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From: GMB Trade Union [REDACTED]
Sent: 25 August 2014 17:07
To: Euro-Ombudsman
Subject: [EOWEB] Response to European Ombudsman public consultation concerning the composition of European Commission expert groups
Attachments: Ombudsman consultation on EC Expert Groups - GMB response (Aug 14).docx

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Date Monday, August 25, 2014 5:07:13 PM CEST

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Subject Response to European Ombudsman public consultation concerning the composition of European Commission expert groups
GMB TRADE UNION RESPONSE to European Ombudsman Public Consultation on

The Composition of European Commission Expert Groups

GMB is the UK's third largest trade union with over 630,000 members across a wide range of sectors, both public and private. We confirm that this response is on behalf of our GMB members.

GMB has serious concerns about the transparency, bias, composition and representation in European Commission expert groups, and welcomes the European Ombudsman's decision to launch a public own-initiative enquiry on the issue.

Content GMB has taken action on this issue together with the European Trade Union Confederation (ETUC), other European trade union colleagues and social NGOs as an issue of acute and joint concern, by raising these concerns with MEPs in the European Parliament, who in turn have presented committee questions to the European Commission.

Our response to this public consultation refers to research carried out by the campaign group Corporate Europe Observatory (CEO), which is extremely valid and further highlights GMB's points.

GMB is pleased to see the Ombudsman take the concerns of the European Parliament, trade unions and wider civil society seriously, and we trust the Ombudsman will make the necessary bold recommendations for the European Commission to improve the representivity of its current and future expert groups.

In attachment: GMB's response to the consultation



GMB TRADE UNION RESPONSE to

European Ombudsman

Public Consultation on

The Composition of European Commission Expert Groups

August 2014

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Introduction and Background

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OMBUDSMAN OWN INITIATIVE INQUIRY INTO EXPERT GROUPS

GMB very much welcomes the Ombudsman's own-initiative inquiry into the composition of European Commission expert groups with a view to encouraging and supporting efforts towards achieving a more balanced composition of these groups.

GMB has raised its concerns about the overrepresentation of corporate interests in European Commission expert groups, together with European trade unions colleagues and social NGOs sharing our concerns, a number of times over the years with the European Commission as well as the European Parliament. The growing number of these groups reinforcing this pattern of imbalance is also a concern, and the justification for and legitimacy of the groups require further investigation.

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?

Expert groups are meant to advise and inform debate and progress with complex or controversial policy areas, yet an imbalanced representation will only serve to reinforce narrow view points, prejudices, or vested interests. Unless the lack of balance is tackled, people across Europe will become increasingly sceptical that the EU is anything more than a club for business and vested interests.

Expert groups – particularly economically and politically important ones – continue to be overwhelmingly dominated by corporate interests, which in some cases disproportionately occupy well over 50% of membership.¹

Annex 1 shows a (non-exhaustive) list compiled by CEO (Corporate Europe Observatory) of European Commission expert groups created since September 2012 with an unbalanced composition and in which the representation of corporate interests is never below 53%. Trade union representation ranges from 0 – 14%.

This contravenes the conditions set by the European Parliament when it lifted its one year budget freeze on expert group in September 2012, stating that no stakeholder should have a majority of seats.² Trade unions are clearly underrepresented in all expert groups, with many groups completely lacking trade union representatives.

It is important to highlight that, in line with the EU treaties, in addition to the obligation to consult EU social partners, the European Commission organises and administers wide-ranging sectoral and cross-sectoral social dialogue committees, which accept the validity of the social partners' input, on the principle of *completely* balanced numbers between trade unions and employers. Yet the European Commission chooses not to apply these same principles more systematically across the board by ensuring trade unions and employers are represented in equal number in its expert groups.

¹ Many examples are taken from the November 2013 ALTER-EU report *A Year of Broken Promises*, which focuses on European Commission expert groups created between September 2012 and September 2013, with additions from supplementary research. The figures were to our best knowledge correct at time of writing, and any changes since September 2013 are not included (e.g. the Stoiber Group was updated between September and November 2013). <http://www.alter-eu.org/documents/2013/11/a-year-of-broken-promises>

² The European Parliament conditions were: 1. no corporate domination of Groups; 2. no lobbyist sitting in Groups in a 'personal capacity' (i.e. pretending to be independent); 3. public calls for application for all new Groups; 4. full transparency.

The root causes of these enormous disparities are:

- an institutional culture within the European Commission which privileges corporate interests;
- the lack of diversity in backgrounds of European Commission officials and internal experts;
- the lack of knowledge and in some cases blatant ignorance of some European Commission officials on social policy, industrial relations matters and European Commission own obligations on social dialogue;
- the disparity in both human and material resources, between trade unions and civil society organisations and those representing corporate interests;
- The proliferation of expert groups that seem to bypass EU institutions and undermine the EU democratic decision-making process and public scrutiny.

Unfortunately, the prevailing European Commission view is one in which corporate interests are equated with public interests, despite the clear divergence between what corporations want compared to citizens, trade unions, consumer and environment groups.³ This bias can also be seen in the unwillingness of the European Commission to tackle the problem of privileged corporate access, even when highlighted by the European Parliament, trade unions and wider civil society, as well as an unwillingness to put effective rules in place to ensure public interest needs are met, let alone enforce existing ones. Even though the different DGs have taken different approaches, the European Commission Secretariat General – which oversees all expert groups – has refused to see the domination of groups by corporate interests as a problem.

A lack of transparency regarding which interest members represent (see answer to question three) has also contributed to the European Commission being able to continue creating groups that give undue influence to corporate interests. The European Commission shows nepotism in involving the same people, groups and associations again and again as part of its expert groups.

The ever growing number of expert groups also opens the door to more corporate membership, as trade unions and civil society organisations simply do not have the same resources as big business to participate actively in all groups.

The European Commission's clear bias towards corporate interests is feeding growing public disillusionment with the EU and its perception of the EU as a business machine that takes no interest in public concerns. This widespread institutional culture is unacceptable and must change.

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?

Personal Capacity

The European Commission considers experts present in a 'personal capacity' to be independent and not representative of an interest, and therefore excludes them from any calculations on expert group composition. However, all too often the label 'personal capacity' is used for individuals who represent corporate or policy interests, thereby skewing composition figures.

Indeed, many academics' departments and/or universities receive funding and have strong ties to the corporate world. Having lobbyists sitting in groups in a 'personal capacity' can mean that

³ Ironically, the short-termism that results from share-holder pressure and corporate governance structures mean corporations are undermining their own long-term interests which are served through sustainable social, environmental and economic policies that provide the environment within which they can operate.

advice the European Commission may believe to be independent is in fact related to a particular interest and therefore strengthens that voice within the group, impacting on public policy and privileging one section of stakeholders over the others. The trend of appointing an expert under 'personal capacity' is extremely worrying. The European Commission should instead appoint experts in a representative capacity, who will have much more legitimacy to respond to the issues at hand.

The European Parliament has called for no lobbyists or corporate executives to sit in expert groups in a personal capacity. The ETUC wants to go even further and abolish the category entirely, as every expert could be considered as representing an interest.

Conflict of interest

Much of the above stems from an institutional attitude where potential conflicts of interest are not seen as problematic because the individuals themselves are unduly trusted to act independently and in the public interest. This attitude is damaging on two levels: firstly (as mentioned above) it gives privileged access to certain stakeholders – who are not thoroughly checked or vetted – which can lead to the capture of public policy making. Secondly, it undermines the public reputation of the European Commission, which is supposed to be both transparent and above suspicion in the way it forms policy in the public interest. More robust selection and monitoring procedures of expert group members is required.

The European Commission's response that the problem is merely administrative – i.e. mislabelling of individuals in a personal capacity rather than as a 'representative of an interest' – is hardly an excuse, and merely highlights the pervading culture within the Commission (of seeing growth, particularly of big business, as the single most important goal) whilst failing to recognise the vested interest held by the individual expert, which may be incompatible with the public interest. Put bluntly, it seems the European Commission does not want other considerations, such as socio-economic or environmental, to be allowed to get in the way of an internal market that serves commercial and business interests. In this way, trade unions and other non-corporate interests are seen as a problem, rather than as part of the solution.

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 level of transparency regarding the composition of European Commission expert groups, in particular through the Register of Commission Expert Groups and Other Similar Entities, is insufficient.

In particular, the following problems regarding opacity of interests have been identified:

- The Register does not make clear the balance between stakeholders. In the 'Statistics' section it notes the number of types of members, e.g. personal capacity, organisation, etc, but fails to mention the number of members representing specific interests, which would give the public an ability to judge if particular interests are overrepresented.
- Furthermore, giving overall figures for interests represented would only work if organisations (and individuals) were properly labelled. There is currently great inconsistency among DGs and even within DGs as to which interest certain organisations belong. The Register has the 'category' field, within which 'NGO', 'Trade Union', 'Association' etc. is filled out, but this is rarely consistent or accurate. For example, amongst

groups created between September 2012 and 2013, more than 80% of organisations representing corporate interests were not labelled as such, with the worst culprits being DG TAXUD (which labelled most corporate interests 'Associations'), and DG AGRI (which labelled all stakeholders 'NGOs')⁴. Clear and accurate labelling of various interest groups (business, trade union, social NGO, environmental NGO, academic, etc) needs to be systematised for expert groups across all DGs, which could be done by providing a link to their entry in the transparency register, as well as giving the public more information on the overall interests and lobbying activities of expert group members. Furthermore, identifying the individual representative capacity of organisations currently lumped together as 'civil society' is vital to show more visibly the make-up of expert groups and any discrepancy or imbalance in members' numbers and influence.

The labelling of individuals is also problematic:

- Particularly in light of previously mentioned concerns around conflicts of interest, if an individual is part of an expert group in a 'personal capacity', a category which we reject (see above), then a clear declaration of interest (DOI) should also be published. Academics and independent experts must include information on any employment or funding they or their department, institution or organisation receive from corporate or commercial interests. This DOI should be thoroughly vetted and assessed by the European Commission and then monitored and updated regularly so as to ensure the independence of the individual expert. If it transpires that there are interests which the member has not declared, a fitting sanction (e.g. a ban for the individual and organisation from all expert groups for a set period of time) should be levied to ensure it works effectively as a mechanism.
- When an individual is not part of an expert group in a personal capacity, i.e. when they are representative of an interest, then all information on that individual and which interest they represent should be made clear, which is currently not the case. This should firstly include which stakeholder group they represent (rather than which industry sector they have expertise in), who they work for and which organisations they have commercial ties to, e.g. board memberships. This would allow the public to be confident of whom they are represented by and allow for a more comprehensive assessment of group composition. This was also called for by the European Parliament when demanding full transparency of expert groups.

The practice of publishing minutes and agendas online is improving, however there are some key improvements still to be made:

- Minutes and agendas should be added to the register as well as linking them to another website.
- Agendas should be placed online *before* a meeting, not afterwards.
- Minutes of a meeting should be placed online as promptly as possible
- The minutes should clearly show which stakeholders or groups of stakeholders have agreed or not (including minority views) or proposed which views, in order to give the public a clear idea of which interests are pushing for what. There is no agreement on secrecy within the European Commission, and all DGs should have to respect this – despite some such as TAXUD protesting. Additionally, reports and research concerning the discussions in the expert groups should be made public.

And on the expert group meetings themselves:

- Chatham House rules, which operate in some expert groups, for example in DG TAXUD's Platform for Tax Good Governance, are counter to the principle of transparency the

⁴ ALTER-EU, *A Year of Broken Promises*.

European Commission pretends it wants to promote, and should not be imposed. These rules make no sense for expert groups made up of individuals representing their organisation, as is the case for the Tax Platform. Besides, it is ironic that experts on fighting tax fraud and avoidance are bound by secrecy rules when these have been a key driver of tax fraud and corporate tax avoidance.

- The length and frequency of speaking time in expert group meetings must also be closely monitored and regulated to allow for a full balance of views to be expressed. In existing expert groups, there is a bias towards corporate and commercial interests, which are given greater opportunities to express their views, and are not interrupted by the European Commission chairs when they continue to speak for a disproportionate amount of time. It is not uncommon for trade unions and NGOs in particular to be treated with less respect. There is a pervading European Commission culture that sees the validity of the employers' voice as greater than that of the trade union or NGO – this clearly is unacceptable and must be remedied.

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. However, the European Commission leans too much towards business, commercial and technical expertise, and does not give the same weight to wider relevant socio-economic and environmental considerations crucial to the issue – even though all of these interests need to be covered. Furthermore, whilst mentioning all stakeholders within the call, as well as the need for balance, often a lack of definition of what balance means can make it difficult to hold the European Commission to account. It should be explicit that full balance is needed between commercial and non-economic actors as well as between social partners, and it should be clearly stated – as the European Parliament has demanded – that no single stakeholder should have a majority of seats.

Ensuring diversity across stakeholders should also go beyond merely stating it in the call for applications, as this has proved ineffective:

- The call for experts for the Platform for Tax Good Governance, aggressive tax planning and double taxation stated the need for diverse stakeholders with a view to striking a balance between different interests and for “international, preferably European level representatives”. Yet, of the 15 expert seats, the European Commission appointed five closely-linked employers' federations (the International Chamber of Commerce and the American Chamber of Commerce; BusinessEurope and its German and French members, BDI and MEDEF respectively), 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), three NGOs (Christian Aid, Oxfam and CIDSE), the tax justice network, and only one representative trade union, the European Federation of Public Service Unions (EPSU). Three other ETUC-backed trade union organisations applied but were rejected without a valid reason. This matter was raised with the European Parliament (including formal questions from MEPs), the Commission and the Ombudsman. An equal number of trade union representatives and employer or employer-linked representatives should be assured. We therefore expect the European Commission to either increase the number of representative trade union members or to reduce the number of employer representatives.
- In addition, there is no agreed period for calls for applications, which is a problem in itself. This should be set at six weeks to allow organisations with wide membership, such as the

ETUC, to consult and to give enough time for organisations outside Brussels to find out about the call and gather the necessary information. The European Commission has the duty to advise key stakeholder groups, and pre-call notices should be published on DG and wider European Commission websites. Currently, call publications are not visible enough.

- The European Commission should also raise awareness of upcoming calls for applications amongst its various stakeholder interest channels, including through its well-established sectoral and cross-sectoral social dialogues with social partners.

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?

European trade unions have consistently applied for membership of expert groups but have either been rejected outright or have found themselves to be extremely underrepresented.

The following list gives just a few examples of expert groups European trade unions GMB works with and/or is affiliated to have tried to join:

Lifelong learning (now Erasmus+) working group: social partners excluded.

CEDEFOP: attempts to reduce social partner membership.

EQF Advisory Group: the European Commission planned to extend the participation of national representatives from 1 to 2 persons, but ignored trade union demands that the second person be a trade unionist or at least to mention on the request for nomination letter that governments should consider to involve national trade unions.

EQAVET meetings: Demand to have a larger trade union delegation was refused, with the excuse that the ministries would not want to cover the extra costs.

Company law/corporate governance expert or reflection group: ETUC requests to become a member of this group were initially rebuffed. The composition was quite unilaterally business oriented. However, an ETUI expert was eventually taken on board for this and the next round.

High level group on business services: One trade union seat only (UNI Europa).

High level group on retail competitiveness: One trade union seat only (UNI Europa).

High level group on administrative burden: One trade union seat only (ETUC).

European Insurance and Occupational Pensions Authority, EIOPA: Although not an official expert group, this stakeholder group on occupational pensions has very similar characteristics and should be subject to similar rules. Occupational pensions are often provided by employers on the basis of a collective agreement. Therefore, trade unions and employers' organisations should both be part of such a stakeholder group in equal numbers. However, the available categories for the

stakeholder group do not take this into account. Employers are not represented as parties to collective agreements on pensions, and although there is a group of trade unions, they are only considered representatives of employees in Institutions for Occupational Retirement Provision (i.e.: employees in pension funds).

Tax good governance Platform: Whilst there is a higher representativity of NGOs and trade unions than in many other expert groups, the overall composition remains unbalanced in favour of corporate interest. As stated in our answer to Question 4, of the four ETUC-backed applications, only one was accepted (EPSU).

The application from the Austrian Federal Chamber of Labour (with support from the Austrian Trade Union Federation) was rejected. After officially complaining, the Chamber of Labour was offered a 'reserve seat' which was declined since that would neither change the lack of influence of trade unionists nor the imbalance of the group itself.

As the EPSU representative and alternate members are based in Brussels, the refund of travel expenses has not been an issue. However, the overrepresentation of corporate interests coupled with their larger human and material resources have worrying implications. They can invite additional staff to make presentations on specific issues. They can send both their representative and alternate members to the meetings, the latter taking the floor to reinforce the interventions of the former. Trade unions and social NGOs do not have the human resources to do the same.

The chair seems reluctant to intervene to ensure balanced participation in the debate, allowing the length and frequency of business interventions at meetings to dominate, which obstructs good progress with the mandate of the platform which is to support the implementation of the European Commission action plan against tax fraud and evasion. This is perhaps not surprising given some of those corporate organisations have no public records on fighting tax fraud and corporate avoidance. After one year of meetings, sadly little tangible progress has been made as a result.

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

Acceptance of the problem

The European Commission needs firstly to accept that corporate-dominated expert groups are not acceptable in a public interest institution, and it must reform its horizontal rules to ensure no single stakeholder has a majority – as demanded by the European Parliament.

There are already positive examples in certain DGs which have correctly interpreted balance as being between different economic and non-economic actors:

- DG ENTR has pledged to stop creating groups in which corporations have more than 50% of the seats (although it has yet to do so in practice – see annex 1)
- DG AGRI's decision for its new 'Civil Society Groups' to complement the Common Agricultural Policy explicitly mentions balance between economic and non-economic actors and a balance between stakeholders (although this has since been undermined through aggressive industry lobbying).⁵
- DG EAC believes its Erasmus Mundus Expert Group is balanced because “no single interests (business, trade union or otherwise) has a majority of the non-government and non-EU seats in the group”.⁶

⁵ CEO, *Will public trust in the EU be sacrificed to keep agribusiness happy?* (January 2014) <http://corporateeurope.org/expert-groups/2014/01/will-public-trust-eu-be-sacrificed-keep-agribusiness-happy>

⁶ Education and Culture, *Review of Expert Groups* (May 2012), accessed as a result of a freedom to information request http://www.asktheeu.org/en/request/review_of_expert_groups#incoming-1328

But in order to assess composition, full transparency is needed regarding classification of interests and declarations of interest, something which should be included in the new horizontal rules. This would prevent the European Commission from being able falsely to claim a balanced composition.

Responding to capacity limitations

If the difference in capacity makes it impossible to ever have enough civil society actors and trade unions for a balanced composition (as DG ENTR has experienced when trying to attract more civil society actors), then the number of other stakeholders should be reduced. The fear of losing expertise can be overcome through the expert group in question inviting experts for a hearing or to submit a paper, rather than giving them a permanent seat and decision-making powers. This is the approach taken by the World Health Organisation's International Agency for Research on Cancer (IARC).⁷

There are also other channels available to collect expertise and opinion, such as through consultations. And the European Commission should not forget that there are formalised ways of gathering expertise, such as the Social Dialogue or other forms of formal consultations of the social partners. And the European Economic and Social Committee brings together employers/business, trade unions and civil society groups. These structures and institutions need reinforcing, rather than developing new expert groups instead.

Paying for trade union and civil society working time is also more likely to increase participation, although only if groups feel it is a worthwhile undertaking. It would be useful to have clear financial reimbursement schemes for all non-profit organisations without corporate funding that would enable more participants from trade unions and civil society organisations to attend meetings.

Horizontal rules

The current horizontal rules on expert groups are too general and weak. Their application differs amongst the DGs and makes it difficult to keep an overview of all the groups. It is crucial to introduce universal, clear and transparent rules on the composition and the application as well as the mandate of expert groups, as demanded by the European Parliament. Arrangements for covering expenses and allowances for expert group members should also be consistent or this could influence the ability of members (particularly trade unions and NGOs) to participate. These rules need to apply horizontally to all expert groups and need to aim at a balanced composition. The establishment of expert groups must be done on the basis of open calls for participation, a transparent and objectively verifiable selection of experts against the call for application, and ensuring that balance of representation applies. It would also be useful to reduce the number of expert groups to make them more manageable and allow organisations with fewer available resources, such as trade unions and NGOs, to participate more proactively in them all.

7. Do you have any other comments?

Balanced outcome more than balanced composition

Equal representation may not necessarily lead to more balanced outcomes. A difference in resources means a difference in preparation, such as producing research or position papers for meetings. Equally, having half a group made up of corporate interests means that to balance it out all other interests (trade unions, consumers, environmental groups) would have to want exactly the same thing. In this sense, one must keep in mind that corporate interests often stand against the general interest of civil society and trade unions.

When thinking about expert group reform, we have to be careful not to assume that balanced

⁷ David Michaels, *Doubt is their Product*, Oxford University Press (2008), p. 255-57.

composition means balanced influence. This is also determined by the Member States present in some groups, as well as the European Commission itself and how it plans and conducts meetings (who presents, who gets the floor etc.). As mentioned above, the overrepresentation of business representatives in the Platform for Tax Good Governance means in practice that they take up a disproportionate amount of speaking time compared to other group members and are clearly obstructing progress.

We also need to ask the question of what we ultimately want – balanced groups or public interest policy-making? Corporate interests rarely conform to public interests. Equally, economic activity and impact on business is only one consideration when making public policy. Therefore, to give corporate interests undue influence over public policy making will only serve to narrow the parameters that our public officials are supposed to operate within.

Additionally, we must not forget that expert groups as such are not democratically elected entities with decision-making power. Expert groups have been gaining more importance which we see as highly problematical. Trade Unions as well as those representing corporate interests already participate in the EU legislative process through clearly defined structures, such as the Social Dialogue. Trade unions accept that the social dialogue is a mechanism that looks only at certain issues and perhaps not always in the detail required. There is therefore a place for expert groups to work alongside the social dialogue, but their work needs to be more focused and feed back into the social dialogue process and other established consultative structures (and vice-versa) more effectively. Reinforcing capacity building of existing structures and institutions will make it possible to share relevant work, and make it more open, transparent, and cost effective without excluding other valid civil society voices.

Fundamental conflicts of interest?

The re-labelling of 'personal capacity' experts' as 'representatives of an interest' brings up a more fundamental issue: should certain interests be allowed to sit in expert groups at all? Are the commercial interests of some organisations inherently opposed to the public interest? In the field of tobacco regulation, the WHO has drawn up strict guidelines, Article 5.3 of the WHO Framework Convention on Tobacco Control,⁸ which severely limit the contact between policy makers and lobbyists and ensure any contact is fully disclosed. It is internationally accepted that the interests of the tobacco industry are *de facto* never going to be in the interest of public health. This argument is applicable more widely: should the dirty energy industry have a say on climate policy, or risky investment bankers on financial regulation?

The argument that the European Commission lacks expertise can be dealt with by ensuring that the core group with decision-making and report-drafting powers is one made up of members who strictly represent the public interest or are truly independent. However, they would be charged with collecting information from external experts, including those who represent specific commercial interests. This would allow political oversight of technical information and ensure its inherent political nature did not inadvertently guide policy, whilst still benefitting from the expertise held by commercial interests. Given the importance of the work conducted by expert groups and the real and apparent conflicts of interest of some members, such a policy would clearly serve the public good.

The wider issue of the European Commission's own lack of diversity in the backgrounds of its personnel and internal experts must also be addressed. The European Commission should review and adapt its recruitment procedure to embrace more candidates from trade union and NGO backgrounds rather than the Florence/ Bruges/ domestic civil service fast-track, so as to better reflect the diversity of EU society interests and groups. Seconded national experts should also be drawn from a wider, more diverse and representative candidate base. Such a diversity in backgrounds, experiences and outlooks would help the European Commission gain more well-rounded internal policy, as well as counter its elitist reputation and bring the institution closer to the people of Europe. In addition, the European Commission must ensure that its civil servants are

⁸ World Health Organisation, *Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control* (2008) http://www.who.int/fctc/guidelines/article_5_3.pdf.

better informed and trained on the EU social dialogue process and related consultation rights.

Commission moving away from Expert Groups?

Worryingly, there are increasing examples of DGs not using the Register and instead creating groups which appear to share many of the same characteristics but are not officially expert groups.

For example:

- DG MARKT created a series of groups focused on self-regulatory outcomes, none of which are in the register:
 - o The *CEO Coalition to Make the Internet a Better Place for Kids* (2011)
 - o The *Safer Networking Taskforce* (2008)
 - o The *European Framework for Safer Mobile Use by Younger Teenagers and Children*
- DG ENTR also created a corporate-dominated group on Technical Advice that was not in the register but ran parallel to a group which was. It was cancelled after complaints.
- DG ENTR has also created the European Rare Earths Competency Network (ERECOM), comprising experts in three working groups, which have the same goal and form as expert groups but are not 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.

The European Supervisory Authorities (ESA)

Although not officially expert groups, the stakeholder groups within the ESA are also very problematic, and should be subject to new expert group horizontal rules to ensure the public interest is served. The 2011 selection of members was, especially in the case of the EBA-BSG and ESMA-SMSG, not done according to ESA's own legal obligation to ensure a balanced composition between the different categories, as well as a geographical and gender balance. Non-industry representatives were under-represented and the definitions of a 'user' or 'employee' representative were loosely interpreted. This brought UNI Europa to file a complaint with the Ombudsman, whose response acknowledged the clear imbalance and asked the ESAs to clarify how they can improve the selection process. GMB encourages the Ombudsman to push for putting in place clearer definitions.

Law-breaking corporations

Surprisingly, corporations that are found guilty of breaking either a Member State or EU-level law are allowed to continue advising the European Commission, even if the misdemeanour directly relates to the remit of the expert group. This is unacceptable and should be remedied.

Review of the Horizontal Rules for Expert Groups in 2015

We call on the Ombudsman to ensure that the European 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.

Annex 1 – Detailed and non-exhaustive list of European Commission expert groups created since 2012 with unbalanced representation (research from Corporate Europe Observatory)

Trade union representation is highlighted.

DG	Group name	Members	Composition of interests / Reason lacks balanced representation
AGRI	Expert Group on agricultural commodity derivatives and spot markets	16	94% corporate interests; 6% farmers – no civil society interest with knowledge on food speculation
ENTR	High Level Group on Business Services	19	74% corporate interests; 11% academia; 5% NGO; 5% SME; 5% trade union
ENTR	CARS 2020 Expert Group (& 4 subgroups)	80 (16x5)	63% corporate interests (ALTER-EU classified the International Motorcycling Federation as corporate due to its funding and corporate events); 25% NGO; 13% Trade Union
ENTR	KETs High Level Commission expert group (& subgroup)	64	59% corporate interests; 25% Hybrid; 9% Academia; 3% SME; 3% Trade Union.
ENTR	Expert Group for Bio-based Products	26	58% corporate interests; 19% academia; 19% Hybrid; 4% NGO
SANCO	European Unique Device Identification (UDI) Commission Expert Group	17	64.5% corporate interests; 23.5% professional association; 6% Hybrid; 6% NGO.
HOME	Data Retention Experts Group	7	100% corporate interests
JUST	Commission Expert Group on a European Insurance Contract Law	20	55% corporate interests; 20% academia; 5% hybrid; 5% NGO; 5% other; 5% professional association; 5% SME
RTD	Expert group for the evaluation of the overall performance of the European Innovation Partnership (EIP) concept and approach	5	80% corporate interests; 20% other
RTD	Expert Group on Intellectual Property Valuation	10	80% corporate interests; 20% academia
RTD	Expert Group on Retail Sector Innovation	11	64% corporate interests; 36% academia
RTD	Expert Group on Open Innovation and Knowledge Transfer	12	58% corporate interests; 25% academia; 17% hybrid
SG	Expert Group on a Debt Redemption Fund and Eurobills	10	70% corporate interests; 20% academia; 10% hybrid

SG	High Level Group on Administrative Burdens ⁹	15	60% corporate interests; 20% NGO; 13% SME; 7% trade union
TAXUD	VAT Expert Group	42	86% corporate interests; 5% NGO; 5% professional association; 2% academia; 2% SME
TAXUD	EU VAT forum	15	80% corporate interests; 13% professional association; 7% SME
TAXUD	Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation	15	59% corporate interests; 20% NGO; 7% academia; 14% trade union (7% in 2013)–. See more details below

Other groups created since September 2012 (n.b. in no way exhaustive)

DG	Group name	Members	Composition of interests / Reason lacks balanced representation
CNECT	High Level Group on the Future use of the UHF band	20	70% corporate interests; 20% public sector; 5% NGO
CNECT	Community of Practice for Better Self- and Co-Regulation	50	68% corporate interests; 16% hybrid; 8% academia; 6% NGO; 2% other
ENTR	Strategic Policy Forum on Digital Entrepreneurship	31 (OECD = gov)	70% corporate interests; 13% academia; 7% SME; 3% hybrid; 3% NGO; 3% trade union
MARKT	High Level Group on Retail Competitiveness	20	85% corporate interests; 5% academia; 5% NGO; 5% trade union
MARKT	Expert Group on the Review of the International Accountancy Standards Regulation	10 (excluding gov)	90% corporate interests; 10% SME

⁹ The Commission has since altered this group. Please see letters from the Secretariat General to the European Parliament regarding the new composition.