

Comments of the Commission in reply to 10 proposals from the European Ombudsman in her closing decision
- Own-initiative inquiry OI/7/2014/NF concerning the composition of Civil Dialogue Groups (CDGs)

I. Background

On 12 May 2015, the European Ombudsman opened an own-initiative inquiry concerning the composition of civil dialogue groups (CDGs) hosted by DG AGRI aiming at complementing her own-initiative inquiry OI/6/2014/NF and specifically at reviewing the appointment of members to the civil dialogue groups.

As a result, the inquiry OI/7/2014/NF was carried out against the background of the novel framework for civil dialogue in matters covered by the common agricultural policy, put in place with Commission decision 2013/767/EU of 16 December 2013. The objective of the own-initiative inquiry was to review how DG AGRI has implemented the novel framework for civil dialogue groups, in particular the requirement for balanced representation of economic and non-economic interests, when appointing members of the groups.

On 5 December 2014, with a view to allowing the Ombudsman to carry out such a review, the Ombudsman services carried out the inspection of DG AGRI files relating to the composition of DG AGRI's CDGs.

On 26 May 2015, a meeting between the representatives of DG AGRI and of European Ombudsman services took place. The main purpose of the meeting, requested by the Ombudsman services, was to determine which information, obtained at the aforementioned inspection and classified as confidential by DG AGRI, could be made public in the Ombudsman's official position on this own-initiative inquiry.

On 7 September 2015, the European Ombudsman informed the Commission of the final decision to close the inquiry and to make 10 recommendations for improvement and asked the Commission to inform her office by 29 February 2016 of any action in relation to her findings.

II. THE RECOMMENDATIONS

The European Ombudsman made the following recommendations.

The Commission and DG AGRI in particular, should:

As regards the process whereby 13 Civil Dialogue Groups were established in July 2014, the Ombudsman believes that, in order to further enhance the transparency of that process:

1. Publish the 2014 'Internal guidelines for selection panels for the selection of member organisations and the allocation of expert seats in civil dialogue groups' (Internal Guidelines).

2. Justify its decision to re-classify the organisations European Forum on Nature Conservation and Pastoralism (EFNCP), European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), Fédération Européenne pour la Santé Animale et la Sécurité Sanitaire (FESASS) and Union of European Foresters (UEF) as to their representing non-economic or economic interests. In case of erroneous re-classification, DG AGRI should reflect on whether a re-allocation of seats is necessary.
3. In the event of COPA (the Committee of Professional Agricultural Organizations in the EU) and COGECA (the General Confederation of Agricultural Cooperatives in the EU) being found by the Commission to be one single organisation, consider seriously the need to re-allocate seats falling vacant in the Groups as a consequence of this development.
4. Publish a revised version of the Director-General's decision of July 2014 on the composition of the Civil Dialogue Groups making sure to state (i) the total number of seats per Group; and (ii) the ratio of economic to non-economic interests represented in each Group.
5. In the revised version of the Director-General's decision of July 2014 on the composition of the Civil Dialogue Groups, (i) correctly identify the member organisations of each Group; (ii) link the member organisations of each Group to their respective profiles in the Transparency Register; and (iii) state the date of the Decision.
6. Remove the linguistic inconsistency in sentence three of Article 4(3) of Commission Decision 2013/767/EU.

As regards the establishment of Civil Dialogue Groups in the future (and bearing in mind that the current Groups have a further six years to run):

7. Define in general terms its concept of balanced representation as regards the composition of its Civil Dialogue Groups.
8. Set out, in any future calls for applications, an individual definition of balance for each Civil Dialogue Group. At the same time it should state the overall number of seats it intends to fill on each Group and how it proposes that the seats will be distributed between the various relevant interests.
9. Work with the over-arching categorisation of economic and non-economic interests when establishing Civil Dialogue Groups.
10. Justify objectively and record in writing, at the stage of preparing the decision on the composition of the Civil Dialogue Groups, how it exercised its discretion in allocating seats.

III. THE COMMISSION'S COMMENTS ON THE RECOMMENDATIONS

On the nature of CDGs

In her letter of 7 September 2015, the Ombudsman made some general remarks on the nature of CDGs.¹ The Commission wishes to point out that tasks to be performed by

¹ See pp.3-4, points 7 and 9, of the Ombudsman's decision of 7 September 2015.

CDGs, as indicated in article 2 of Commission decision 2013/767/EU, are of the same type of those carried out by many other expert groups set up by the Commission or its services in other areas. The fact that CDGs serve also as a platform for dialogue with relevant stakeholders does not alter their nature as Commission expert groups. Where the Commission's horizontal rules refer to the expert groups' general task of gathering expertise from various sources, that also includes gathering views from different stakeholders²; these two types of activities co-exist in many expert groups. As indicated in the Commission's reply to the Ombudsman as regards own-inquiry OI/6/2014/NF, expert groups are not set up to hold a debate of general nature with stakeholders or public opinion, but to assist the Commission on the basis of a well-defined mandate.

On the Ombudsman's recommendations to address the present situation

Concerning the publication of the Internal Guidelines:

The Commission considers that the selection criteria and the process detailed in DG AGRI's Internal Guidelines are well reflected in the public call for applications, launched on 1 April 2014. Likewise, DG AGRI Director-General's decision of July 2014 (available: at http://ec.europa.eu/agriculture/civil-dialogue-groups/index_en.htm) contains sufficient reasoning on how the decision concerning the allocation of expert seats in the CDGs has been taken.

Given that most of the elements of the selection process detailed in the Internal Guidelines are already public, the Commission takes note of the Ombudsman's recommendation and agrees to publish the internal guidelines on the Europa website with immediate effect (available: at http://ec.europa.eu/agriculture/civil-dialogue-groups/index_en.htm).

Concerning DG AGRI's decision to re-classify the organizations EFNCP, EFFAT, FESASS and UEF as to their representing non-economic or economic interests and an eventual re-allocation of seats is necessary.

At the outset, the Commission would like to clarify that it has never taken any formal decision on the classification of the above-mentioned organizations.

Commission Decision 2013/767/EU does not provide for a definition of an economic- or non-economic organization or interest and indeed in the case of some organizations the line between economic and non-economic interest is not easy to draw. Therefore, in its Internal Guidelines, DG AGRI provided some guidance to the panels to establish which member organisations are to be considered as representing economic³ or non-economic⁴ interests. In the call for applications, launched on 1 April 2014, the organizations were asked to submit a wide range of information, including the relevant section of the Transparency Register the organization is registered in and also the type of activities they are carrying out.

During the preparatory phase, including the work of the panels and the simulations made, a classification method was largely discussed. In particular, the question on the

² C(2010)7649, p.3

³ Section II of the Transparency Register

⁴ Other sections of the Transparency Register

appropriate classification of some organizations arose, since some of the organizations registered in section III (NGOs) of the Transparency Register appeared to undertake gainful activities, while some of the organizations registered in section II (In-house lobbyists and trade/professional/business associations) of the Transparency Register appeared to have some non-profit activities. The discussions about the appropriate classification of these organizations were internal and had however not resulted in any formal decision concerning a general classification method destined to the public or to those concerned organizations.

Concerning the eventual need to re-allocate seats falling vacant, in particular with regard to COPA and COGECA

COPA (the Committee of Professional Agricultural Organizations in the EU) and COGECA (the General Confederation of Agricultural Cooperatives in the EU) are and have always been considered as two separate organizations notwithstanding the fact that they have a joint secretariat in Brussels. The Commission sees no reason to consider them as being one entity for the following reasons. According to the information provided by these entities, they have their own specific objectives and they also have a different membership. Copa was created in 1958 and has 55 full members in 26 Member States. Its main objectives are to examine any matters related to the development of the Common Agricultural Policy; to represent the interests of the agricultural sector as a whole; and to seek solutions that pander to the common interest. Cogeca, on the other hand, was created in 1959 and has 30 full members in 23 Member States. Its main objectives are to represent the general and specific interests of European agricultural cooperatives; to contribute to developing cooperatives in general; and to provide a platform to hold political discussions and exchange views on policy issues and the added value of agricultural produce and businesses. In order to achieve their objectives, Copa and Cogeca maintain and develop their own relations with the Union institutions and with other representative organizations at European level.⁵ They also have separate identification numbers in the Transparency Register (Copa: 44856881231-49, Cogeca: 09586631237-74). It follows from the above that these organizations represent different interests as the first one represents the farmers and the latter the cooperatives. This is particularly important in the context of allocating seats in the CDGs, for which the interests represented by the organizations are taken into account.

In the light of the above, the Commission does not consider that there is a need to re-allocate seats falling vacant, in particular with regard to COPA and COGECA.

Concerning the publication of a revised version of the Director-General's decision of July 2014 on the composition of the Civil Dialogue Groups and the need to provide specific information on (i) the total number of seats per Group; and (ii) the ratio of economic to non-economic interests represented in each Group.

First of all, we would like to draw your attention to the fact that, in its Annex, DG AGRI's Director-General's decision of July 2014 includes a reference to the number of seats per CDG. Moreover, although the Decision at stake does not provide for the precise ratio of economic to non-economic interests represented in each CDG, the

⁵ See letter of Copa Cogeca of 25 February 2015 sent to SG and attached as an annex to the Commission reply to the EO prepared by SG on the own-initiative inquiry OI/6/2014/NF.

Commission considers that the balance can be assessed by interested stakeholders and the general public on the basis of the information contained in the Decision itself and the information currently available at: http://ec.europa.eu/agriculture/civil-dialogue-groups/index_en.htm. Lastly, a ratio such as 40/60 does not translate the complexity of elements taken into account during the selection process such as the overall number of application by organizations representing economic/non-economic interest or the fact that the organizations representing a non-economic interest had received almost full satisfaction with regard to the seats requested per CDG.

Concerning the need to (i) correctly identify the member organizations of each Group; (ii) link the member organizations of each Group to their respective profiles in the Transparency Register; and (iii) state the date of the Decision.

The Commission agrees to label correctly the organizations on the Register of Commission expert groups and other similar entities ('Register of expert groups') as well as on the dedicated webpage on Europa.

The Commission also agrees to link organizations to their respective profiles in the Transparency Register, once this will be technically possible, in the framework of a revised Register of expert groups, currently under preparation.

As for the date of the Director-General's decision, DG AGRI has already corrected this clerical mistake and a new, correctly dated, version of the Decision has been uploaded on the Europa website (available: at http://ec.europa.eu/agriculture/civil-dialogue-groups/index_en.htm) and on the Register of expert groups.

Concerning the need to remove the linguistic inconsistency in sentence three of Article 4(3) of Commission Decision 2013/767/EU

The Commission takes note of the recommendation by the Ombudsman and although it considers that the risk for misinterpretation or wrong application of that sentence is rather small, the Commission agrees to review the drafting on the first occasion when the Decision would require an amendment.

On the Ombudsman's recommendations for the future (recommendations 7-10)

In response to recommendations n° 7 and 8, the Commission confirms its position, as expressed in its reply to the Ombudsman on the own-initiative inquiry *OI/6/2014/NF* and recalls that the Commission is committed to ensuring a balanced composition in the groups. Nevertheless, whether a group benefits from a 'balanced' representation cannot be an exercise in arithmetic in relation to the number of experts present in each group. Various factors may determine the membership of an expert group, some of which are not possible to foresee in advance. The Commission, therefore, confirms that not only a definition of 'balance' cannot rely on figures alone but that any attempt to draw up such a definition, including for each and every CDG, on the basis of fixed criteria would not only face conceptual problems and be administratively burdensome in its application, but would also not provide any guarantees as to its effectiveness as it is not a given that, if introduced, any such definition would have a real impact on the group composition.

In response to recommendations n° 9 and 10, The Commission has strived to ensure a balanced representation in each CDG, taking into account the mandate of CDGs, the

type of expertise required, as well as the outcome of the selection procedure and in particular the number, relevance and quality of applications received.

Taking into account that the member organizations are appointed for a period of seven years and the current composition of the CDGs was established in 2014, the Commission considers it to be premature to review the decision setting up the CDGs at this stage. Indeed, it will be possible to take concrete actions with respect to these recommendations only by taking into account the experience that the Commission is certain to gather before the next appointment takes place. Moreover, the future horizontal rules on expert groups currently under preparation will also apply to these groups in the future.

The Commission commits to continuing improving the CDGs in view of making the selection process as transparent and inclusive as possible.