

## **Report on the meeting in the European Ombudsman's strategic inquiry OI/6/2014/NF concerning the composition of Commission expert groups**

Correspondence - 04/07/2017

**Case** OI/6/2014/NF - **Opened on** 12/05/2014 - **Recommendation on** 16/11/2017 - **Decision on** 14/11/2017 - **Institution concerned** European Commission ( Recommendation agreed by the institution ) |

**Institution or body concerned** : European Commission

**Date and time** : 8 June 2017, 11:30 - 12:15

**Location** : Rue de la Loi 200, 1049 Brussels, BERL 6/B

### **Ombudsman**

**represented by** : Ms Rosita Hickey, Head of Strategic Inquiries Unit Ms Nastasja Fuxa, Unit 4 – Inquiries Mr Pieter van der Ploeg, Strategic Inquiries Unit

**Commission represented by** : Mr Christophe Keller, SG.F.3 Mr Henning Klaus, SG.B.2 Ms Dorthe Christensen, SG.B.2 Mr Antonello Maschio, SG.B.2 Mr Bernard De Cock De Rameyen, SG.B.2 Ms Gitte Olsen, SG.B.2 Mr Kevin Rieger, SG.B.2

## **1. Introduction and procedural aspects**

The Ombudsman and Commission representatives introduced themselves. The Ombudsman's inquiry team explained that the purpose of the meeting was to gather further information from the Commission to determine to what extent the Commission has accepted and applied the Ombudsman's two specific recommendations [1] in relation to the content of expert groups meeting minutes and the confidentiality of expert group deliberations. The Ombudsman deemed that sufficient time had passed since the Commission's adoption of its Decision [2] establishing new horizontal rules governing expert groups to now move to this step in the inquiry.

The Ombudsman's inquiry team outlined the legal framework applicable to the meeting [3] and also informed the Commission that the Ombudsman intended to use the substantive information



obtained during the meeting to inform the next step in her inquiry.

## **2. Exchange of views and information provided by the Commission**

In preparing for the meeting, the Ombudsman had asked the Commission to provide her with ten examples of expert group minutes adopted recently which, according to the Commission, meet the standards set out in the Commission Expert Group Decision, as well as with ten examples of expert group minutes, where the Commission believes there is still room for improvement. [4]

The Ombudsman's inquiry team sought clarification on a number of points in relation to these minutes, including whether the Commission or the expert groups themselves produce the minutes. The Commission representatives indicated that in the overwhelming majority of cases, the Commission is responsible for producing the minutes.

The Ombudsman had also, beforehand, informed [5] the Commission that she would consider it useful to obtain answers to the following questions during the meeting:

- 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.
- Could the Commission please outline any obstacles it has faced in implementing the above Ombudsman recommendations?
- What further steps will the Commission take to improve the meaningfulness and completeness of expert group meeting minutes in the future?
- 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?
- How often and which expert groups have made use of the possibility of deliberating publicly?
- 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?

Regarding the Ombudsman's first question, the Commission had, in advance [6] of the meeting, sent the Ombudsman a template for minutes of expert groups meetings, which the Secretariat-General had drawn up and provided to the Commission's Directorates-General ('DGs') to be used as of November 2016. The template includes specific guidance on how to draft minutes. In particular, it asks DGs to list all points discussed by an expert group, one by one, and to draft the minutes in a way that allows for a thorough understanding of the topics on the agenda, and any other topic discussed at the meeting, the positions expressed by participants in relation to each of the topics discussed, and possible conclusions or vote on each topic discussed. The template also provides for DGs to state whether a meeting was



public or non-public.

On the Ombudsman's second question, the Commission representatives stated that it had been a challenge to ensure the timely implementation of certain new obligations introduced in its Decision establishing new horizontal rules governing its expert groups. The transitional period ended on 31 December 2016. In the second half of 2016, a significant proportion of the Commission's available resources were dedicated to ensuring that declarations of interests were published on its expert groups register, that members were categorised according to the new classification, and that expert group members falling within the scope of the Transparency Register were actually signed up to the Transparency Register. With regard to the implementation of the Ombudsman's specific recommendations, the main challenges mentioned by the Commission representatives in terms of improving standards and ensuring coherence in expert group were the large number of expert groups [7] and thus the sheer number of meetings taking place, and of minutes originating from the groups .

On the Ombudsman's third question, the Commission representatives stated that the Commission will continue to monitor its DGs' use of the minutes template and of how they follow the guidance on drafting minutes. In particular, the Commission will circulate the best practice examples of meeting minutes to its DGs, asking them to draw on those examples in further improving the meaningfulness of their own expert groups' meeting minutes. The Commission will also continue to provide guidance to its DGs on specific questions and to offer regular training courses for its staff.

Regarding the Ombudsman's fourth question, the Commission representatives explained that the timing of the publication of expert groups meeting documents essentially depends on the working arrangements within the groups, which differ according to the groups' mandates and the specific work they carry out. Many groups adopt meeting minutes only at the subsequent meeting, which leads to a certain lapse of time between the date of the relevant meeting and the date of publication of its minutes. However, some groups have different working arrangements in place and adopt minutes through the use of online platforms. Given the different types of work carried out by expert groups and their differing working arrangements, the Commission representatives stated that there is a limit to the standardisation that the Commission can achieve in this area. In particular, it is not practically possible for the Commission's Secretariat-General to monitor, for each and every expert group meeting, when precisely background documents or meeting minutes are published on the expert groups register [8] . However, the Commission will, by the end of 2017, create a new section on its expert groups register specifically dedicated to documents on expert groups' work. The Commission expects that this new section, which will classify documents by type, will increase the visibility of the documents and incentivise DGs to publish documents in a timely manner. [9]

In response to the Ombudsman's fifth question, the Commission representatives referred to the fact that the Commission had, in its template for meeting minutes, included a specific heading "*nature of the meeting*", which will set out whether a particular expert group meeting was held publicly or not. The Commission's intention is to thereby make its DGs and the expert groups themselves reflect upon whether a particular meeting could possibly be opened up to the public,



depending on the subject matter of the meeting. The decision to make a particular meeting public necessarily needs to be taken in advance of the meeting, to allow for the relevant practical arrangements, such as the booking of a suitable meeting room or setting up web streaming. Overall, the Commission's aim in this area is to encourage more openness and to further publicise with its DGs the idea of holding public expert group meetings, whenever opportune. The Commission representatives stated that, to their knowledge, three expert group meetings had taken place publicly so far, via web stream. Another expert group had organised a public workshop on the topic of its work. [10] The Ombudsman's inquiry team was pleased to learn that some, be it a small number of, expert groups had made use of the possibility to web stream [11] their meetings.

In response to the Ombudsman's sixth question, the Commission representatives stated that, to their knowledge, dissenting opinions of members had so far been recorded in three expert groups, either directly in the relevant minutes or in an Annex to the minutes. [12] The fact that dissenting opinions are rarely formally recorded stems from the fact that expert groups have traditionally carried out their work in a collective manner, which implies that possibly diverging points of view are often resolved over time. The Commission's impression is that expert groups aim to reach consensus on their work in order to give their opinions, recommendations and reports greater authority.

In relation to the new requirement that expert group members falling within the scope of the Transparency Register be registered therein, the Commission representatives stated that there had been a noticeable increase in the number of registrations on the Transparency Register in the six to nine months following the Commission's adoption of its new horizontal rules governing expert groups.

The Ombudsman's inquiry team *thanked the Commission representatives for the fruitful meeting.*

Brussels, 04/07/2017

Ms Rosita Hickey Head of Strategic Inquiries

Ms Nastasja Fuxa Unit Legal Officer (case handler)

[1] The Ombudsman's recommendation is available here:  
<https://www.ombudsman.europa.eu/en/cases/recommendation.faces/en/63441/html.bookmark>  
[Link]

[2] The Commission adopted its Decision establishing new horizontal rules governing expert groups on 30 May 2016. The Decision provides for a transitional period until 31 December 2016 for the implementation of certain new rules.



[3] Article 4(5) and (8) of the European Ombudsman's Implementing Provisions.

[4] The Commission provided the requested documents by e-mail of 31 May 2017.

[5] The Ombudsman's request for a meeting and for documents is available here:  
<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/78385/html.bookmark>  
[Link]

[6] By e-mail of 31 May 2017.

[7] There are currently around 800 expert groups.

[8] The Commission's expert groups register is available here:  
<http://ec.europa.eu/transparency/regexpert/> [Link]

[9] The new documents section on the expert groups register will also be linked to a new register on delegated acts, which the Commission is in the process of setting up. Some expert groups have as their specific task to provide advice and expertise on the preparation of Commission delegated acts.

[10] By e-mails of 8 and 13 June 2017, the Commission provided the Ombudsman with a list of the relevant public expert group meetings, including links to the relevant meeting minutes and/or web streaming.

[11] See for example:  
<https://webcast.ec.europa.eu/6th-meeting-of-the-structured-dialogue-with-european-structural-and-investment-funds>  
[Link]; <https://webcast.ec.europa.eu/inaugural-meeting-of-the-platform-on-animal-welfare> [Link]

[12] By e-mails of 8 and 13 June 2017, the Commission provided the Ombudsman with a list of the relevant dissenting opinions expressed in expert groups, including links to the relevant dissenting opinions.