



Council of European Municipalities and Regions
European Section of United Cities and Local Governments

The Secretary General

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Brussels, 20 August 2014

Re: European Ombudsman's public consultation concerning the composition of European Commission expert group

Dear Ms O'Reilly,

The inquiry you launched into the European Commission's expert group is of great importance for the Council of European Municipalities and Regions (CEMR). In the past, we have questioned the composition of these groups, as we felt the balance of interest and the transparency of the process were not properly guaranteed. Thus, we thank you for this opportunity to contribute to solving these issues.

You will find enclosed a detailed answer to your consultation. CEMR's input can be summarised through the following key points.

First of all, we regret that local and regional authorities are very rarely represented in the Commission's expert groups, even in areas that directly affect their functioning or their competences, for policies that they implement on the ground. The Commission should acknowledge that, as they are democratically elected, local and regional governments are as legitimate as central governments to represent the voice of public sector in the EU arena. Local and regional governments should also be considered as relevant as, if not more than, business associations, trade unions and NGOs which are sometimes partly funded by the EU itself or have specific private interests. Since they are in charge of implementing a significant part of European legislation, local and regional authorities must then be involved at an early stage in the legislative process, in order to have policies better tailored to meet local needs and a better appropriation of EU policies on the ground.

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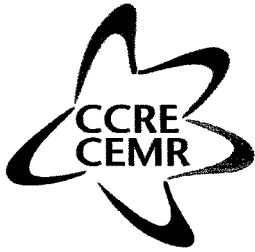
Secondly, our past experience led us to believe that further steps must be taken in order to raise awareness of the European Commission's services on the importance of involving all relevant stakeholders, including local governments, early in their decision-making process, through transparent and inclusive expert groups, not only the usual Brussels-based ones.

Finally, while the Register of expert groups constitutes a very useful tool for transparency, several issues remain in the way information is made available to the public. These issues mainly concern information about the appointment of experts in their individual capacity, and the background of the organisations that are part of the expert groups (type of organisation, origin of funding, areas of interest...). The calls for application for membership also need to be launched in a harmonized, open and transparent way, preferably through a single portal with a common set of criteria, to facilitate the participation of a wider range of stakeholders, such as what has been done for the public consultations. In the attached document, we provide practical recommendations to address these problems.

We hope that CEMR's propositions will contribute positively to your investigation. Our Director of Policy, Angelika Poth-Mögele [REDACTED] tel. +32-2-500.05.40), remains at your disposal for any further questions about our work and experience within the expert groups.

Yours sincerely,


[REDACTED]
Frédéric Vallier



Council of European Municipalities and Regions
European Section of United Cities and Local Governments

European Ombudsman's public consultation concerning the composition of European Commission expert group

1. Which specific Commission expert groups do you consider to lack a balanced representation of relevant areas of expertise and interest in their membership? What, according to you, is the root cause of the unbalanced composition of the Commission expert groups identified by you?

It is important to point out that local and regional levels of government are rarely or sparsely represented in expert groups, even where they could be most useful for the Commission. Indeed, the expert groups cover issues that affect their day-to-day functioning (e.g. public services, public procurement) or areas that are generally among their competences (transports, services of general interest, rural development...). Furthermore, they are in charge of implementing a significant part of the EU legislation at the level closest to the citizens. Local and regional authorities could provide an invaluable expertise, based on legal competence, to the Commission, even more so than industry organisations or Non-Governmental Organisations (NGOs) who have an outsider view of the EU legislation and often defend specific interests.

Central governments or administrations cannot fully represent the interest of local and regional authorities, especially in areas where these authorities will be the ones implementing European policies on a day-to-day basis. It is common understanding that a state is composed of different spheres of government and administration and that diversity ensures the good level of services provided to the citizens. Furthermore, as several CEMR studies on the consultation procedures within Member States and on the Partnership Principle have showed in the past, the level of dialogue between national government and local and regional authorities can greatly vary from one State to another. Local and regional authorities, and their representative organisations, find their legitimacy in the elections and they should be considered as relevant if not more relevant than other organisations, such as business associations, trade unions or NGOs.

A significant number of groups are exclusively composed of representatives of Member States administrations. As Member States already have multiple channels to get involved at different stages of the decision-making process at EU level (in particular with the Council of ministers and the comitology committees), we believe that the involvement of local and regional government representatives would have a positive impact on the work of the expert groups.

The Commission should clarify the role of the expert groups: are they mainly additional fora for the Member States to participate in the decision-making process at EU-level, or do they aim to offer real opportunities for relevant stakeholders to provide their own inputs and experiences?

We have identified expert groups where the Council of European Municipalities and Regions (CEMR) as the European umbrella organisation representing around 150 000 local and regional government of 41 European countries has an interest in.

List of groups where local and regional authorities and their representatives could provide valuable input:

- ***Advisory Committee on equal opportunities for women and men:*** Member States (MS), private sector organisations and trade unions are members while NGOs (specialised in women rights) are only observers; no Local and Regional Authorities' (LRAs) representation.
Since 1983, CEMR works actively to promote equality between women and men in the decision-making process. CEMR monitors the European charter for equality between women and men in Local life that engages 1409 signatory cities and municipalities in 29 countries in developing specific policies to ensure progress in this field (link to the [charter](#)).
- ***Ambient air quality expert group:*** only MS.
Air quality is a competence of many local and regional authorities in the EU, and is often a local concern, especially in urban areas. CEMR has established a focus group on this issue and is carefully monitoring Air policy at the European level, to make sure its objectives are achievable at the local level.
- ***Commission Government Experts Group on Public Procurement:*** only MS.
- ***Informal Green Public Procurement Advisory Group:*** local and regional levels of government are not represented.
Public procurement rules affect all level of government and should not be discussed only with the national level. CEMR has established a focus on public procurement, gathering input from local and regional authorities all across the EU.
- ***Group on the future of VAT:*** only MS.
Local and regional authorities are directly affected by some aspects of the VAT, such as VAT rates on locally supplied services. CEMR has answered Commission's consultation on this matter in the past and continues to monitor closely this issue.
- ***European Climate Policy Group:*** Only MS.
CEMR supports the implementation of the Local Government's Climate roadmap in Europe and takes part in the Global Task Force of Local & Regional Governments for Post 2015 Development Agenda towards Habitat III (www.gtf2016.org) and participates in UN negotiations on climate.
- ***High level expert group on the Digital Agenda:*** only MS
Many innovative actions and projects linked to the digital economy are implemented at the local or regional level. CEMR itself is participating in the project [AFE-INNOVNET](#), to promote active and healthy ageing through the use of ICT at local and regional level.
- ***Joint expert group on Transport and Environment:*** only MS.
Both transport and environment are major competences of local and regional authorities. CEMR has been working on both these issues, in particular within the framework of its focus group on cohesion policy and of its thematic platform on resource efficiency and environment.
- ***Public Employment Services:*** only MS, no other levels of government.
In many countries, especially those with a decentralised system of government, public employment services depend from the regional or local level. Representatives of local and regional authorities can thus provide a valuable input, alongside with representatives from national level.

2. The Commission's horizontal rules on expert groups allow for the Commission to appoint individual experts in their personal capacity. In your experience, does this possibility give rise to concern in terms of the balanced composition of expert groups and/or conflicts of interest?

Key message:

- Individual experts are not necessarily without any link to specific interest groups (e.g: in the coal advisory group there is an expert working for Alstom). By appointing the experts “in their personal capacity”, there is a risk of not transparent conflicts of interest.
- There is a lack of transparency on individual experts: their current activities and employers are not always mentioned; and there is no information in the register about their past activities and possible links to an interest group.

The appointment of individual experts is a source of serious transparency issues. First of all, the very idea of nominating them “in their personal capacity” means they cannot be proper representatives of an interest group, which in turn does not allow an open balance of interests in the composition of the groups. It is important to note that, while some of these groups are composed mainly of academics and have the single purpose of providing technical knowledge on specific issues (which would make the question of balancing interest less acute but not completely irrelevant), other groups deal with political issues and gather experts who sometimes are working for interest groups.

More importantly, it is often difficult to judge if the composition is properly balanced in an expert group with individual experts, and if there is a risk of conflict of interest, because of lack of transparency. There is often very little information about the individual experts: not only is there no resume available in the register of the expert groups, or any mention of past activities or funding received, but very often, there is no mention of their current employer and/or activities.

Hence, if the appointment of individual experts in their personal capacity can be legitimate and useful to advise the Commission on specific technical issues, stricter rules should be established regarding the transparency of the process. In particular, all information regarding experts' present activities must be made available, as well as any past link with a relevant interest group.

In the case of representatives of Local and Regional governments or administration, we, as the European umbrella organisation representing those, believe we have the capacity to ensure a fair and clear process of designation of experts for our constituency.

3. Do you consider that the current level of transparency regarding the composition of Commission expert groups, in particular through the Register of Commission Expert Groups and Other Similar Entities, is sufficient? In particular, does the information made available by the Commission allow you to ascertain which interests are represented by the members of Commission expert groups? If not, where do you see room for improvement? Do you consider that the current level of transparency regarding the work of expert groups, in particular through the publication of agendas and minutes, is sufficient?

Key message:

- The register contains a good amount of information concerning each expert group (tasks, rules of procedures, working documents). However, there is a discrepancy between “formal” and “informal group”: the information on the latter is often less detailed.
- There is a lack of transparency regarding the members: the categories used by the Commission are unclear, inconsistent, inadequate and misleading. Furthermore, no information is provided on the members, besides the name (and sometimes just the acronym) and the (questionable) category. A link to the member fiche on the Transparency register would be very useful in this regard.

The information available directly in the Register is fairly simple and general (the description of the group’s mission and of its tasks is not very detailed and does not mention the specific pieces of legislation or topics on which the group can be consulted). However, the Register often provides a link to an external webpage dedicated to the group, as well as a link to the various working documents and to the rules of procedures, which makes it a useful tool for transparency. We must nonetheless underline that there is a discrepancy between the “formal” and the “informal” groups. The informal groups generally do not have rules of procedures, and rarely have a website; only a few working documents are usually available. This makes it difficult, or even impossible, to find important details such as the frequency of the groups’ meetings, or how its participants were selected - information that is available on the website or in the rules of procedures for the formal groups. The Commission should thus harmonize the information available for each group, so that the flexibility of informal groups does not become a pretext for opacity.

Furthermore, the Register suffers from serious issues of transparency when it comes to the members of the group. For each member, the only information available are its name (sometimes only its acronym), its membership, a general area of expertise (directly linked to the group’s focus), its scope (national, European, international) and the type of organisation. This last piece of information is the most problematic. The Commission divides the members between a limited number of categories: association, NGO, trade union, national administration, international organisation. These categories are unclear, inconsistent, inadequate and misleading. There is no definition of the scope of each category; this may explain why they seem to be used at random: an organisation participating in two different groups can be put under two different categories. These mistakes can lead to a misrepresentation by users of the Register of which interests have a seat in each group, when a business association or a trade union is put under the NGO category for example. Another major problem is the absence of information on the funding of each organisation, as it is important to know whether an organisation is funded by private companies, individual member subscriptions or even by the EU itself, through operational grants, to assess the risk of conflict of interest.

It is thus crucial to enhance the transparency regarding the members of the expert groups through three actions: reform the system of categories mentioned above; put a link to the organisation profile in the Transparency register (an easy way to make all the relevant information quickly available); and finally, create a unified profile for each organisation in the Register of expert groups, to avoid any inconsistency and to allow users to check all the groups in which this organisation is a member.

4. Where the Commission publishes calls for application for membership in expert groups, do you consider that these calls provide for selection criteria which sufficiently take into account the need for a balanced composition of expert groups? If not, where do you see room for improvement? In your view, could the Commission do more to raise awareness about these calls, with a view to encouraging applications? If so, what concrete steps could it take in this regard?

Key message:

- There is no centralised and harmonised publishing of the calls. Each DG publishes its own calls with its own set of rules. While there is a guideline written by the Commission itself, aiming to ensure transparent, efficient and balanced expert groups, the rules are not legally binding and seem too general to provide real guarantees.
- The creation of a single web page for the publication of calls for expert groups (such as the one existing for public consultation) would both raise awareness about the calls, attracting a greater variety of applicants, and better address concerns about the transparency of the process.

It is difficult to make general comments on the calls for application, as they are not published in a centralised and harmonized way. Each Directorate General publishes its own calls with its own criteria. The Commission has set guidelines for the creation and management of the expert groups in order to ensure the respect by its services of overarching principles (transparency, efficiency, balanced representation, openness...). However, these guidelines are not legally binding and, most importantly, they are too general to be really practical. The 2002 Communication of the Commission regarding the collection and use of expertise, for example, simply states “both mainstream and divergent views should be considered”, which sounds more like a declaration of intention than a concrete rule.

Thus, for the sake of transparency, it is crucial to establish a more concrete set of common rules. Moreover, the Commission should consider creating a common web page for the publication of all calls for application for membership in expert groups, like the one existing for public consultations. Furthermore, the duration of the expert groups needs to be mentioned, and their composition should be renewed after a period of 2 – 3 years.

Stakeholders, especially those with interest in transversal issues, should have the possibility to keep track of all the calls. Better information will also allow greater variety of application, beyond the circle of the Commission’s usual interlocutors. A common web page for publication of calls will also increase the transparency of the whole process of creation of the expert groups, in the same way the Register allows greater transparency of their functioning.

5. Do you have any experience in applying for membership in a Commission expert group? If so, did you face any problems in the application process? If not, are you aware of any such problems faced by civil society organisations? Based on your experience, do the costs inherent in participation/the lack of comprehensive reimbursement schemes discourage civil society organisations from applying for membership?

CEMR nominated experts in some groups in the past mainly to DG Environment, e.g. on floods or air policy. We did not experience any difficulties with these nominations. However, many years ago we wanted to nominate an expert for public procurement and were told to wait for the next call, which was never published. Comments towards DG TAXUD that the group on the future of VAT should also have representatives from local and regional government because they are seriously concerned, were not responded positively.

In general, we think that there is a lack of awareness in the Commission services that the work of the expert groups would benefit from the early involvement of the relevant stakeholders, in particular local and regional government that have to implement major pieces of policy and legislation that is prepared and decided at European level and have to bear the costs. Early cooperation would increase the applicability and acceptance of new EU regulations at local and regional level and help their acceptance by the Citizens.

6. Please give us your views on which measures could contribute to a more balanced composition of Commission expert groups

Recommendations: The Commission should:

- Include representatives of local and regional government: they are closest to the ground, implement a significant number of European policies on a day-to-day basis and are in direct contact with the citizens.
- Centralise calls for participation in expert groups, to attract a wider range of stakeholders, and not just Brussels' usual suspects.
- Justify better the participation of experts appointed in their individual capacity.
- Improve the Register to enhance transparency.

7. Do you have any other comments?

The current marginalisation of associations representing Local and Regional Authorities, as well as their recent exclusion from DG AGRI's civil dialogue groups and the new obligation for them to be included in the Transparency Register on the same foot as industrial lobbies or NGOs, is part of a worrying negative trend.

Local and Regional Governments should be considered as part of the State and therefore be included systematically on groups that deal with issues of interest for them. To avoid any misunderstanding, their organisations should not be considered as civil society organisations but specifically as Local and Regional Governments organisations.