



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Jean Claude Juncker
President
European Commission

Strasbourg, 12/07/2017

Complaint 811/2017/EA

Subject of case: Whether the 'Group of Personalities on the Preparatory Action on Common Security and Defence Policy related research' should be considered to be a European Commission expert group

Dear Mr President,

On 12 May 2017, I received a complaint from the European Network Against Arms Trade (ENAAAT) against the European Commission. The complaint concerns the fact that the Commission did not consider the 'Group of Personalities on the Preparatory Action on Common Security and Defence Policy (CSDP) related research' ('GoP') to be an expert group and therefore did not register it in its Register of Expert Groups and Other Similar Entities ('the Register')¹.

The complaint fulfils the admissibility requirements, in that the complainant wrote to the Commission and received a reply which, in its view, failed to address its concerns in a satisfactory manner. I have therefore decided to open an inquiry.

The complainant raises three matters:

1. The Commission took too much time to respond to its letter (six months).

¹ <http://ec.europa.eu/transparency/regexpert/>



2. The Commission's reply is extremely short and does not explain why it did not consider the GoP to be an expert group which should be included in the Register. According to the complainant, the GoP met the criteria of an expert group - applicable at the point in time - and the Commission should therefore have considered the GoP to be an expert group and have included it in the Register.

3. The fact that the GoP's work has now ended does not prevent the Commission from including it in the Register, as the latter also includes information about past groups.

The complainant states that the Commission should include in the Register all the information about the GoP, including dates of meetings and lists of participants in all GoP and sherpas' (senior representatives) meetings, as well as the minutes of the meetings.

I note that, in response to a question from a Member of the European Parliament, the Commission has given two reasons for not considering the GoP as an expert group, namely i) the political and strategic nature of the advice requested from the GoP, and ii) the absence of technical experts.²

As regards the first reason, the complainant notes that the GoP report refers to GoP as "*a group of experts*" that presented "*specific proposals*" and "*a clear vision of the scope of the Preparatory Action, a workable format for its implementation*". The complainant thus believes that the GoP was not providing general political and strategic guidance only, as claimed by the Commission. I also note that the GoP played a significant role in preparing the Commission's European Defence Action Plan, including the proposal for a European Defence Fund.³

As regards the second reason, it might indeed be argued, given that the EU's High Representative Ms Mogherini was a member and Commissioner Bieńkowska chaired the GoP, that the GoP did not consist of 'technical experts'. However, I also understand that part of the GoP work was conducted by way of 'sherpas' meetings', that is, meetings between representatives nominated by GoP members.

While not having taken any position on the complaint at this point, I take this opportunity to reiterate some points I made in my decision concerning the Commission's Network on Unconventional Hydrocarbon Extraction ('the Network').⁴

- "*[...] However, it is the Ombudsman's view that it would be preferable for the Commission to choose to use an "expert group" if it wishes to obtain significant advice on important policies.*"

² <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-009217&language=EN>

³ By way of example, according to its report, the GoP proposed a total budget of at least €3.5 billion for the period 2021-2027 (€500 million per year) in order for the European Defence Research Programme (EDRP) to be credible and make a substantial difference. A European Parliament report on the European Defence Union (2016/2052/(INI)) made the same proposal. The Commission includes this recommendation in the European Defence Action Plan.

⁴ See points 19, 22-23:

<https://www.ombudsman.europa.eu/cases/decision.faces/en/77069/html.bookmark>



- “[...] The key question is, however, should it have been set up and operated as an “expert group”. The answer to this question depends upon actual work carried out by the Network.”
- “It is for the Commission to decide if it needs the input of an “expert group” on a specific matter. Where the Commission seeks in-depth, objective, independent advice and expertise – in relation to legislative proposals, policy initiatives, delegated acts, or the implementation of legislation and policies – it would, in the Ombudsman’s view, be preferable that it use an “expert group”. Choosing to structure a group as an “expert group” will have a positive impact on the eventual legitimacy, in the eyes of EU citizens, of the policies to the development of which that group has contributed. In contrast, if the Commission is not seeking policy advice, but is, for example, simply gathering information, it may be appropriate to choose lighter and more flexible structures.”

In view of the above, I would be grateful if the Commission would provide a full reply to the points raised by the complainant, as well as to my comments above. I would be grateful to receive the Commission’s reply by 29 September 2017.

Should your staff have any queries, they may contact Ms Rosita Hickey (+32 2 284 25 42) or Ms Elpida Apostolidou (+32 2 284 18 76), from my Office.

Attached to this e-mail, please find a copy of the complaint.

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosure: Complaint 811/2017/EA