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**From:** Ester Caldana [REDACTED]  
**Sent:** 14 July 2014 15:11  
**To:** Euro-Ombudsman  
**Subject:** [EOWEB] Public consultation on the composition of European Commission expert groups (case OI/6/2014/BEH) - CER contribution  
**Attachments:** CER response to Ombudsman Consultation.pdf

### Sender

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**Sender** Ester Caldana [REDACTED]  
**Date** Monday, July 14, 2014 3:11:16 PM CEST

### Your data

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#### Part 1 - Contact information

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Language you would like to receive an answer in en - English

#### Part 2 - Data

**Subject** Public consultation on the composition of European Commission expert groups (case OI/6/2014/BEH) - CER contribution

Dear European Ombudsman,

Dear Ms O'Reilly,

On behalf of the Community of European Railway and Infrastructure Companies (CER), I have the pleasure to submit our response to the European Ombudsman public consultation regarding the composition of European Commission expert groups.

#### Content

Looking forward to the outcome of your own-initiative inquiry, I remain available to provide you with any clarification or additional information that you might need.

Kind regards,

Ester Caldana

# European Ombudsman’s consultation on the composition of European Commission’s expert groups (OI/6/2014/BEH)

## *CER answers to the Consultation*

14 July 2014

COMMUNITY OF EUROPEAN RAILWAY AND INFRASTRUCTURE COMPANIES - COMMUNAUTÉ EUROPÉENNE DU RAIL ET DES COMPAGNIES D'INFRASTRUCTURE - GEMEINSCHAFT DER EUROPÄISCHEN BAHNEN UND INFRASTRUKTURGESELLSCHAFTEN



The Community of European Railway and Infrastructure Companies (CER) brings together more than 70 members - European railway undertakings, their national associations as well as infrastructure companies. The membership is made up of long-established bodies, new entrants and both private and public enterprises. CER members represent about 61% of the rail network length, more than 84% of the rail freight business and about 99% of rail passenger operations in EU, EFTA and EU accession countries.

For more information, see <http://www.cer.be/> or follow us via Twitter at [@CER\\_railways](https://twitter.com/CER_railways)

Identification number in the Transparency Register: 7574621118-27

**Additional information about this input paper can be directly asked to Ester Caldana by email**

## CER answers to the Consultation

**QUESTION 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?**

*In general, CER does not consider that expert groups are unbalanced in their composition. However, in the last years we have noticed the creation of some 'groups' - by DG Move among others - the composition of which was not embracing all representatives in the rail sector or which had been composed according to unclear criteria.*

*Our main concern is that those "out-of-the-rules-groups" do not pertain to the expert groups of the European Commission and are settled outside of any control and do not follow clear rules. This is a questionable and possibly dangerous practice and we think that the European Commission should put to an end to it as soon as possible.*

**QUESTION 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?**

*No, we don't think that there is this risk. CER does not see this risk inside the groups it has been attending. Nonetheless, CER deems that potential situations of conflict of interests can be avoided through the correct application of the established rules and the checks by the Commission, both at the moment of appointing experts and throughout their mandate (according to Rule 9 of the Horizontal rules for Commission expert groups).*

*CER agrees that the selection upon CV is a correct process to appoint individual experts. However, public calls for applications should be in such a case also applied, as they allow for more transparency as regards the required skills and expertise, and the subsequent assessment of applicants by the Commission.*

**QUESTION 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?

*The current framework may be considered appropriate, provided that all groups are put into the same regulatory framework and respect the existing rules on transparency, namely as set out in Chapter IV of the Horizontal rules for Commission expert groups. Unfortunately, this does not seem to be always the case at the moment (please refer to question 1).*

*Information about the activities that are carried out by expert groups should be as complete and transparent as possible. Meeting minutes and/or summary records should not only report the final results of discussions, but also the different points raised during the meetings (without necessarily relating them to individual participants) in order to provide a more realistic and hence useful overview of the debates. This would be perceived as an important improvement of the transparency and the information for the stakeholders not participating in the meetings.*

**QUESTION 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?

*The Commission could make use of the register of interested stakeholders in order to inform at least those registered of the existence of any group.*

*As a general rule, selections based on public calls for applications should be privileged among other selection criteria. The Commission should also ensure that information about expert groups reaches also relevant stakeholders based at the national level, and is not only limited to Brussels-based actors. This would allow to reach the right balance both in the kind of expertise provided and in the geographical representation of experts. In concreto, this means that each new expert group should be advertised also at national level (for instance on the websites of the relevant national ministries) in order to overcome potential language barriers.*

**QUESTION 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?**

*Yes, CER applied and there are no particular remarks to make. With regards to the financial aspects, there could be a need to keep money available to cover costs reimbursement, in order to avoid to indirectly exclude the less wealthy undertakings, citizens and NGOs representatives.*

*For the same reason, and in order to ensure the inclusion of experts based at national level in the expert groups, the Commission should also guarantee that enough resources are devoted to the removal of potential obstacles to their participation, such as travel expenses and linguistic barriers, which can be addressed through adequate reimbursement of expenses, as well as the provision of interpretation during meetings and translation of meeting document.*

**QUESTION 6: PLEASE GIVE US YOUR VIEWS ON WHICH MEASURES COULD CONTRIBUTE TO A MORE BALANCED COMPOSITION OF COMMISSION EXPERT GROUPS.**

*It is necessary that the European Commission put an end to its practice of setting up groups in an unconventional manner and according to unclear criteria (please refer to question 1) and make more use of the Transparency Register before setting up any group.*

*Secondly, although CER agrees that the selection upon CV is a correct first step to appoint individual experts, this first check may be supplemented by interviews to check adequacy between applicants' CVs and effective expertise. Another way to improve the selection process would be to seek advice from national Ministries, agencies or universities on the relevance of CVs or ask them to participate to interviews. Gathering advice from external bodies would help to select members of an expert group with the utmost care.*

*Thirdly, a more balanced composition will be ensured if the selection process takes also into account the opportunity of having different/diverging views represented inside the groups.*

*Finally, the Commission could also set up web tools allowing for the involvement of a wider expert community also at national level, in order to better inform the discussions of the expert groups and overcome the necessary limitation in the size of an expert group.*

**QUESTION 7: DO YOU HAVE ANY OTHER COMMENTS?**

*The same improvements in transparency standards should apply to meetings in the framework of 'comitology' as well as in the framework of some EU Law provisions that allow the European Commission to chair meetings of national entities and bodies, like the network of regulatory bodies in the rail sector.*

*It is also important that staff members in the Commission are properly trained to manage expert groups, have the relevant background to understand the input from the group and consider these groups as a way to improve policy-making, even though the final decision shall rest with the relevant political level.*

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## Disclaimer

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