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Content

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11 August 2014

Dear Sir/Madam

European Ombudsman Consultation: Composition of European Commission expert groups

This is the UK Financial Services Consumer Panel's response to the public consultation concerning the composition of European Commission expert groups.

The Panel provides advice and challenge to the Financial Conduct Authority (FCA) on the extent to which the FCA's general policies and practices are consistent with its general duties. The Financial Services Authority (FSA) was required to set up a panel to represent the consumer interest under the Financial Services and Markets Act 2000. The FCA now has that duty, following the division of the FSA into supervisory and conduct regulators. The Panel represents the interests of all groups of financial services consumers and operates independently of the FCA. The emphasis of its work is on activities that are regulated by the FCA, although it may also look at the impact on consumers of activities that are not regulated but are related to the FCA's general duties.

The Panel welcomes the Ombudsman's investigation. Overall, we consider that the interests of consumers of financial services remain underrepresented in EU expert groups. The Panel accepts that the European Commission has undertaken positive steps to increase consumer representation. Notably, DG MARKT has created a Financial Services User Group (FSUG) to provide a dedicated forum for consumer interest groups to advise the Commission in the preparation of policy and legislation. The public register of expert groups has increased transparency, and the creation of Finance Watch has helped redress the balance. However, these initiatives are not enough. The groups are also hindered by their limited resource. Consumer organisations lack the evidence-base to challenge the views of industry. Addressing this would be greatly beneficial.

Although outside the formal remit of her investigation, we would urge the Ombudsman to include conclusions and recommendations on consumer representation on the expert groups operated by the European Supervisory Authorities (ESAs) in the financial services sector: the EBA, ESMA and EIOPA.

These stakeholder groups are affected by the same issues as Commission expert groups. Given the substantial role the ESAs now play in formulating technical standards and implementing regulations for EU financial services legislation, the Panel feels that the functioning of the Authorities' expert groups is relevant for the Ombudsman's inquiry as they are in essence analogous to the Commission groups. Our responses apply equally to the ESA stakeholder groups.

Responses to questions

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?

Clearly, consumer representatives are outnumbered on some expert groups, notably on the Expert group on the taxation of savings, and the Pension Forum, both of which have only one retail user representative, according to the register. However, it is important to stress that balance is about more than equal numbers. In the Panel's view, the lack of consumer representation on the Commission expert groups in the field of financial services policy has multiple roots. Research undertaken on behalf of the Panel¹ identified one underlying cause for this imbalance as the lack of resources available to organisations representing the interests of financial services consumers, which manifests itself in three ways:

- A) A lack of financial backing to regularly attend meetings overseas. This may prevent them from participating fully in the EU's expert groups.
- B) Limited access to the technical resources needed to participate fully in the expert groups' discussions. Consumer organisations lack the evidence-base needed to engage actively in the technical issues that are discussed, which in turn limits their ability to effectively challenge the views put forward by the financial services industry. This adversely affects the overall output of the expert groups by skewing their views in favour of the industry, often to the detriment of consumers.
- C) Lack of knowledge of EU processes and procedures. Consumer organisations may not be aware of the existence of specific stakeholder groups and/or the role they play in the formulation of EU financial services policy. This again reinforces the dominance of industry stakeholders, as these have superior resources and frequently employ staff dedicated to engaging with EU institutions.

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?

The rules can work well for individual experts who are not affiliated to a particular organisation, although the resource issues outlined above are likely to be particularly acute in such cases. Problems may arise where an individual leaves a consumer organisation and no longer wishes to participate in the expert group. The organisation concerned cannot nominate a replacement, as the membership is individual. It would be helpful to have some flexibility in this respect, at least for the consumer organisation to nominate a replacement for the remainder of the departing member's term.

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

¹ FSCP Research, "Consumer Representation at EU level" (December 2013)

groups, in particular through the publication of agendas and minutes, is sufficient?

Transparency of composition

The information provided on the members of expert groups varies greatly on a case-by-case basis. To enable interested parties to assess the composition of expert groups, the Commission should consider expanding available information in a uniform way, for example by providing biographies, CVs or links to websites.

Transparency of activities

Agendas, minutes and other meeting documents of experts groups are not communicated in a consistent and efficient manner, particularly to stakeholders who do not sit on expert groups in which they nonetheless take an interest. This has an adverse impact on the transparency of these groups, and makes it difficult for consumer organisations to evaluate the work being undertaken or being planned.

To make the activities of the expert groups subject to improved scrutiny by stakeholders, the Commission should implement an improved notification system for new documents relating to specific expert groups, allowing interested stakeholders to be notified of upcoming meetings, activities and minutes with minimum effort.

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?

Interested stakeholders may not always be aware of calls for applications to join expert groups and can miss out on a valuable opportunity to provide direct input into the EU policy-making process. Calls should be advertised more prominently on the Commission website, and the Commission should consider establishing a centralised email based alerting system that allows stakeholders to be made aware of calls for application to join expert groups within their areas of interest.

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?

The Panel Chair is a member of the FSUG, and experienced no particular problems in applying for membership. However, the Panel is relatively well resourced compared with many consumer organisations. As noted above, the costs involved in attending and participating in expert group meetings are a significant barrier to many consumer groups under the current circumstances.

The amount of time expert group members must devote to the work of the group is also a barrier. Most civil society consumer organisations are small, especially compared with financial services firms. They do not have the research and administrative back up. In addition, many cannot afford to lose the capacity to deliver their core national objectives by giving up time to EU business.

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

1. A review of remuneration and expenses for expert group members to attract well-qualified applicants, boosting the participation of consumer representatives who may lack the resources to fully engage otherwise. The current practice of applying a "no remuneration" principle should be abandoned in favour of a more flexible system that would allow expert group participants from smaller, under-resourced organisations to make a claim for remuneration.
2. Active outreach to consumer groups, to encourage them to join expert groups, by improving the way in which calls for applications are announced and disseminated. This should be accompanied by guidance outlining how the work of the expert groups feeds into EU policy-making to encourage participation by consumer groups.
3. Making funding available to expert groups to carry out their own research, to improve the technical information and expertise available to consumer organisations on the policy options discussed within the groups. Such funding is already available for the Financial Services User Group, which could serve as an example of best practice.

7. Do you have any other comments?

The Panel believes there should be an obligation for the Commission and ESA to respond formally to opinions issued by their stakeholder groups to ensure that the views of consumer groups are taken into account. This would improve confidence among consumer groups that their views are taken seriously and encourage them to participate more actively in expert groups.

Yours faithfully



Sue Lewis

Chair - Financial Services Consumer Panel