

Euro-Ombudsman

From: Catherine Olier <[REDACTED]>
Sent: 28 August 2014 18:18
To: Euro-Ombudsman
Subject: [EOWEB] Oxfam International contribution to the own initiative inquiry on the composition of European Commission's expert groups
Attachments: Oxfam International contribution to Ombudsman consultation - August 2014.docx
Follow Up Flag: OI/6/2014/BEH CB 29.08
Flag Status: Flagged
Categories: FC to Complaint

Sender

Sender Catherine Olier <[REDACTED]>
Date Thursday, August 28, 2014 6:17:33 PM CEST

Your data

Part 1 - Contact information

First name	Catherine
Surname	Olier
Gender	Female
E-mail address	[REDACTED]
Language you would like to receive an answer in	en - English
Other language you would accept an answer in (if applicable)	fr - français

Part 2 - Data

Subject Oxfam International contribution to the own initiative inquiry on the composition of European Commission's expert groups
Dear Ms O'Reilly,

On behalf of the Oxfam International European Union Advocacy Office, please find attached our contribution to the own-initiative inquiry on the composition of the European Commission's expert groups.

Content Do not hesitate to contact me should you need additional information
[REDACTED]

With kind regards,

Catherine Olier

EU Policy Advisor

Oxfam EU Advocacy Office

Rue de la Science 4, B-1000 Brussels

**Oxfam International contribution to EU Ombudsman own initiative inquiry
on the composition of European Commission's expert groups
Brussels, August 2014**

On behalf of Oxfam International, we very much welcome the Ombudsman's own-initiative inquiry on the composition of EC expert groups with a view to encouraging and supporting efforts towards achieving a more balanced composition of these groups.

Oxfam is answering to this consultation based on its experience as a member of the European Commission Platform for Tax Good Governance¹ since May 2013. This contribution aims at complementing feedback from other civil society organisations, like Corporate Europe Observatory, that have years of experience exposing the power of corporate lobbying in the European Union.

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?

As previously mentioned, Oxfam is responding to this consultation on the basis of its membership to the EC platform on tax good governance. We do not have enough expertise on other Commission working groups' composition but from what other civil society organisations have exposed so far, it seems that there is a general lack of balanced representation of interest in all EC expert groups across the board².

Regarding the EC platform on tax good governance, fifteen non-governmental actors have been selected to participate to this working group which meets between three to four times a year with the objective to assist the Commission in developing initiatives to promote good governance in tax matters in third countries, to tackle aggressive tax planning and to identify and address double taxation. The Platform also aims at assisting the Commission in preparing its report on the application of its Recommendations regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters and on aggressive tax planning. Whilst there is a higher representation of NGOs and trade unions than in many other EC expert groups, the overall composition remains unbalanced in favour of corporate interests. Looking at the composition, it seems that around 60% of non-governmental members represent corporate interests (only 20% for NGOs and 14% for trade union). This goes against the commitment of the European Commission towards the European Parliament that no expert group should be dominated by corporate interest.

Among the root causes to explain this unbalanced composition, Oxfam has identified three main reasons:

- **A misperception by the European Commission on what characterises the public interest.** At the heart of the problem seems to be a wrong assumption within the European Commission to assimilate corporate interests with public ones, despite being clear that corporations pursue private (commercial) interests that differ widely from SMEs, trade unions, consumer organisations or NGOs. This 'culture of interests' and tendency to keep working with those you know (meaning those lobbying you, instead of reaching to new stakeholders) lead to social, environmental and economic policies that do not reflect the public interest and increase the democratic gap between EU institutions and European citizens (see for several examples the CEO report 'The Record of a Captive Commission'³).
- **The lack of capacity of NGOs or other public interest groups** to apply and commit to participate to expert groups. Given the large number of Expert Groups, the often large size of membership, and the disparity in

¹ http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/platform/index_en.htm

² See for example ALTER-EU report 'A year of broken promises', November 2013, <http://www.alter-eu.org/documents/2013/11/a-year-of-broken-promises>

³ http://corporateeurope.org/sites/default/files/attachments/record_captive_commission.pdf

resource between big business actors compared to others, it is no wonder there are more corporate members. Corporations have the resources to fund a staff member's involvement due to its importance to their commercial interests, while their trade associations and transversal business lobbies also prioritise involvement. However, for trade unions and civil society organisations with more limited capacity and resources, taking part can be difficult.

- **The proliferation of expert groups on related topics.** This aspect combined with the lack of capacity either obliges NGOs to select which working group they would like to participate in or discourage them to participate given the level of expertise required to apply. For example, while there is a platform on tax good governance established since May 2013, DG Taxud decided in the Summer 2014 to create another expert group on the automatic exchange of financial account information⁴. While we understand this new group refers to another piece of legislation from DG Taxud, we wonder whether automatic information exchange could not have been discussed within the framework of the EC platform, as a means to fight tax dodging and promote tax good governance.

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?

Regarding Oxfam's experience in the EC platform on tax good governance, none of the non-governmental representatives have been appointed as individual experts and the fifteen members therefore all speak on behalf of their organisation. Therefore, we believe that this group should not be called an 'expert group' but rather an 'interest group' since it's clear from its first four meetings, each non-governmental platform member speaks for their interests.

On the specific issue of appointment of individual experts, there have been many cases where these people could be connected, in one way or another, with corporate interests (e.g. scientists working on climate change linked to polluting industries, medical experts linked to pharmaceutical companies...) This could therefore, under cover of 'expertise', contribute to unbalanced representation in the EC expert groups. The abolition of this category, as called by some trade unions, should therefore be considered and best practices of other international institution (e.g. UN agencies) should be implemented to avoid future conflicts of interest.

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?

Again, our experience is limited to the EC platform on tax good governance but we would like to echo ALTER-EU's concerns about the insufficient transparency on the composition of Commission expert groups, in particular through the Register of Commission Expert Groups and Other Similar Entities. The practice of creating other groups, which are not officially expert groups, and therefore not referenced in the register should also be banned, to allow for greater transparency⁵.

The EC platform on tax good governance has a dedicated website where agendas, minutes and CVs of non-governmental members are downloadable, despite some delays in posting the documents at the beginning. This is a

⁴ The selection of applicants is currently ongoing at the time of this submission and Oxfam has sent an expression of interest to be a member. For more information, see:

http://ec.europa.eu/taxation_customs/taxation/tax_cooperation/mutual_assistance/financial_account_information/index_en.htm

⁵ There are increasing examples whereby DGs are creating groups which appear to share many of the characteristics of the expert group but are not officially called this way and referenced in the Register. For example, DG Markt created a series of groups focused on self-regulatory outcomes, none of which are in the register. 'Workshops' are also being used as a substitute for Expert Groups, giving industry a privileged channel to influence legislation in a space beyond public scrutiny.

good first step; however, the European Commission should **provide a template CV for participants to fill in to ensure the same level of information is provided by each participant**. Similarly, a **'no conflict of interest' declaration** (on the model of the one filled by MEPs) should also be available on the website to avoid to the extent possible any conflict of interest. One major area of concern regarding the EC platform on tax good governance is the application of Chatham House rules to the meetings. Although it could be argued that these rules might allow a more frank discussion, they go against the principle of transparency the European Commission should promote, especially for a working group aiming at fighting tax dodging, which is often permitted because of secrecy laws and jurisdictions. In the case of this platform, there is no reason to justify Chatham House rules as there is no individual expert and every member speaks on behalf of the organisation he/she represents. It is advisable to apply **Chatham House rules on a case-by-case basis and not by-default option for working groups**. Moreover, in order to promote more transparency and accountability, the European Commission should **record and webstream (preferably in live) the sessions of expert groups**, so that every European citizen can access information on how 'experts' help the Commission adopt legislation that defend their interest. The practice of the OECD Base Erosion and Profit Shifting (BEPS) team regarding access to information and webstreaming should be copied by the European Commission⁶.

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 selection criteria within calls are often broad enough to justify the selection of any member, which on paper is a positive thing to allow many interests to be represented. However, in practice, we notice a **tendency from the Commission to systematically appoint more representatives from corporations and de-prioritize other socio-economic and environmental considerations**, despite being crucial to the work of the expert groups.

It should be explicit from the terms of references and calls for applications of expert groups that all interests (commercial and non-commercial) relevant to the content of the group should be represented and that **no interest group or single stakeholder should have a majority of seats**. This has been clearly expressed by the European Parliament in 2012 and the European Commission should be held accountable. Looking at the composition of the fifteen non-governmental seats of the EC platform, we notice that very similar interests are represented with an unbalance towards business⁷.

The European Commission should go beyond appointed the usual suspects it knows and reach out to wider audiences when publishing calls for application (e.g. through social media). It is important to warn in advance when calls for application would be launch (e.g. for example by announcing at the beginning of the civil year when calls for application are expected for the next 12 months) and avoid launching calls for application during Summer time (as it is currently the case with the new expert group on automatic information exchange⁸).

In case the European Commission does not receive enough eligible applications from one group of interest, it should either re-launch a call with a more specific targeting at organisations in this group or reduce the number of representatives from other interest groups to ensure a proper balance.

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?

⁶ <http://www.oecd.org/tax/beps-webcasts.htm>

⁷ The platform counts 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). It also has two trade unions (EPSU and CESI) and one academic (the European Association of Tax Law Professors)

⁸ http://ec.europa.eu/taxation_customs/taxation/tax_cooperation/mutual_assistance/financial_account_information/index_en.htm

As explained at the beginning, Oxfam has a limited experience with applying to EC expert groups. We are currently only a member of the EC platform on tax good governance (DG Taxud) and we have submitted an application to participate to the newly created group on automatic information exchange (DG taxud).

Oxfam has not faced any problem as our application was successful. However, we are aware of another NGO, Eurodad, which expressed interest to participate to the platform, was refused and never got a proper explanation to why they were not selected. We also would like to raise that despite having five employers organisations in the platform, the EC originally selected only one trade union (EPSU) to participate.

Our concern with the EC platform on tax good governance also extends to the conflict of interest of some of its representatives. As reported by ALTER-EU, the employers' associations such as BusinessEurope and the Federation of German Industries (BDI) have consistently argued for lower corporate taxes as a way of tackling tax evasion⁹, while the Chamber of Commerce successfully lobbied Ireland to weaken its tax code, allowing royalty payments for intellectual property to be funnelled offshore¹⁰. Meanwhile the tax advisers in the platform all represent the Big 4 accountancy firms – Deloitte, Ernst & Young, KPMG and PwC – who are directly involved in channelling profits through tax havens¹¹, and many of their senior management previously held or currently still hold posts in these firms¹². This makes it unlikely for any of them to be enthusiastic about ending tax evasion and avoidance. After four meetings, it appears clear than business representatives attempt to slow down any progress of the platform and contribute to a negative climate, soaping any political will for reforms.

Finally our concerns go beyond just the representation of the platform with issues of double representation (both representatives from some business organisations participating to the meeting and taking the floor to express opinions), leading to unbalance speaking time or lack of transparency (Chatham House rules).

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

In order to ensure a more balanced composition of Commission expert groups, Oxfam generally recommends that the **Commission selects expert group members with the interest of the many in mind** and not just to defend interests of a few. By selecting more representatives from the business than from any other category, the European Commission tends to say that interest of corporations is more important than other interests. This is a **fundamental change of “institutional culture”** that can only benefit citizens' trust in the European Union.

Moreover, the European Commission should ensure **greater transparency thanks to strong conflict of interest policies**, preventing some representatives defending private interests – irreconcilable with the public interest mission of the working group – to participate. As commonly admitted, tobacco companies cannot seat in groups promoting tobacco-restrictive measures to guarantee people's health. The same is true for the fight against tax dodging. It appears clear **that business representatives involved in tax dodging (or aggressive tax planning) schemes or facilitating them for their clients should not seat in an EC platform to promote tax good governance** and help implement the EC action plan on tax fraud and tax evasion. In case some representatives are later on found in breach of this conflict of interest policy, they should be banned from the EC expert group and from other similar group for a definitive period of time.

⁹ Letter to David Cameron and the G8, which states “pro-growth tax reform that lowers rates, broadens tax base, simplifies the system and ensures compliance is a priority throughout the G8 (<http://www.belfasttelegraph.co.uk/business/news/g8-should-clamp-down-on-tax-avoidance-29286110.html>) while in March 2013, President of BusinessEurope and former President of BDI stated ‘To help reduce overall tax burdens, fiscal consolidation should focus primarily on reductions in current public expenditure protecting investment, not tax rises. (<http://www.euractiv.com/specialreport-ebs/thumann-EU-must-cut-green-tape-519718>)

¹⁰ <http://www.ft.com/intl/cms/s/0/ee6c1b64-c1f2-11e2-ab66-00144feab7de.html>

¹¹ See Richard Murphy, ‘The Big 4, tax havens and tax avoidance’, <http://www.taxresearch.org.uk/Blog/2012/12/05/the-big-4-tax-havens-and-tax-avoidance/>

¹² See CVs of non-governmental representatives to the EC platform:

http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/platform/index_en.htm

In the case where the Commission cannot select as many representatives from other interest groups than from business, it should make the effort to target (proactively approach) some pan-European organisations that could represent the public interest in the selected working group (e.g. consumer organisations, trade unions, sector-specific NGOs etc...). In the case where still not enough representatives from these groups were available, the Commission should then **decrease the number of business representatives to ensure a balance composition**. In principle, Oxfam stands against the remuneration of participants to attend working groups, which could alter the impartiality of participation since these participants will have a financial link with the European Commission.

Finally, as previously said, the composition of the expert groups cannot be delinked from discussions in these groups. It is advisable to apply **Chatham House rules on a case-by-case basis and not by-default option in EC expert groups** to allow for maximum transparency and accountability to European citizens. It could be granted only on an exceptional basis, upon request, for sensitive information or opinions (which should be narrowly defined). **Meetings should also as a principle be live webstreamed (or at least registered and uploaded online after the meeting)** so that European citizens can access information and see which interests are being defended in these expert groups and if the European Commission really has the public interest in mind.

7. Do you have any other comments?

Together with other civil society organisations, we call on the Ombudsman to ensure that the Commission conducts a thorough review of its Expert Group Horizontal Rules in 2015, which it currently has no plans to do, in order to incorporate the findings from this Own Initiative Inquiry.