

Comments of the Commission on the decision of the European Ombudsman in case 811/2017/EA on the transparency of “advisory bodies” that influence the development of EU policy

- Complaint by the European Network Against Arms Trade, ref. 811/2017/EA

I. THE DECISION OF THE EUROPEAN OMBUDSMAN

In her decision of 19 September 2018 the Ombudsman concludes that the Commission’s decision not to register the Group of Personalities (GoP) as an expert group **does not constitute maladministration**, given that it would be difficult to consider it as an “expert group” in view of its composition which included individuals with a political mandate at Member State level or at EU institutional level. However, ensuring appropriate transparency in relation to the work of the Group of Personalities should not be dependent on that Group being categorised as an “expert group”. The Ombudsman **stops short of finding maladministration in the failure of the Commission to ensure appropriate transparency regarding the work of the Group**. Nevertheless, given the role of the Group, the Ombudsman concludes that it is clear that **a level of transparency, broadly equivalent to that applicable in the case of an “expert group”, would have been appropriate**. The Ombudsman makes a suggestion in this regard. Furthermore, the Ombudsman considers that, for the future, the Commission should take measures to ensure that groups that influence the development of EU policy, such as the Group of Personalities, are subject to **appropriate transparency requirements**.

More precisely, the **suggestions for improvement** made by the Ombudsman are the following:

“In the case of the Group of Personalities, the Commission should now publish its meeting agendas and minutes as well as its participants’ submissions (except where disclosure would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001).

In future, the Commission should ensure that the transparency rules which apply to expert groups, or broadly equivalent rules, should apply to any new version of the Group of Personalities and to any similar bodies which influence the development of EU policy.”

II. THE COMMISSION’S COMMENTS ON THE DECISION OF THE EUROPEAN OMBUDSMAN

The Commission thanks the European Ombudsman for the analysis of the complaint, her decision and suggestions for improvement. In particular, the Commission welcomes that the European Ombudsman shares its opinion that the GoP could not be registered as a “Commission expert group” in the sense of the Commission rules in place at the time of its creation, as well as of the revised rules adopted by the College in May 2016¹, and hence that the Commission’s decision not to register it does not constitute maladministration.

The Commission shares the Ombudsman’s view that a level of transparency, broadly

¹ C (2016) 3301 of 30.5.2016.

equivalent to that applicable in the case of Commission expert groups, would be appropriate to apply to the GoP. Thus, the Commission will publish meeting agendas, minutes, as well as participants' submissions related to the work of the GoP except where the Commission considers that disclosure would undermine the protection of any public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001². The exceptions referred to in that provision are intended to protect public security, **defence and military affairs**, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and **the institution's decision-making process**.

As for the future, the Commission agrees that the transparency rules which apply to "Commission expert groups" and "other similar entities", in the sense of Article 2 of Commission Decision C (2016) 3301, or broadly equivalent rules, should apply to any new version of the Group of Personalities and in principle also, wherever appropriate, to other *sui generis* consultative bodies providing the Commission with advice in relation to the development of EU policy.

² OJ L 145 of 31.5.2001, p. 43.