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Subject: [EOWEB] Expert Group Consultation Input on behalf of Transparency International EU Office
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Part 2 - Data

Subject Expert Group Consultation Input on behalf of Transparency International EU Office
Content

Input for public consultation concerning the composition of European Commission expert groups

Organisation: Transparency International Liaison Office to the EU

Rue de l'industrie 10, Brussels 1000, Belgium

Transparency Register Identification Number: 501222919-71

Thursday, 17th. July 2014

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?

TI-EU considers that the list of Commission expert groups as detailed in the CEO report A Year of Broken Promises (here: http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf), is sufficiently illustrative of the broader problem of unbalanced Commission expert groups. While not exhaustive, the list detailed in the report provides clear and numerous examples of specific cases of unbalanced expert groups.

In terms of root causes of such imbalance, TI-EU considers that institutional inertia regarding real public accountability and consultation has contributed to the problem. While TI-EU recognises the disparities in terms of resource capacity of different types of stakeholder, and the de-facto limitations this places on the pool of potential experts for the Commission, we believe that more efforts could, and should, reasonably be made by the Commission to protect a more representative balance of interests.

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?

TI-EU sees the rules on experts appointed to Commission expert groups in their 'personal capacity' as highly problematic. As the Commission considers those in a personal capacity to be independent and not representative of an interest, they are therefore excluded from any calculations on composition. This would be less problematic if the individuals were in fact independent experts or academics without corporate ties, but unfortunately the label 'personal capacity' has often been used by individuals who represent an interest (lobbyists), thereby skewing composition and resulting in misleading estimations of represented interests in such groups.

This issue is compounded by the absence of requirement for such individuals to provide public declarations of interests. Without such disclosure, the question of whether or not an expert sitting in their personal capacity actually faces a conflict of interest falls outside the scrutiny capacity of the public domain. The current standard, of requiring a signed statement from such individuals committing themselves to act in the public interest does not provide for real and effective public scrutiny. As such, TI-EU recommends that the obligatory declarations of interest should be a standard element in the appointment procedure for individual experts for all expert groups which should be adequately scrutinised by the Commission prior to appointment. Upon appointment, these declarations should be made public and sanctions should be applicable in instances where a conflict of interest has not been declared. (e.g. dismissal from relevant expert group, prohibition from participating in expert groups for a designated period of time). This would fall in line with the general recommendation of the Court of Auditors in its 2014 special report in the context of the 2012 Commission discharge.¹

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?

¹ Court of Auditors Special Report on the 2012 Commission discharge, http://www.europarl.europa.eu/document/activities/cont/201404/20140414ATT82806/20140414ATT82806_EN.pdf, (last accessed 17.07.2014)

TI-EU views the current section on register entries presenting ‘statistics’ on the group as deeply lacking. While numbers are provided for ‘individuals acting in their personal capacity’ and ‘organisations’ etc., the categorisation remains too broad to offer any real public information of what this means for the influence of different, specific interests in the group.

The broad category of ‘interest groups’ also exacerbates the opacity of specific stakeholder influence. The terminology leaves little room for public comprehension of what this category really represents and of what interests are really being represented by this group.

In terms of room for improvement, TI-EU feels that the Commission could take several steps to increase the level of transparency around expert groups. Possible measures could include: minutes and agendas being directly linked to the register rather than hosted remotely, publication of agendas in advance of meetings rather than ex-post, publication of meeting minutes as close to real time as possible, clear indications in meeting minutes of which experts/stakeholders have proposed which views.

Additionally, targeted social media channels could be harnessed to increase public awareness around a call for experts.

TI-EU calls, additionally, for increased transparency on former members of expert groups. As the register currently stands, only the names of current members are publicly accessible despite significant inputs to the ongoing work of the group having potentially been made by former expert members.

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?

TI-EU reiterates its general call in this regard for more concise and measurable selection criteria for members of expert groups. As the situation currently stands, selection criteria remain broad and open to wide margins of discretion. Where a genuine balance of interests cannot simply be remedied by concise definitions, TI-EU believes the Commission is responsible for taking further practical steps to ensure such balance.

TI-EU also believes that standardised durations for open calls for experts should be put in to place to allow stakeholders to harmonise their activities with a more fixed consultative rhythm and schedule. The current practice of more ad hoc time periods for open calls for experts limits the capacity of stakeholders to identify opportunities for their input and ultimately disadvantages less resourced groups with a lesser capacity for real-time monitoring and responding. Furthermore, TI-EU sees that open calls should be mandatory for all expert groups seeking members from organisations outside public institutions.

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?

In TI-EU's membership experience of Commission expert groups, the issue of insufficiently measurable selection criteria could be flagged as an area for further improvement by the Commission.

As a civil society NGO, TI-EU recognises the dissuasive effect of resource limitations when choosing whether or not to sit on an expert group. Staff travel and accommodation costs have previously posed an obstacle in allowing the office to input directly relevant expertise to a Commission consultation, particularly when expertise may not be locally available.

Furthermore, for organisations funded largely through a project funded portfolio, and thus lacking in core funding, participation in Commission expert groups is often constrained thus sometimes limiting mobility of relevant experts.

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

In instances where there may not be existing comparable levels of experts from different sectors, the Commission should ensure balanced representation by setting caps on the proportions of other sectors that will sit on an expert group to ensure a steady balance, regardless of the overall number of members of the group. For example, where civil society remains underrepresented due to a lack of articulation of interests at EU level, business

representation would be capped so as to avoid great disproportion in terms of sectoral representation.

Where limitations may impact on the capacity of civil society/non business experts to provide input, the Commission should take steps to address experts through alternative mechanisms other than engagement in a formalised group. This should be done, all the while, ensuring equal balance of input from different sectors in spite of potentially varying channels of input from different sectors.

The Commission should include in its terms of reference for the establishment of a specific expert group, its definition of what constitutes 'balanced composition' for the purposes of that group with a reasoned justification for this definition. This should also be included in open calls. When defining balance, the Commission should take care to avoid over representation of interests e.g. where an individual company is a member of an expert group as is an industry association of which it is a member.

7. Do you have any other comments?

N/A