

1. Which specific Commission Expert Groups do you consider to lack a balanced representation of relevant areas of expertise and interest in their membership?

Corporate Europe Observatory would like to highlight the following Expert Groups as having more than 50% of non-governmental and non-EU seats representing corporate interests. These groups don't meet the condition set by the Parliament when it lifted the budget freeze in September 2012: "Prohibit a single interest category from having the majority of the non-government and non- EU seats in any Expert Group."

Most of the examples in the table below are taken from the November 2013 ALTER-EU report "*A Year of Broken Promises*", which focuses on groups created between September 2012 and September 2013. ¹ Data have been checked and updated in June 2014.

DG		Group name	Members	Composition of interests / Reason lacks balanced representation
AGRI	E02834	Expert Group on agricultural commodity derivatives and spot markets	16	94% corporate interests; 6% farmers – no civil society interest with knowledge on food speculation
ENTR	E02849	High Level Group on Business Services	19	74% corporate interests; 11% academia; 5% NGO; 5% SME; 5% trade union
ENTR	E02890	CARS 2020 Expert Group (& 4 subgroups)	80 (16x5)	63% corporate interests (ALTER-EU classified the International Motorcycling Federation as corporate due to its funding and corporate events); 25% NGO; 13% Trade Union
ENTR	E02841	KETs High Level Commission Expert Group (& subgroup)	64	59% corporate interests; 25% Hybrid; 9% Academia; 3% SME; 3% Trade Union.
ENTR	E02886	Expert Group for Bio-based Products	26	58% corporate interests; 19% academia; 19% Hybrid; 4% NGO
SANCO	E02896	European Unique Device Identification (UDI) Commission Expert Group	17	53% corporate interests; 24% professional association; 6% Hybrid; 6% NGO
HOME	E02933	Data Retention Experts Group	7	100% corporate interests
JUST	E02903	Commission Expert Group on a European Insurance Contract Law	20	55% corporate interests; 20% academia; 5% hybrid; 5% NGO; 5% other; 5% professional association; 5% SME
RTD	E02915	Expert group for the evaluation of the overall performance of the European Innovation Partnership (EIP) concept and approach	5	80% corporate interests; 20% other
RTD	E02863	Expert Group on Intellectual Property Valuation	10	80% corporate interests; 20% academia
RTD	E02864	Expert Group on Retail Sector Innovation	11	64% corporate interests; 36% academia
RTD	E02862	Expert Group on Open Innovation and Knowledge Transfer	12	58% corporate interests; 25% academia; 17% hybrid
SG	E02935	Expert Group on a Debt Redemption Fund and Eurobills	10	70% corporate interests; 20% academia; 10% hybrid

¹ For a full explanation of the categories of interests, please see ALTER-EU, November 2013, *A Year of Broken Promises* http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf

SG	E02149	High Level Group on 2 Administrative Burdens	15	60% corporate interests; 20% NGO; 13% SME; 7% trade union
TAXUD	E02813	VAT Expert Group	42	86% corporate interests; 5% NGO; 5% professional association; 2% academia; 2% SME
TAXUD	E02845	EU VAT forum	15	80% corporate interests; 13% professional association; SME
TAXUD	E02897	Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation	15	60% corporate interests; 27% NGO; 7% academia; 7% trade union

1.a Other groups created since September 2012 (n.b. in no way exhaustive)

DG		Group name	Members	Composition of interests / Reason lacks balanced representation
CNECT	E02997	High Level Group on the Future use of the UHF band	20	70% corporate interests; 20% public sector; 5% NGO
CNECT	E02927	Community of Practice for Better Self- and Co- Regulation	50	68% corporate interests; 16% hybrid; 8% academia; 6% NGO; 2% other
ENTR	E02998	Strategic Policy Forum on Digital Entrepreneurship	31 (OECD = gov't)	70% corporate interests; 13% academia; 7% SME; 3% hybrid; 3% NGO; 3% trade union
MARKT	E02970	High Level Group on Retail Competitiveness	20	85% corporate interests; 5% academia; 5% NGO; 5% trade union
MARKT	E02849	High Level Group on Business Services	19	69% corporate; 16% academia; 5% NGO; 5% SME; 5% trade union
MARKT	E03081	Expert Group on the Review of the IAS Regulation	10 (excl. gov't)	90% corporate interests; 10% SME

1.b Do you have any extra examples where the Commission is creating groups that are not in the register?

DG ENTR also formed an 'informal' Working Group for Technical Advice, parallel to the existing Working Group for Non Road Mobile Machinery (Emission from non road mobile machinery engines) ([E01346](#)). The informal working group's mandate was "advising the commission in drafting the new legislative proposal". This new informal group was completely industry dominated and undercut the ongoing work of the existing Expert Groups. When civil society groups complained, DG ENTR closed the group and claimed it was never an Expert Group.

1.c What, according to you, is the root cause of the unbalanced composition of the Commission Expert Groups identified by you?

Institutional culture

Although in the past few years some DGs have made efforts to improve the balance of their Expert Groups, large parts of the Commission, including the Secretariat General, don't see corporate dominance in Expert Groups as a major issue. As a result many politically and economically sensitive groups are still dominated by big business interests (eg the examples listed above). The

² The Commission has since altered this group. Please see letters from the Secretariat General to the European Parliament regarding the new composition

rules on Expert Groups were reviewed in 2010³, but with very little change. Since then, despite strong demands from the European Parliament, the Commission refrained from introducing new rules to tackle the problem of unbalanced Expert Groups. It is difficult to generalise too widely, as different DGs have taken different approaches, but the Secretariat General – which oversees all Expert Groups – has refused to see the domination of groups by corporate interests as a problem. On the positive side, DG ENTR has agreed in principle to follow the European Parliament’s recommendations of no single stakeholder having a majority of seats, and has told civil society that it is committed to restrict corporate interests in its Expert Groups to no more than 50% of seats. But in practice this goal is not being met – either in new groups or existing ones.

There is insufficient transparency regarding which interests Expert Groups’ members represent (see answer to question 3). This allows the Commission to continue creating groups that give undue influence to corporate interests, as it makes it difficult for citizens to see the bias towards big business interests.

Lack of internal expertise/capacity

The lack of sufficient internal technical expertise is a strong incentive for the European Commission to call upon corporate interests for so-called ‘technical’ advice. The problem is that this technical expertise is not necessarily ‘neutral’, especially when it comes from a big company with vested interests.

Disparity in resources and capacity

Our research has shown that experts linked to corporate interests dominate the Commission’s Expert Groups.

Corporations, trade associations and transversal business lobbies have the resources to ensure active participation of company staff in Expert Groups. For civil society organisations, with often limited staff capacity and resources, taking part in Expert Groups is an opportunity cost which can sometimes be difficult to justify to funders or members.

Given this situation, as long as the Commission does not actively pursue a balanced representation of corporate and other interests in its Expert Groups, the bias towards big business interests will continue.

Moreover, the number of civil society groups with the requested type of EU-level knowledge is limited. For example, consumer organisation BEUC is expected to represent consumers in most Expert Groups, yet it has not enough staff to meet these expectations. Input from national consumers organisations into Expert Groups would be very valuable (and it does happen) but the constraints there are even greater, given the perceived distance between Brussels and national level activities and the pressure to focus on work that is directly relevant in the national context.

The often-technical nature of the groups requires high degrees of specialisation in very niche topics, making it even less likely that a high number of non-corporate groups will have the necessary expertise, capacity and resources to take part.

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?

³ ALTER-EU, 10 January 2011, New Rules on Expert Groups fail to prevent capture by business lobbies - setback for transparency

Balanced Composition

As the Commission considers experts in a ‘personal capacity’ to be independent and not representing an interest, the Commission excludes those experts when assessing balance in the composition of Expert Groups. This would be less problematic if the individuals were indeed independent experts or academics without corporate ties. Unfortunately the label ‘personal capacity’ (PC) has often been used for individuals who represent an interest (RoI, i.e. lobbyists), thereby skewing composition.

See for example the following groups:

Most examples are taken from the November 2013 ALTER-EU report “*A Year of Broken Promises*”⁴ which focuses on groups created between September 2012 and September 2013, with additions from supplementary research. The figures were to our best knowledge correct at time of researching the report, and any changes since September 2013 are not included (e.g. the Stoiber Group was updated between September and November 2013).

DG	Group Name	⁵ RoI/ PC	Names and reasons
AGRI	High Level Steering Board for the European Innovation Partnership	2/10	[REDACTED]
BEPA	Science and Technology Advisory Council	7/15	[REDACTED]

⁴ For a full explanation of the categories of interests, please see *A Year of Broken Promises* http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf

⁵ Members appointed in their personal capacity when in fact they should be a ‘Representative of an Interest’ compared to total number of members appointed in their Personal Capacity: RoI/PC

	Contract Law		
RTD	EU Bioeconomy Panel	8/24	[REDACTED]
RTD	Expert Group on Retail Sector Innovation	7/11	[REDACTED]

			<p>[Redacted]</p>
RTD	Expert Group on Open Innovation and Knowledge Transfer	9/12	<p>[Redacted]</p>
RTD	Expert Group on Public Sector Innovation	3/9	<p>[Redacted]</p>
RTD	Experts Group on the role of Universities and Research Centres in Smart Specialisation	2/7	<p>[Redacted]</p>

			[REDACTED]
SG	Expert Group on a debt redemption fund and eurobills	8/10	[REDACTED]
SG	High Level Group on Administrative Burdens	1/1	[REDACTED]
TAXUD	VAT Expert Group	26/28	[REDACTED]

Having lobbyists or those with links to commercial interests sitting in groups in a personal capacity can mean that advice the Commission may have believed was independent is in fact related to a particular interest and therefore strengthens that voice within the group, impacting public policy and privileging one section of stakeholders over the others. In reaction to research by ALTER-EU, DG ENTR has agreed to stop appointing members of new groups in a personal capacity.

Conflict of interest

There is no horizontal conflict of interest policy for experts in Commission Expert Groups. The most common practice is asking candidates to sign a declaration stating they will act in the public interest. No declaration of interests is required and there are no checks on potential conflicts of interest. This might spark controversial conflict of interest cases reported in the media and thus form a risk for the public reputation of the European Commission. Also, the Commission’s assumption that the individuals they pick for Expert Groups can be trusted to act independently (without proper checks and balances in place) could create the impression of Expert Groups being a closed, unaccountable old-boys network.

There is a clear need for an effective, transparent and accountable conflicts of interest policy for all individuals appointed in a personal capacity, which is something Vice President Šefčovič promised to look into over a year ago, but that has not progressed since. Conflict of interest policies developed by the WHO and some of the European Agencies (EMA, EFSA etc.) could be worthwhile and has been recommended to Vice President Šefčovič by civil society groups.

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?

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 not sufficient. In particular, the following problems regarding opacity of interests have been identified:

- The Register does not make clear the balance between stakeholders. In the ‘Statistics’ section it notes the number of types of members, e.g. personal capacity, organisation, but fails to mention numbers of members representing specific interests, which would give the public an ability to judge.
- Giving overall figures for interests represented would only work if organisations (and individuals) were properly labelled. There is currently great inconsistency among DGs and even within DGs as to which interest certain organisations belong to. The Register has the ‘category’ field, within which ‘NGO’, ‘Trade Union’, ‘Association’ etc. is filled out, but with many inconsistencies and inaccuracies. For example, among groups created between September 2012 and 2013, more than 80% of organisations representing corporate interests were not labelled as such, with the worst culprits being TAXUD (labelling most corporate interests ‘Associations’), and DG AGRI (labelling all stakeholders ‘NGOs’). For more statistics, see “*A Year of Broken Promises*”⁶. Clear and accurate labelling needs to be systematised across all DGs, which could be done by linking their entry to the transparency register, as well as giving the public more information on the overall lobbying activities of members.

The labelling of individuals is also problematic:

- Particularly in light of the aforementioned concerns around conflicts of interest, if an individual is there in a personal capacity then a clear declaration of interest (DOI) should also be published to assure the public. This DOI should be thoroughly reviewed by the Commission to ensure the independence of the individual expert. If it transpires that there are interests which the member has not declared, a fitting sanction (e.g. a ban for the individual and organisation from all groups for a set period of time) could be levied.
 - The Expert Group on a Debt Redemption Fund and Eurobills includes more information than most groups on its members in a personal capacity, but also misses out many board positions (see table above). Nevertheless, the information provided should have been sufficient to determine that the individuals should not have been construed as acting in a personal capacity.
- When it is clear that an Expert Group member labelled as “in a personal capacity” represents an interest, then all relevant information on the interest(s) represented by that individual should be made public. This is currently not the case. This information should include which stakeholder group they represent (rather than which industry sector they have expertise on), who they work for, and which organisations they have commercial ties to, e.g. board memberships. This would allow the public to be confident of who they represented and allow a more comprehensive assessment of composition.
 - The High Level Group on the Future use of the UHF band has listed the title of its members, but has not stated anywhere who they work for or any other commercial interest. Ironically,

⁶ ALTER-EU, 2013, *A Year of Broken Promises*, available at http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf

the press release actually gives much of the relevant information (who they all work for). There is no reason this information should not be in the register.

- Equally, The Expert Group on Removing Tax Problems Facing Individuals who are Active Across Borders within the EU has all members as representing an interest but doesn't say who they work for. It sporadically lists some of their professional titles (e.g Prof.; Dr.; Prof. Dr.), and when exploring the individual it lists the interest represented e.g. 'law (taxation)' or 'External relations', but no indication of who they work for.
- This situation is also apparent in all new Horizon 2020 groups, which will decide the research funding opportunities for the next 7 years. This process should be fully transparent and accountable (particularly given the clear conflicts of interest present within FP7 Expert Groups)⁷ but is not. In fact, this is a problem across DG RTD, where information on representatives of interests is incredibly limited, e.g. the Research, Innovation and Science Policy Experts (RISE) High Level Group (HLG)

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?

The practice of putting minutes and agendas on line is improving, however there are some key improvements to be made:

- Minutes and agendas should be added to the register rather than linking to another website.
- Agendas should be placed on line before a meeting, not afterwards.
- Minutes of a meeting should be placed on line as promptly as possible
- The minutes should clearly show which stakeholders have agreed or proposed which views, in order to allow the public a clear idea of which interests are pushing for what. There is no agreement of secrecy within the Commission, and all DGs should have to do this – despite some such as TAXUD protesting.

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?

The selection criteria within application calls are often broad enough to justify the selection of any member. However, while mentioning all stakeholders within the call, as well as the need for balance, a lack of clarity on what 'balance' is understood to mean can make it difficult to hold the Commission to account. It should be explicit when mentioning a need for balance between economic and non-economic actors, as well as clearly stating – as the European Parliament has demanded – that no single stakeholder should have a majority. Ensuring diversity across stakeholders should also go beyond stating it in the call for applications:

- The Platform for Tax Good Governance stated the need for diverse stakeholders, yet appointed five closely-linked employers federations (the International Chamber of Commerce and the American Chamber of Commerce; BusinessEurope and its German and French members), four closely-linked accountancies (Confédération Fiscale Européenne is joined by its Dutch member, while the Fédération des Experts Comptables Européens is joined by its UK member) and three similar overseas development NGOs (Christian Aid, Oxfam, CIDSE), despite the call asking for 'International, preferably European level' representatives and claiming to strike a balance between different interests.

In your view, could the Commission do more to raise awareness about these calls, with a view

⁷ ALTER-EU, 2012, Who's driving the Agenda at DG Enterprise and Industry?, available at http://www.alter-eu.org/sites/default/files/documents/DGENTR-driving_0.pdf

to encouraging applications? If so, what concrete steps could it take in this regard?

There is no agreed period for calls for applications. A minimum period of 6 weeks would be appropriate. Organisations with wide membership need time to consult internally, and groups outside Brussels may only learn about a call several weeks after it was launched. Additional steps should be taken to ensure that a wider pool of experts is reached, for example: using social media; targeting specific sectors through trade magazines and websites; asking civil society organisations active in the field to publicise it among their networks; identifying areas where there are fewer applicants and reaching out in a more targeted, proactive way.

The number and nature of the applicants and the criteria used to choose between them should all be made public. This would help understand better the nature of the problem: is there a problem of lack of applicants or are there biases in the selection of applicants?

To the extent that there is a lack of diversity in the applications to participate in Expert Groups, the Commission should also be ready to accept that there may be a more fundamental problem stemming from a lack of internal, academic, and civil society expertise on a topic, which will mean under-representation. This does not mean the Commission should create unbalanced groups, but rather it should find alternative solutions (see question 6).

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?

Corporate Europe Observatory has not participated in any Expert Group.

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

Recognition of the problem

First, the Commission must recognise that it is undesirable that Expert Groups are dominated by big business interests, as the Commission is supposed to be a public interest institution. A full review of the horizontal rules is required in 2015, with new rules introduced to ensure that no single stakeholder has a majority. There are already positive examples in certain DGs:

- DG ENTR has pledged to stop creating groups in which corporations have more than 50% of the seats
- DG AGRI's decision for its new 'Civil Society Groups' to compliment the Common Agricultural Policy explicitly mentions balance between economic and non-economic actors and a balance between stakeholders (although unfortunately the composition of the new groups⁸ shows it has rescinded this commitment).
- DG EAC believes its Erasmus Mundus Expert Group is balanced because "no single interests (business, trade union or otherwise) has a majority of the non-government and non-EU seats in the group"⁹.
- DG CONNECT, in correspondence with the European Parliament, has also stated that it

⁸ [See the Birdlife/EEB consultation submission](#)

⁹ Education and Culture, May 2012, Review of Expert Groups, accessed as a result of a freedom to information request, available at http://www.asktheeu.org/en/request/review_of_expert_groups#incoming-1328

respects the Parliament's conditions and ensures that corporate interests represent no more than 50% of expert group members

But in order to assess composition, full transparency is needed regarding classification of interests and declarations of interest, something which should be included in the horizontal rules. This would prevent the Commission being able to falsely claim a balanced composition.

Responding to capacity limitations

If the difference in capacity makes it impossible to ever have enough civil society actors for a balanced composition (as DG ENTR has experienced when trying to attract more civil society actors), then the number of other stakeholders should be reduced. The fear of losing expertise can be overcome through the Expert Group in question inviting said expert for a hearing or to submit a paper, rather than giving them a permanent seat and decision-making powers. This is often suggested by DGs (particularly TAXUD) as a way for civil society groups to participate, rather than being members of groups, yet it appears the approach hasn't been considered for corporate members. It is also an approach taken by the World Health Organisation's International Agency for Research on Cancer (IARC).¹⁰

7. Do you have any other comments?

Commission taking backward steps

Following the letter sent from MEPs to the European Commission on 5th November 2013, outlining the continuing existence of problems within Expert Groups, the Commission has reneged on its commitments. In correspondence with civil society and MEPs, it now claims there was no agreement made in September 2012 (when the budget was lifted) to improve Expert Groups, and is claiming that it has done what is necessary of it, while 'work is ongoing'. It is also denying there was ever an agreement to review horizontal rules in 2015, which was a key opportunity to systematically fix Expert Groups. This threatens much of the progress obtained by the European Parliament so far. The Ombudsman therefore must ensure that the new Commission takes the problem seriously and that a full review of rules on Expert Groups – with a participative, consultative process – is launched in 2015.

Fundamental conflicts of interest?

As well as ensuring that individuals representing interests should not be in Expert Groups in an independent capacity, there is a more fundamental issue: should certain interests be allowed to sit in Expert Groups at all? Are the commercial interests of some organisations inherently opposed to the public interest? In the field of tobacco regulation, the WHO has drawn up strict guidelines, Article 5.3 of the WHO Framework Convention on Tobacco Control,¹¹ which severely limit the contact between policy makers and tobacco lobbyists and ensure any contact is fully disclosed. It's internationally accepted that the interests of the tobacco industry are de facto never going to be in the interest of public health. This argument is applicable beyond the tobacco industry: should the dirty energy industry have a say on climate policy or risky investment bankers on financial regulation?

The Commission's justification for their inclusion – that it lacks expertise – can be overcome by ensuring that the core group with decision making and report drafting powers is one made up of members who strictly represent the public interest or are truly independent. However, they would be charged with collecting information from external experts, including those who represent specific

10 David Michaels, 2008, *Doubt is their Product*, Oxford University Press, p. 255-57

11 World Health Organisation, 2008, *Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control*, http://www.who.int/fctc/guidelines/article_5_3.pdf

commercial interests. This would allow political oversight of technical information and ensure its inherent political nature did not inadvertently guide policy, while still benefiting from the expertise held by commercial interests. Given the importance of the work conducted by Expert Groups and the real and apparent conflicts of interest of some members, such a policy would clearly serve the public good.

Commission moving away from Expert Groups?

Worryingly, there are increasing examples whereby DGs are not using the Register and instead creating groups which appear to share many of the same characteristics but are not officially Expert Groups. For example:

- DG MARKT created a series of groups focused on self-regulatory outcomes, none of which are in the register
 - The CEO Coalition to Make the Internet a Better Place for Kids in December 2011, a voluntary scheme for corporations to sign-up to in which the coalition forms a workplan with deadlines and performance indicators, as well as making recommendations;
 - The Safer Networking Taskforce, formed in 2008, brought together social networks, researchers and child welfare organisations to develop a set of voluntary guidelines;
 - The European Framework for Safer Mobile Use by Younger Teenagers and Children came out of a High Level Group discussion and sets out voluntary principles;
- As listed above, DG ENTR formed an ‘informal’ Working Group for Technical Advice, parallel to the existing Working Group for Non Road Mobile Machinery (Emission from non road mobile machinery engines) ([E01346](#)), but cancelled this group when civil society complained;
- DG ENTR has also created the European Rare Earths Competency Network (ERECON), comprising experts in three working groups, which have the same goal and form as Expert Groups but are not in the register. Worryingly, the groups consist of business leaders and policy makers and occasionally technical experts, which suggests an imbalance in composition.
- ‘Workshops’ (sometimes identified in the Impact Assessments) are also being used as a substitute for Expert Groups, giving industry a privileged channel to influence legislation in a space beyond public scrutiny.

Law-breaking corporations

Surprisingly, corporations who are found guilty of breaking either a member-state or EU-level law are allowed to continue advising the Commission, even if the misdemeanour directly relates to the remit of the Expert Group. This should not be seen as acceptable. For full recommendations, please

12

see the report by ex-MEP Martin Ehrenhauser, Crooked Counsel.

Attached documents:

- Letter from DG ENTR opening a new highly-imbalanced Expert Group (in parallel to an existing balanced one)
- Spreadsheets with raw data behind the figures presented in the submission
- Correspondence between DGs and the European Parliament following the publishing of ALTER-EU's report 'A Year of Broken Promises'
- CSO letters to Vice-President Maroš Šefčovič, as well as responses
- Letter from DG AGRI showing the rollback of commitments on meeting the Parliament's

conditions