and minutes?
5. How often and which expert groups have made use of the possibility of deliberating publicly?
6. How often and in which expert groups have members that voted against an opinion, recommendation or a report (or abstained from voting) made use of their right to have their dissenting opinions set out in an annex?

I would appreciate it if you could arrange for the documents to be sent to my Office by mid-May and for the meeting to take place by the end of May 2017.

Should your staff have any queries concerning this inquiry, they may contact Ms Nastasja Fuxa (+ 32 (0)2 283 07 84; nastasja.fuxa@ombudsman.europa.eu). In particular, if you wish to submit



documents or information that you consider to be confidential, please contact Ms Fuxa.

Yours sincerely,

Emily O'Reilly European Ombudsman

Enclosures:

- [Annex I: Preliminary assessment of the Commission's reform of its horizontal rules governing expert groups \[Link\]](#)
- [Annex II: Methodology used to produce Annex III \[Link\]](#)
- [Annex III: Excel table containing a review of meeting minutes available on the Register of Expert Groups \[Link\]](#)

[1] Commission Decision of 30.05.2016 establishing horizontal rules on the creation and operation of Commission expert groups, C(2016) 3301 final.

[2] European Parliament report adopted 14 February 2017
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2017-0021>
[\[Link\]](#)