

**Comments of the Commission on a request for information from the European Ombudsman**

**- Complaint by the European Network Against Arms Trade (ENAAAT), ref. 811/2017/EA**

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**I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY**

On 12 May 2017, the European Network Against Arms Trade (ENAAAT) submitted a complaint to the European Ombudsman (EO) about maladministration by the European Commission.

The Members of ENAAAT complain that they wrote to the Commission in relation to the Group of Personalities on the Preparatory Action for CSDP-related research (GoP) and received an answer that fails to address their concerns in a satisfactory manner.

On 12 July 2017, the European Ombudsman informed the President of the European Commission that the complaint fulfils the admissibility requirements. She decided to open an inquiry on the matters raised by the complainant.

**Group of Personalities on the Preparatory Action for CSDP-related research (GoP)**

In 2015, Commissioner Bieńkowska convened the GoP which held their first meeting on 30 March 2015. The GoP has proven very important in helping to shape the Commission's plans for the Preparatory Action and in providing strategic advice on the longer term aspirations for EU-funded defence-related research. The Members of the GoP included High Representative/Vice-President (HR/VP) Mogherini, a Member of the European Parliament (MEP), (former) members of national parliaments and governments, heads of research and technology organisations and company chief executive officers (CEOs).

Each Member of the GoP nominated a sherpa, who joined a working group reporting directly to the GoP, while the Commission (DG GROW) ensured secretarial duties. The European Union Institute for Security Studies (EUISS) acted as the rapporteur of the report containing the recommendations of the GoP.

The GoP met three times, and delivered on 23 February 2016 its report to Commissioner Bieńkowska. After this meeting the Group ceased to exist.

The report is publicly available: <https://www.iss.europa.eu/content/report-group-personalities-preparatory-action-csdp-related-research>

**II. THE COMPLAINT**

According to the EO, the complainant raises three issues:

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

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 of Commission expert groups and other similar entities ('the Register of expert groups'). 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 of expert groups.

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

The complainant states that the Commission should include in the Register of expert groups 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.

The Ombudsman further notes 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<sup>1</sup>. As regards the first reason, the complainant notes that the GoP report refers to the 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. The Ombudsman also notes that the GoP played a significant role in preparing the Commission's European Defence Action Plan, including the proposal for a European Defence Fund<sup>2</sup>.

### III. THE COMMISSION'S COMMENTS TO THE COMPLAINANT'S ARGUMENTS

1. The Commission registered the request by the Members of ENAAT on 23 May 2016 and sent its reply to them on 25 November 2016. The Commission regrets the long delay in replying to the request that was clearly unintentional. The request arrived at an extremely busy moment in the development of the Preparatory Action and the European Defence Action Plan (EDAP).

2. Due to the specific circumstances mentioned above, the responsible service prepared a short reply, yet briefly indicating the reason why the GoP could not be considered as a 'Commission expert group'. The Commission would now like to explain better its reasoning.

The Commission confirms that the GoP does not qualify as a Commission expert group in the sense of the Commission rules in place at the time of its creation<sup>3</sup>, as well as of the

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<sup>1</sup> <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-009217&language=EN>

<sup>2</sup> 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.

<sup>3</sup> C(2010) 7649

revised rules adopted by the College in May 2016<sup>4</sup>. In fact, in light of the provisions concerning the role and membership of expert groups, and taking into account the actual composition of the expert groups which have operated over the years, the Commission takes the view that 'Commission expert groups' are to be understood as advisory bodies operating at technical and/or administrative level. In particular, although the Commission's rules do not explicitly exclude the presence of members of Government or members of Parliament in Commission expert groups, the wording and spirit of those rules clearly point in that direction. This is particularly evident in the provisions on the membership of expert groups which indicate, *inter alia*, that the Commission interacts with Member States' competent authorities (which in turn appoint their representatives in the groups), not with the political level<sup>5</sup>.

Contrary to Commission expert groups, the membership of the GoP had a clear political prominence<sup>6</sup> and provided the Commission with strategic and political rather than technical advice. Furthermore, as the sherpas were nominated by the GoP and reported to the GoP's members, not to the Commission, they should not be considered as constituting a Commission expert group.

Defence policy has been identified as one of the priority areas of action in President Juncker's political guidelines<sup>7</sup>. As part of a comprehensive defence package following up the EU Global Strategy in the security and defence area, the Commission adopted the European Defence Action Plan (EDAP) on 30 November 2016<sup>8</sup>. The Commission indeed used recommendations formulated in the GoP report as strategic and political source of input, amongst others, for this policy document, in particular in outlining the research programme of the European Defence Fund. However, as the GoP ceased to exist already in February 2016, it was not a consulting body in preparing the EDAP.

In its report, the GoP formulated high level recommendations on the scope, governance and modalities which are to be further detailed by the Commission in developing the Preparatory Action and the future defence research programme. The Commission fully agrees with the Ombudsman's view that it should be assisted by Commission expert groups in further detailing the activities in the context of the Preparatory Action and the future defence research programme. The Commission therefore took the initiative to set up two expert groups which are registered in the Register of expert groups:

- The "As-If Programme Committee for Defence Research" (E03524) which consists of governmental experts to discuss and agree on the technical priorities of the EU Member States to be covered by the work programmes of the Preparatory Action and the future defence research programme;
- The "Advisory Group for the Preparatory Action on Defence Research" (E03523) which will consist of stakeholders from academia, research and technology organisations, and industry as well as the European Defence Agency and the EU Military Staff to provide technical advice to the

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<sup>4</sup> C(2016) 3301

<sup>5</sup> C(2010) 7649, Rule 8 and C(2016) 3301, Articles 7 and 9.

<sup>6</sup> One MEP (Gahler), one member of the Assemblée Nationale (Guigou), one member of the Polish Senat (Klich), one former Swedish Prime Minister and Minister (Bildt) and the HR/VPMogherini.

<sup>7</sup> The State of the Union 2016: "Towards a Better Europe – A Europe that Protects, Empowers and Defends", 14 September 2016.

<sup>8</sup> COM(2016)950 of 30.11.2016.

Commission to successfully implement defence research activities in the context of the Preparatory Action. In order to be considered, applicants need to prove that they possess such technical expertise. This expert group is scheduled to hold its first meeting in fall 2017.

3. In view of the above, the Commission is of the opinion that it was justified not to include the GoP in the Register of expert groups. The Commission would also point out that it is indeed possible to search for closed groups on the Register. However, it should be noted that these groups were classified as Commission expert groups while they were still active. In contrast, it would not be appropriate to list the GoP on the Register now that its activities have ended, and since the Commission does not consider the GoP a 'Commission expert group', for the above-mentioned reasons. Nevertheless, as mentioned above, the report prepared by the GoP and presented to Commissioner Bieńkowska is publicly available.

The Commission will treat requests for access to documents as regards the GoP in line with Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.<sup>9</sup>

#### **IV. CONCLUSIONS**

The Commission acknowledges that the response time to the original request from the complainants could have been shorter, for which it apologises, and that the content of the reply might not have been to their satisfaction. The Commission has in the meantime taken measures to avoid such incidents in the future.

On substance, the Commission remains of the opinion that neither the GoP (because of its clearly political orientation), nor the sherpa group (because it reported directly to the GoP) can qualify as a Commission expert group (or sub-group) and hence should not be included in the Register of expert groups. The documentation related to the GoP can thus not be made available via the Register of expert groups, but access to it can be requested through the usual procedures for requesting access to documents held by the Commission.

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<sup>9</sup> OJ L 145, 31.5.2001, p. 43.