

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

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) |

Preliminary assessment of the Commission's reform of its horizontal rules governing expert groups

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

EO recommendation

COM implementation

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

Preliminary assessment

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;**

Article 13(7) and (8)

" **Minutes** on the discussion on each point on the agenda and on the opinions delivered by the group **shall be meaningful and complete .** "

"In principle, expert groups shall adopt their opinions, recommendations or reports by consensus. In the event of a vote, the outcome of the vote shall be decided by simple majority



of the members. **The members that voted against or abstained shall have the right to have a document summarising the reasons for their position** annexed to the opinions, recommendations or reports."

Reply

*" In line with the Ombudsman's request, the revised horizontal rules further enhance transparency. **As requested by the Ombudsman, the revised horizontal rules foresee that minutes should be meaningful and complete** .*

As suggested by the Ombudsman, the revised horizontal rules instruct Commission departments to ensure prior publication of the agenda and of the background documents in due time ahead of the meeting, followed by timely publication of adequate minutes of the particular expert group meeting. [...]

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

Not implemented as requested.

*The rules now provide that minutes must be "meaningful and complete". While this is a **new quality standard** that did not exist under the old rules, the Commission chose not to explicitly provide for the setting out of positions/viewpoints expressed by members.*

*The extent to which the Commission implemented the recommendation will thus depend on how **" complete "** minutes are in practice.*

The Commission also introduced a new transparency element as regards the output of expert groups' work: Members who, in the exceptional case of a vote, abstained from voting or voted against the adopted opinion or report, now have the right to have their dissenting views annexed to the adopted document. This is a welcome new feature which, however, simply increases transparency of the end product of a group's work, not of the input provided by members in individual meetings leading up to the adoption of an opinion or a report.

The Ombudsman reserves her final assessment of the recommendation's implementation until minutes produced under the new rules are available and have been inspected by her staff.

• 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.



Article 13(6) and Article 26(1)

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

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

Reply

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

Not implemented as requested.

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

*However, the Commission chose not to reverse the default rule of confidential deliberations. As was the case under the old rules, expert groups have the possibility of deciding that particular deliberations shall be public. There has been **no substantive change on this point** .*

The Ombudsman reserves her final assessment of the recommendation's implementation until her staff have had the opportunity to examine how many expert groups actually make use of the possibility to deliberate publicly.

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

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

The following five suggestions were not (fully) implemented:



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

EO suggestion

COM implementation

(Decision and reply)

Preliminary assessment

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

(a) Commit to always using public calls for applications for the selection of expert group members who are not public authorities;

Article 10(1)-(4)

" The selection of expert group members shall be carried out via public calls for applications , except for Type D and E members and for representative bodies established by Union legislation for advice in specific areas [...]."

[...]

" The Commission may depart from provisions included in paragraphs 1 to 3, where this is deemed justified by overriding priorities or cases of urgency. Where the Commission decides that a public call is not a suitable instrument for the selection of members of a specific expert group, the choice of experts shall be made on the basis of objective verifiable criteria, which are published on the Register of expert groups."

Implemented but provision for an exception.

Overall satisfactory implementation



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

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

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

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

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

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

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

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

"Commission departments **shall classify members** [...] of expert groups and sub-groups [...] **on the Register of expert groups in accordance with the provisions included in this Decision and its annexes** , on the basis of the information provided by applications responding to a public call for applications."

Annex Classification form :

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

a) Academia, research Institutes and Think Tanks

b) Banks/Financial institutions

c) Companies/groups

d) Law firms

e) NGOs



- f) Professionals' associations
- g) Professional consultancies
- h) Trade and business associations
- i) Trade unions
- j) Other (please specify)"

Reply

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

Fully implemented

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

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

Outside the scope of the Commission Decision

Reply

" The current Inter-institutional Agreement does not foresee formal ex-ante vetting of new registrants. All organisations on the Transparency Register are, however, bound by the Transparency Register's Code of Conduct [...]. [...] All new incoming registrations are subject to an eligibility check which, inter alia, assesses the appropriateness of the section chosen by the registrant based on their profile and activities. Efforts to improve the data quality will continue to intensify. The ongoing public consultation on a mandatory transparency register will also allow stakeholders to express their view on how to improve the user-friendliness and the overall quality of the data included in the Register. "

Satisfactory reply

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

Article 11(5)



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

Reply

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

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

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

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

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

Satisfactory overall.

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

No corresponding provision

Reply

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

Not fully implemented (no standalone provision on what 'balance' means).

Some elements of what 'balance' means for the Commission can - as was the case under the old rules - be deduced from Article 10(5) on a balanced composition. See below.

(f) Require that expert groups have a balanced composition. The Commission may allow for an



exception from the balance requirement in duly justified cases;

Article 10(5) and (6)

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

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

Reply

" As public calls give equal opportunities to all parties concerned, the Commission cannot subscribe to the Ombudsman's view that if the Commission faces difficulties in achieving a fully balanced composition, it should consider modifying the mandate of the group, reducing its size or even deciding not to set it up at all. This would, in fact, significantly diminish the Commission's capacity to have access to the expertise and view that it really needs, which goes against the very purpose of setting up expert groups. "

Not implemented.

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

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

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

Articles 5(1) and 10(2)

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



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

Reply

"[...] calls for applications should clearly outline the selection criteria including the required expertise and, where existing, the interests to be represented in relation to the work to be performed. These requirements give adequate guidance to the Commission's departments in ensuring a balanced composition for their expert groups, without there being any need for laying down more specific ex ante requirements for individual groups. [...] Ultimately, the Commission wishes to underline that the final balance achieved in expert groups also depends on the number and quality of responses which it receives to its calls for applications. In contrast, the composition of expert groups should not be designed by introducing a cap or quota for each interest category, irrespective of the concrete circumstances in which these groups operate and of the interest shown by stakeholders concerned during the selection procedure, because this would often result in an artificial composition of groups, which would then be incapable of providing the Commission with the added value it needs and why the group is set up. In light of this, the Commission also maintains that it is neither appropriate nor useful to draw up a theoretical definition of balance or a definition of balance for every group [...]. "

Fully implemented

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

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

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

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

No corresponding provision

Reply

" In light of experience gained, the Commission does not deem it appropriate to define general criteria for the categorisation of economic and non-economic interests in expert groups. As indicated in the Commission's reply to the Ombudsman in relation to her own-initiative inquiry



OI/7/2014/NF concerning the composition of the Civil Dialogue Groups (CDGs), it proved to be impossible to establish a reliable classification method. Again, the nature of the interests represented should be assessed on a case-by-case basis in the framework of calls for applications. "

Not implemented but helpful explanation provided.

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

Article 26

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

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

Reply

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

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

Not implemented as regards where documents will be published . The Ombudsman asked the Commission to publish documents directly on the register only, given that the documents can then be searched. The Commission maintains the current situation where documents can be published either on the register or on a dedicated website.

Overall, the implementation can be seen as satisfactory .



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

The Commission has translated the commitments made in its opinion to the Ombudsman (dated May 2015) into the provisions of the new Expert Groups Decision. However, it remains to be seen how some of the commitments will technically be implemented in the new version of the expert groups register.

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

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

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

COM commitment

COM implementation (Decision and reply)

Preliminary assessment

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

- i. Enhance the visibility of calls for applications by creating, on the expert groups register, a section exclusively dedicated to them;

Recital (5) and Article 27

"Transparency should be enhanced by **releasing a new version of the Register of Commission expert groups** and other similar entities ('the Register of expert groups'), reflecting the revised horizontal rules. [...]"



" Migration towards the new version of the Register of expert groups :

Migration tools ensuring automatic transfer of existing data, when technically possible, shall be put in place. Commission departments shall manually encode data which cannot be automatically migrated as well as additional data required as a result of these horizontal rules, **by the end of 2016 ."**

Fully implemented

ii. Use a standard minimum deadline of four weeks for all calls for applications, with the possibility to deviate from this period in duly justified cases or to use continuously open calls for applications;

Article 10(2) and (3)

"[...] The **minimum deadline** for applications **shall be four weeks** ."

"Commission departments **may select the members of expert groups via a continuously open call** , to be published on the Register of expert groups, in which case a specific call would not be necessary."

Fully implemented

iii. Require registration in the Transparency Register for appointment to expert groups of organisations falling within the scope of the Transparency Register and self-employed individuals representing a common interest shared by stakeholders;

Article 8

"Type B and Type C members **shall only be appointed if they are registered** in the Transparency Register."

Fully implemented

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

Article 24

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

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



groups to the profile of those members in the Transparency Register ."

Reply

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

Fully implemented

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

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

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

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

Annexes :

- Standard declaration of interests
- Guidance for filling in the declaration of interests

Fully implemented

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

Article 25(2) + Annex 8

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

Fully implemented

vii. Provide, on the expert groups register, more information on the interest represented by



individual experts appointed to represent a common interest shared by stakeholders.

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

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

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

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

Annex Classification form :

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

a) Academia/Research

b) Civil society

c) Employees/Workers

d) Finance

e) Industry

f) Professionals

g) SMEs

h) Other (please specify)"

Implemented

viii. Look into making technical adjustments to the expert groups register, in particular by redefining the 'statistics' tab to show additional information and provide a better view on the composition of expert groups

Reply

" Given the significant resources required to release a new version of the Register of expert groups it was not possible to include certain new features at this stage, including the redesign of the statistics tab. The Commission will reconsider this issue in the future. "



Too soon to tell , will depend on future changes to be made to the new version of the expert groups register.