ZINCK Caroline

From: Marie-Hélène Ska [redacted]
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To: Euro-Ombudsman
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Expéditeur

Expéditeur Marie-Hélène Ska [redacted]
Date Friday, August 29, 2014 11:19:17 AM CEST

Vos informations

Partie 1 - Information sur l'expéditeur

Prénom	Marie-Hélène
Nom	Ska
Sexe	Féminin
Adresse courriel	[redacted]
Langue de réponse souhaitée	fr - français
Autre langue dans laquelle vous accepteriez une réponse (le cas échéant)	en - English

Partie 2 - Contenu

Sujet Réponse de la CSC de Belgique - Consultation publique sur le dialogue avec les groupes d'experts de la Commission européenne

Contenu

Madame la Médiatrice,

Faisant suite à votre initiative d'une consultation publique sur le dialogue avec les groupes d'experts de la Commission Européenne, nous avons le plaisir de vous communiquer le résultat d'un travail commun qui a été mené avec beaucoup de soins entre organisations syndicales, membres de la Confédération Européenne des syndicats (CES).

Il est vraisemblable que ce texte vous sera communiqué par de nombreuses autres organisations syndicales qui ont collaboré, d'une façon ou l'autre, à la compilation d'informations permettant de répondre aux diverses questions de l'enquête que vous avez initiée.

La répétition des mêmes arguments servira seulement à prouver le sérieux de ce travail mené en groupe et dont la valeur ajoutée est précisément d'être l'expression d'un travail sérieux et approfondi sur les questions que vous avez soulevées, avec pertinence.

Il ne s'agit en aucun cas d'une solution de facilité mais de démontrer le large soutien dont jouit le texte répondant aux 6 questions posées.

Les réponses ci-jointes montrent que le mouvement syndical européen est très profondément préoccupé par les problèmes persistants et fondamentaux en termes de composition déséquilibrée, de manque de transparence et de procédures d'application des groupes d'experts de la Commission.

Par ailleurs, nous souhaitons vous faire savoir combien notre organisation est préoccupée par la multiplication d'enquêtes très largement ouvertes au grand public **initiées** par la Commission européenne dans des matières qui traditionnellement, dans les systèmes de relations industrielles européens, sont

l’apanage des partenaires sociaux.

Les consultations sont utiles pour éveiller le sentiment d’appartenance à l’Europe mais elles ne peuvent remplacer le dialogue social qui est un des éléments du modèle social européen, là où sa compétence et sa pertinence ont été démontrées, de longue date.

Nous restons à votre disposition pour tout renseignement ultérieur.

Veuillez agréer, Madame la médiatrice européenne, nos salutations les plus distinguées,

Marie-Hélène Ska

Secrétaire générale de la CSC

Pour plus d’informations sur la CSC – Belgique, la Confédération des Syndicats Chrétiens de Belgique avec 1, 7 millions de membres et affiliée à la CES, veuillez consulter le site www.csc-en-ligne.be

OMBUDSMAN OWN INITIATIVE INQUIRY INTO EXPERT GROUPS

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 – particularly economically and politically important ones – continue to be dominated by corporate interests, in some cases occupying well over 50% of membership.

This contravenes the conditions set by the Parliament when it lifted the expert group budget freeze in September 2012, stating no stakeholder should have a majority of seats[12].
As far as trade unions are concerned, they are clearly underrepresented in all of the mentioned Expert Groups. Many groups completely lack trade union representatives, even when they are not corporate dominated.

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 sectoral and cross-sectoral social dialogue committees on the principle of *completely* balanced numbers between trade unions and employers. Yet the Commission chooses not to apply the same principle systematically across the board by ensuring trade unions and employers are represented in equal number.

The following groups were all created since the budget reserve was lifted in September 2012 and all lack balanced representation and exclude trade union representatives: Expert Group on agricultural commodity derivatives and spot markets, Expert Group for Bio-based Products, European Unique Device Identification (UDI) Commission Expert Group, Data Retention Experts Group, Commission Expert Group on a European Insurance Contract Law, Expert group for the evaluation of the overall performance of the European Innovation Partnership (EIP) concept and approach, Expert Group on Intellectual Property Valuation, Expert Group on Retail Sector Innovation, Expert Group on Open Innovation and Knowledge Transfer, Expert Group on a Debt Redemption Fund and Eurobills, VAT Expert Group, EU VAT forum, High Level Group on the Future use of the UHF band, Community of Practice for Better Self- and Co- Regulation, Expert Group on the Review of the International Accountancy Standards Regulation.

The following groups created since September 2012 include trade union representatives but still have more than 50% of their members representing corporate interests: High Level Group on Business Services, CARS 2020 Expert Group (& 4 subgroups), KETs High Level Commission expert group (& subgroup), High Level Group on Administrative Burdens, Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation, Strategic Policy Forum on Digital Entrepreneurship, High Level Group on Retail Competitiveness.

DG ENTR also formed an 'informal' Working Group for Technical Advice, parallel to the existing 'non-road mobile machinery' expert group, with the mandate “advising the commission in drafting

[1] Many examples are taken from the November 2013 ALTER-EU report 'A Year of Broken Promises', which focuses on groups created between September 2012 and September 2013, with additions from supplementary research. The figures were to our best knowledge correct at time of researching the report, and any changes since September 2013 are not included (e.g. the Stoiber Group was updated between September and November 2013).

[2] 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 new legislative proposal". This new informal group was completely industry dominated and undercut the ongoing work of the existing expert groups. When civil society groups complained, DG ENTR closed the group and claimed it was never an expert group.

Annex 1 shows a list of EU Commission expert groups created since September 2012 which has been complied by CEO (Corporate Europe Observatory) with an unbalanced composition in which corporate interest is never below 53%. However, this list is not exhaustive. The Expert Groups containing trade union members are highlighted. Their representation ranges from 0 – 14%. Annex 1 gives you a detailed list of expert groups and their composition.

The root causes are:

- an institutional culture within the European Commission which privileges corporate interests;
- the lack of diversity in backgrounds of Commission officials and internal experts;
- the lack of knowledge and in some cases blatant ignorance of some EC officials on social policy, industrial relations matters and EC 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 we fear bypasses EU institutions and undermines EU democratic decision-making process and public scrutiny.

Unfortunately the prevailing 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 Commission to tackle the problem of privileged access when highlighted by the Parliament or civil society, as well as an unwillingness to put effective rules in place to ensure the public interest is met, let alone enforce existing ones. Even though the different DGs have taken different approaches, the 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 Commission being able to continue creating groups that give undue influence to corporate interests, as it is far harder for the public to judge. The Commission shows nepotism in involving the same people, groups and associations again and again to become part of its expert groups.
The 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.

Another fundamental reason that groups are unbalanced is the lack of internal expertise, which – when combined with the institutional culture – means the Commission invites corporate interests to provide so-called technical advice (assuming that vested interests can be detached from technical expertise). However, collecting expert opinion (which is by its nature subjective rather than objective) does not have to equate to allowing all experts to take part in the drafting of reports or recommendations, or having any decision making capacity. If Expert Groups are very influential at the early stages of policy making, therefore the political aspect (i.e. decision making) needs to be held by a group representative of all stakeholders, including SMEs, trade unions and other parts of

[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.

civil society if the outcome is to be in the public rather than narrow commercial interest. The Commission often looks at issues too narrowly and fails to acknowledge the very relevant social, environmental and other sectoral impacts related to the technical issues under discussion, and which are crucial to social policy-making and regulation. Only by representing *all* these interests, in completely balanced numbers, can its expert groups ever be truly representative and work in the public interest.

Given the large number of Expert Groups in existence, the often large size of membership, and the disparity in 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. Therefore reducing the number of corporate interests within groups and increasing trade union numbers would allow more parity between employers and trade unions, as well as make the task of meeting overall balance easier.

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 Parliament called for no lobbyists or corporate executives to be sitting in expert groups in a personal capacity. However, as everybody represents an interest, the ETUC would go further and abolish the entire category.

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 for individuals who represent an interest (lobbyists), thereby skewing composition. 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 advice the Commission may have believed was independent is in fact related to a particular interest and therefore strengthens that voice within the group, impacting public policy and privileging one section of stakeholders over the others. The trend of appointing an expert under "personal capacity" is extremely worrying. The Commission should appoint experts in a representative capacity who will have much mire legitimacy to respond to the issues at hand.

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 in the public interest. This is damaging on two levels: firstly (as mentioned above) it gives privileged access to certain stakeholders – who are not thoroughly checked or vetted- that 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 members is

required.
The 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 (that of seeing growth, particularly of big business, as the single most important goal) whilst failing to recognise the vested interest that may be held by the individual expert, nor how that interest may not be compatible with the public interest. Put bluntly, it seems the 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 part of the solution.
See for example the groups in annex 2.

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 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, but fails to mention numbers of members representing specific interests, which would give the public an ability to judge.
- 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, among 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 TAXUD (who labelled most corporate interests 'Associations'), and DG AGRI (who labels all stakeholders NGOs)[4]. Clear and accurate labelling of various groups (business, trade union, social NGO, environmental NGO, academic) needs to be systematised for expert groups across all DGs, which could be done by linking their entry to the transparency register, as well as giving the public more information on the overall interests and lobbying activities of members. Furthermore, we believe that 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’ number and influence. Expert group members should be publicly listed according to their various interests and representative

[4]ALTER-EU, 2013, A Year of Broken Promises, available at http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf

roles, to ensure full transparency and allow the public to see clearly which expert groups are balanced and which are still riddled with disparities.

The labelling of individuals is also problematic:

- Particularly in light of previously mentioned concerns around conflicts of interest, if an individual is there in a personal capacity, which we reject (see comment 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 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 groups for a set period of time) should be levied to ensure it works effectively as a mechanism.
- When an individual is not there in a personal capacity, i.e. when they are there as a 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 who they represented and allow a more comprehensive assessment of group composition. This was also called for by the European Parliament when demanding full transparency.

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

- Minutes and agendas should be added to the register additionally to linking them to another website.
- Agendas should be placed on line *before* a meeting, not afterwards.
- Minutes of a meeting should be placed on line 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 allow the public a clear idea of which interests are pushing for what. There is no agreement of secrecy within the Commission, and all DGs should have to do 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 Commission claims it wants to promote, and should be removed. The rules make absolutely no sense for expert groups composed of individuals who represent their organisation, as is the case for the Tax Platform. Besides, it is ironic that experts on fighting tax fraud and avoidance would be bound by rules on secrecy, a key driver of tax fraud and corporate tax avoidance. The length and frequency of speaking time must also be closely monitored and regulated to allow for a full balance of views to be expressed. In existing expert groups, there is again a bias towards corporate and commercial interests, who are giving greater opportunities to express their views, and are not interrupted by the 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 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 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- but all of these interests need to be covered. Furthermore, while 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 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 stating it in the call for applications as it has been ineffective:

- The call for the group of experts called the Platform for Tax Good Governance, aggressive tax planning and double taxation stated the need for diverse stakeholders with a view to strike a balance between different interests and for "international, preferably European level representatives ". Yet, of the 15 expert seats, the EC 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) and the tax justice network ; and initially only one trade union, the European Federation of Public Service Unions (EPSU). Three other ETUC-backed trade union organisations applied but were rejected. The matter had been raised with the European Parliament, Commission as well as the Ombudsman. The point here that there should be an equal number of trade union representatives and employer or employer-linked representatives – in this case, it is 5 to 2. We therefore expect the Commission to either increase the number of trade union representatives or to reduce the number of employer representatives.

There is no agreed period for calls for applications, which is a problem in itself. In our view, it should be set at six weeks to allow organisations with wide membership, such as the ETUC, to consult, as well as allowing those beyond Brussels time to hear about it and inquire. The Commission has the duty to advise key stakeholder groups, and pre-call notices should be published on DG and wider EU Commission websites, as well as all members of the transparency register. Currently call publications are not visible enough. But for this to be effective, other complementary steps should be taken that ensure a wider pool of experts is reached, for example: using social media; targeting specific sectors through trade magazines and websites; asking civil

society organisations active in the field to publicise it among their networks; identifying areas where there are fewer applicants and reaching out in a more targeted way. The Commission should also raise awareness of upcoming calls for applications amongst its various stakeholder interest channels, including through its sectoral and cross-sectoral social dialogues with social partners. In the social field the social partner should be informed directly and automatically.

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?

As trade unions we have applied for memberships to Expert Groups and have either been rejected or have felt extremely underrepresented. The following list is comprised of examples of our experiences with Expert Groups.

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

CEDEFOP: attempts to reduce social partner membership

EQF Advisory Group: the Commission planned to extend the participation of national representatives from 1 to 2 persons. We demanded that the second person must be a trade unionist or at least to mention on the request for nomination letter that governments should consider to involve national trade unions. This was not taken up by the Commission.

EQAVET meetings: Demand to have a larger trade union delegation was refused giving as a reason that the ministries would not want to pay.

Company law/corporate governance expert or reflection group: in the past the ETUC did not succeed to have a representative in the Expert Group. The composition was quite unilaterally business oriented. However, an ETUI expert was eventually taken on board in this round and for the next round as well.

High level group on business services: One representative of UNI Europa is a member

High level group on retail competitiveness: One representative of UNI Europa is a member

High level group on administrative burden: ETUC has one seat.

European Insurance and Occupational pensions authority, EIOPA: Although not an Expert Groups or officially a similar entity, it has very similar characteristics and should be subject to similar rules. This is a stakeholder group on occupational pensions. Occupational pensions are often provided by employers on the basis of a collective agreement. Therefore, trade unions and employers' organisations would be relevant stakeholders for such a stakeholder group. However, the categories for the stakeholder group does not take this into account. There is no representation for employers in their respect as parties to collective agreements on pensions. There is a group of trade unions, but the description is about trade union representatives of employees in Institutions for Occupational Retirement Provision, that is 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 above, of 4 ETUC backed applications, only one was accepted, the EPSU. Earlier this year, another European trade union, not linked to the ETUC, joined the group in replacement of a social NGO who could no longer attend the meetings. This change however did not alter the balance of the group's composition.

The Austrian Federal Chamber of Labour (with support from the Austrian Trade Union Federation) applied for a membership to the Tax Platform in 2013. The application was rejected. After officially complaining the Chamber of Labour was offered a "reserve seat" which we 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, 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 length and frequency of business interventions at meetings are also obstructing good progress with the mandate of the platform which is to support the implementation of the EC 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 1 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 Commission needs to first accept that corporate-dominated Expert Groups are not acceptable when it is a public interest institution and reform the horizontal rules to ensure no single stakeholder has a majority – as demanded by the European Parliament. There are already positive examples in certain DGs who 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 is not managing to do so in practice, as the groups presented here show)
- 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]

But in order to assess composition, full transparency is needed regarding classification of interests

[5] http://corporateeurope.org/expert-groups/2014/01/will-public-trust-eu-be-sacrificed-keep-agribusiness-happy

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

and declarations of interest, something which should be included in the new horizontal rules. This would prevent the Commission being able to falsely 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 said expert for a hearing or to submit a paper, rather than giving them a permanent seat and decision making powers. This is an approach taken by the World Health Organisation's International Agency for Research on Cancer (IARC).[7] Equally, as the Commission continues to point out when civil society asks for greater representation, there are other channels for expertise and opinion to be collected, such as through consultations.

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. There is also the European Economic and Social Committee that puts together employers/business, trade unions and civil society groups. These structures and institutions need reinforcing rather than developing further new expert groups.

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, which is part of the problem. Their application differs among the Directorates General of the European Commission and make it difficult to keep an overview of all the groups. It would be extremely important to have universal, clear and transparent rules on the composition and the application as well as the mandate of Expert Groups, as demanded by 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 of the Groups. The establishment of expert groups must be done on the basis of open calls for participation, 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

[7] David Michaels, 2008, Doubt is their Product, Oxford University Press, p. 255-57

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 balanced composition means balanced influence. This is also determined by the member states present in some groups, as well as the 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

But 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, while corporations only employ one third of the population (the other two-thirds of the working population are employed by SMEs). 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 legislation 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 that 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 relabeling of experts in their personal capacity into '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 beyond the tobacco industry: should the dirty energy industry have a say on climate policy or risky investment bankers on financial regulation?

The argument that the 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, while still benefiting from the expertise held by commercial interests. Given the importance of the work conducted by Expert Groups and the real

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

and apparent conflicts of interest of some members, such a policy would clearly serve the public good.

The wider issue of the Commission's own lack of diversity in the backgrounds of its personnel and internal experts must also be addressed. The Commission should adapt its recruitment procedure to ensure candidates better reflect the diversity of society interests and groups including from trade union and NGO backgrounds rather than the Florence / Bruges/ domestic civil service fast-track. 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 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 Commission must ensure that their civil servants are 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 whereby DGs are 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

(The *CEO Coalition to Make the Internet a Better Place for Kids* in December 2011, a voluntary scheme for corporations to sign-up to in which the coalition forms a workplan with deadlines and performance indicators, as well as making recommendations;

(The *Safer Networking Taskforce*, formed in 2008, brought together social networks, researchers and child welfare organisations to develop a set of voluntary guidelines;

(The *European Framework for Safer Mobile Use by Younger Teenagers and Children* came out of a High Level Group discussion and sets out voluntary principles;

- As listed above, DG ENTR also created a corporate-dominated group that was not in the register but rather ran parallel to a group which was in the Register, but was cancelled after complaints;
- DG ENTR has also created the European Rare Earths Competency Network (ERECON), comprising experts in three working groups, which have the same goal and form as Expert Groups but are not in the register. Worryingly, the groups consist of (technical experts sometimes), business leaders and policy makers, which suggests an imbalance in composition.
- 'Workshops' (sometimes identified in the Impact Assessments) 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

Although not officially expert groups, the stakeholder groups within the ESA are also very problematic, and be equally subject to new expert group horizontal rule 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 its own legal obligation to ensure a balanced proportion between the different categories, and ensuring a geographical and gender balance. Non-industry representatives were under-represented and the definition of who can be considered to be a "user" or "employee" representative were loosely interpreted. This brought UNI Europa to file a complaint with the Ombudsman for the above-mentioned stakeholder groups. In 2013 her replies were much welcomed as they acknowledged the clear imbalance and asked the ESAs to clarify how they can

improve the selection process. We would like to encourage the Ombudsman to push for putting in place clearer definitions. “Financial services employees and their representatives” did not in the two previous selections have to be someone with trade union affiliation. This is highly unfortunate and leads to the non-affiliated person only speaking from her/his individual employee perspective. We therefore demand to ensure that for the 2015 selection process there are stricter definitions and that the employee representative has a clear trade union link.

Law-breaking corporations

Surprisingly, corporations who are found guilty of breaking either a member-state or EU-level law are allowed to continue advising the 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 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

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

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

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

Annex 2

DG	Group Name	RoI/PC[10]	Names and reasons
AGRI	High Level Steering Board for the European Innovation Partnership	2/10	[redacted]
BEPA	Science and Technology Advisory Council	7/15	[redacted]
CNECT	Young Advisors Expert Group on implementation of the Digital Agenda for Europe	20/25	[redacted]
CNECT	Community of Practice for Better Self- and Co- Regulation	10/15 (excl gov)	[redacted]

[10]Members appointed in their personal capacity when in fact they should be a 'Representative of an Interest' compared to total number of members appointed in their Personal Capacity: RoI/PC

			[redacted]
SANCO	Expert Panel to provide advice on effective ways of investing in health	1/11	[redacted]
HOME	Data Retention Experts Group	1/1	[redacted]
JUST	Commission Expert Group on a European Insurance Contract Law	1/7	[redacted]
RTD	EU Bioeconomy Panel	8/24	[redacted]

			[redacted]
RTD	Expert Group on Retail Sector Innovation	7/11	[redacted]

			[redacted]
RTD	Expert group for the evaluation of the overall performance of the European Innovation Partnership (EIP) concept and approach	5/5	[redacted]
RTD	Expert Group on Intellectual Property Valuation	8/10	[redacted]
RTD	Expert Group on Open Innovation and Knowledge Transfer	9/12	[redacted]

			[redacted]
RTD	Expert Group on Public Sector Innovation	3/9	[redacted]
RTD	Experts Group on the role of Universities and Research Centres in Smart Specialisation	2/7	[redacted]
SG	Expert Group on a debt redemption fund and eurobills	8/10	[redacted]

			[redacted]
SG	High Level Group on Administrative Burdens	1/1	[redacted]
TAXUD	VAT Expert Group	26/28	[redacted]