

Reply by the Commission on a request for information from the European Ombudsman

- Own initiative inquiry, ref. OI/3/2024/KR

I. BACKGROUND

On 1 July 2024, the Ombudsman informed the Commission of the opening of an own initiative inquiry concerning the role of expert groups supporting the European Commission to prepare (legislative) proposals, as well as in implementing legislation, programmes, and policies. The Ombudsman indicated that the inquiry focuses *‘in particular on how the Commission ensures that the transparency measures in its rules are complied with in a meaningful way’*¹.

The Ombudsman also noted that this inquiry was a follow-up to an earlier inquiry on the composition and transparency of Commission expert groups (ref: OI/6/2014/NF), closed in November 2017.

II. THE COMMISSION'S REPLY

Before addressing the Ombudsman's questions, the Commission would like to recall some general features concerning expert groups and to draw the Ombudsman's attention to several arrangements and tools developed or improved over the years.

First, it should be recalled that expert groups are advisory bodies assisting the Commission in relation to various tasks, such as the preparation of new policy initiatives and new legislation, the monitoring of the implementation of existing legislation or the preparation of delegated acts. Expert groups do not take any binding decisions, they may formulate opinions, recommendations or submit reports. Thus, the Commission and its departments remain fully independent regarding the way they assess the expertise and views gathered from the experts.

Currently, there are around 660 expert groups and 460 sub-groups published on the Register of expert groups. In this reply, unless otherwise indicated, the term ‘expert groups’ covers also sub-groups of expert groups, and those advisory groups to the Commission created by the Union legislator (‘other similar entities’) and their sub-groups which have a similar or identical role to that of Commission expert groups and their sub-groups.

The legal framework pertaining to Commission expert groups is provided for in Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of those groups (‘the horizontal rules’)² which provided a positive response to many suggestions made by the Ombudsman in her earlier inquiry. As also pointed out by the Ombudsman in her Decision of November 2017, these rules significantly overhauled the expert group system by making it more robust, inclusive, and transparent.

Over the years, the Commission has established and improved an internal system, involving both responsible Commission departments and the Secretariat-General of the Commission (‘the SG’), aiming at ensuring that expert groups operate in compliance with the horizontal rules.

¹ Other areas of Ombudsman interest concern the manner in which the Commission applies the provisions in its rules to prevent conflicts of interest.

² Commission Decision C(2016)3301.

Each Commission department has one or more dedicated staff members that have a role of expert group coordinators. The Directorate-Generals' expert group coordinators are tasked to ensure first-level support on all questions related to the setting up and functioning of expert groups. In fact, the day-to-day work on organising the meetings, preparing documents, running the groups, and feeding the [Register of Commission expert groups and other similar entities](#) ('The Register of expert groups' or 'The Register') is fully decentralised and is done in each department for the expert groups placed under its responsibility. In this context, the SG provides support to Commission colleagues by offering tailored advice and expertise, notably as regards more complex cases or questions of horizontal nature.

Expert group coordinators are also part of a dedicated Commission network which meets periodically to discuss issues of common interest and other issues of relevance or novelties concerning expert groups. The network is also used to monitor and promote the correct implementation of the horizontal rules by Commission departments, notably in light of experience gained. The meetings of the network are prepared and chaired by the SG.

In addition to the above, the SG promotes and monitors the correct and coherent implementation of the horizontal rules in the following ways:

✓ **Checking key documents related to expert groups**

All documents related to the creation of new expert groups, the modification of existing groups or the calls for applications for selecting group members are checked not only by the coordinators of the Directorate-General ('DG') responsible but also by the SG, which contributes to coherent implementation of the horizontal rules. Furthermore, in cases where expert groups are set up or modified by Commission Decisions, relevant draft decisions are also checked by the Legal Service and other services concerned.

✓ **Offering reference material and instructions**

The SG provides a comprehensive package of supporting documents, training courses, and instructions to Commission departments running expert groups.

In particular, in September 2022 the SG issued detailed internal Guidelines for the services of the Commission on the 'Implementation of the Commission's horizontal rules on expert groups' ('the SG Guidelines') which were then slightly modified in October 2023 (SEC(2022)353/2, see annex).

The SG has also provided templates for all documents related to expert groups, which are published on the Commission's corporate pages concerning expert groups. This includes standardised forms for Commission Decisions for setting up expert groups, calls for applications with 'conflict of interest' forms, terms of references, and rules of procedures.

In addition, the SG is offering dedicated training courses for Commission officials dealing with expert groups several times per year, as well as more tailored training to specific DGs upon request, which also contributes to raising awareness and increasing knowledge in the DGs as regards the Commission policy and practices in the area of expert groups.

✓ **Co-managing and developing the Register of expert groups as a key tool for ensuring transparency on expert groups**

The Commission maintains and continuously updates the Register of expert groups. This is a collective effort, in which both the departments concerned, and the SG participate. In

particular, DGs are responsible for encoding information and uploading documents that are then validated by the SG and made available on the public Register.

Furthermore, the SG has constantly worked to improve the Register over the years:

Some of the latest developments of the Register include a new dedicated section concerning all sub-groups that offers more transparency as regards their existence and work, as well as their members and tasks. In addition, the Register has been integrated with other Commission systems: the Commission's Advanced Gateway to your Meetings application³ ('AGM') which is used for the sending of invitations and processing participants' travel expenses reimbursements, and the Hermes Ares NomCom ('HAN', the Commission Common Repository for all registered documents). This ensures that all documents are automatically exported between the systems and properly registered in the common repository.

Moreover, the SG verifies that Commission departments publish on the Register Commission decisions or terms of reference of the expert groups, calls for applications and, where required, rules of procedure⁴, and that any updates of these documents are also duly and timely published on the Register. As a result, the Register offers complete transparency about the tasks and the overall mandate of the expert groups.

Finally, the SG offers dedicated hands-on training on the Register of expert groups, addressed primarily to coordinators and colleagues responsible for encoding information and uploading documents on the Register.

Turning to the specific questions as formulated by the Ombudsman, the Commission's reply is provided below.

1. As regards the 1st block of questions on up-to-date information on the activities of expert groups:

a. Does the Commission offer any guidance to its staff members in charge of expert groups in relation to what documents expert groups are obliged to make public? If so, please provide relevant documents for inspection.

The horizontal rules⁵ require DGs to make available relevant documents of expert groups either on the Register of expert groups or via a link from the Register to a dedicated website where this information can be found. Exceptions to publication are possible under Art. 26.2 of the horizontal rules where it is deemed that disclosure of a document would undermine the protection of any public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001.

As mentioned above, the SG has issued detailed Guidelines on the implementation of the horizontal rules on expert groups (Annex 1). These SG Guidelines contain a dedicated section on transparency, and the question of transparency of documents is addressed in points 124 and 125 in the point 8.2 on transparency on documents. In addition, transparency is addressed in the above-mentioned training courses on expert

³ [Advanced Gateway to your Meetings \(europa.eu\)](https://ec.europa.eu/eu-justice/justice-portal/en/advanced-gateway-to-your-meetings)

⁴ According to Article 17(2) of Commission Decision C(2016) 3301, expert groups and sub-groups existing at the time of adoption of that Decision may continue operating without rules of procedure being adopted.

⁵ Commission Decision C(2016)3301.

groups provided by the SG.

- b. What does the Commission do to ensure that minutes on expert group meetings are meaningful? For example, do those responsible for drafting minutes on expert group meetings receive guidance in this regard? If so, please provide relevant documents for inspection.**

Point 113 in the section 6.2 on the management of expert groups of the SG Guidelines (Annex 1) reiterates the obligation laid down in the horizontal rules (Art. 13.7) that the minutes of the discussions on each point on the agenda and on the opinions delivered by the group should be meaningful and complete. Point 113 also refers to the dedicated template for minutes (Annex 2) available on the Commission's corporate webpages. In light of the diversity of topics discussed and tasks performed by expert groups, the Commission considers that a certain degree of flexibility in the way minutes are drafted, including on their structure and presentation, is justified and that this is compatible with the principle of transparency that the Commission strongly supports.

- c. How does the Commission ensure that all relevant documents, including agendas, are published in good time ahead of the meeting?**

The Commission services that manage the group are also in charge of preparing and publishing the agendas, minutes, and all relevant documents. The service responsible for the expert group is supported by a local coordinator for expert groups, in particular in relation to compliance with transparency-related provisions.

Furthermore, the Commission has recently implemented an important technical facilitation to that end via the Register of expert groups. As pointed out above, the Register of expert groups is now integrated with the Commission's Advanced Gateway to your Meetings application (AGM) which is an online tool offering an electronic workflow for the invitations to meetings organised by the Commission, and reimbursement processes. This means that when a new meeting of an expert group is organised, the relevant documents sent with the meeting invitation are automatically exported from the AGM to the Register of expert groups. The Commission service responsible then ensures that these documents are publicly available in the Register, unless it deems that publication would undermine the protection of any public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001, in compliance with Article 26(2) of the horizontal rules. Besides the efficiency gain, this integration allows services to ensure quicker, easier, and timely publication of relevant documents, such as agendas. This new feature became operational at the end of January 2024.

- d. In cases of long established expert groups, minutes from meetings held in the past may no longer be accessible. Does the Commission remove older minutes? If so, what are the criteria for doing so?**

As long as an expert group is active, information about its work, including the minutes of its meetings, are to be accessible on the Register. For groups that are closed, minutes of meetings and all other documents, except for declarations of interests of experts appointed in their personal capacity, are kept on the Register for 5 years after the closure of the group. Following these 5 years, the groups are archived, and the documents are not accessible to the public in the Register, but could nevertheless be

retrieved – if requested – by the Commission⁶.

2. The reply of the Commission concerning the 2nd block of questions on public and closed deliberations of expert groups is the following:

a. How many expert groups have been streaming their meetings online?

The data from the Register currently indicate that since December 2017⁷, there were 91 meetings physically open to the public, 41 meetings that were web-streamed, and 46 meetings that were both web-streamed and physically open to the public. Thus, in total, there have been 178 public meetings. This shows that public deliberations are to some extent being used by expert groups, following the introduction of this possibility by the Commission.

b. What incentives has the Commission put in place to encourage further openness and accessibility of expert groups' activities for the public?

The Commission wishes to clarify at the outset that the work of expert groups is not the same as holding public conferences, information sessions or workshops with stakeholders.

In fact, Article 1(2)(e) of the horizontal rules distinguishes the expert groups from expert gatherings for *ad hoc* events, such as one-off meetings and conferences. The very purpose of expert groups is to advise and assist the Commission, not to provide information or advice to the public. Meetings may require a confidential space to fully achieve the groups' goal. As indicated in the Communication accompanying the Commission decision establishing the horizontal rules on expert groups⁸, the work carried out by expert groups requires mutual trust. Experts should therefore be able to contribute freely to the work of expert groups in closed discussions, if this can ensure the smooth functioning of the group. This is without prejudice to ensuring transparency by publishing relevant documents, in compliance with the horizontal rules.

The Commission, however, recognises that in certain cases holding meetings of expert groups open to the public or web streaming these meetings may be beneficial and appropriate. Such a possibility is provided explicitly in Article 13(6) of the horizontal rules subject to 2 conditions: (i) agreement of the competent Commission service; and (ii) simple majority of all members being in favour of holding the deliberations publicly. Thus, the horizontal rules offer sufficient space to expert groups to decide how they want to operate, in a flexible way, with the agreement of all parties concerned, in light of its specific circumstances.

In the context of the Ombudsman inquiry on expert groups OI/6/2014/NF, the Commission confirmed to the Ombudsman that its aim in this area was to encourage more openness and to further publicise, among its DGs, the idea of holding public expert group meetings, whenever opportune. The possibility of holding public

⁶ As regards expert group meetings held prior to the adoption of the horizontal rules on 30 May 2016, due to the absence of the same transparency requirements, it may be that minutes of some of such meetings do not exist.

⁷ Before December 2017 data on public meetings are not available on the Register.

⁸ C(2016) 3300.

meetings has been included in all relevant templates, such as those for Commission decisions or terms of reference establishing expert groups, which has made this possibility clear to Commission staff and members of the groups. Furthermore, the SG has raised services' awareness on this point during the above-mentioned training courses. The Commission considers that by having taken these measures, it has followed up on its commitment.

- c. On what basis does an expert group decide to hold sessions that are closed to accredited stakeholder observers, and when are such closed door meetings considered appropriate?**

The notion of 'accredited stakeholder observer' is not clear to the Commission, as this term is neither used in the Commission's practice nor in the horizontal rules on expert groups, which only refers to members and observers. Both members and observers in expert groups have a permanent role; they are selected in view of their expertise, taking into account the tasks of each group. As indicated in Article 16(4) of the horizontal rules, observers and their representatives may be permitted by the Chair to take part in the discussions and provide expertise. However, they shall not have voting rights and shall not participate in the formulation of recommendations or advice of the expert group or sub-group. All members and observers of each group are indicated in a dedicated section in the Register.

Even though members and observers have permanent status, it is not mandatory for Commission services to invite all of them to each and every meeting of the group or sub-group at stake. The services may decide which type of members and observers to invite, for example, only stakeholders or only Member States' authorities. As indicated in point 34 of the SG Guidelines, services shall take that decision depending on the expertise they need in light of the topics on the agenda. This is part of the Commission's autonomy in managing expert groups, so that groups can best serve their purpose of providing advice and assistance to the Commission. There are, therefore, no 'closed door meetings' of the groups. In the majority of cases, the Commission invites all members and observers to expert group meetings, but there are some meetings to which only certain types of members or observers are invited, in light of the specific topics to be discussed.

- d. How many expert groups have held sessions that are closed to accredited stakeholder observers?**

Please see the explanations provided under letter (c) above.

3. As regards the 3rd block of questions on the availability of documents:

- a. Can the Commission explain why it uses various platforms for storing and making public documents related to the work of expert groups?**

Replied together with the questions under the letter (b) below.

- b. Would the Commission consider streamlining its information environment, for example by creating a single searchable portal for all the relevant documents related to expert groups? What would be the technical challenges to creating such a portal?**

The Register of expert groups has already been for many years *the* single entry-point

ensuring transparency on expert groups. As pointed out above, Commission services are required to make available relevant documents *either directly* in the Register of expert groups or *via a link* from the Register to dedicated websites. The Register, therefore, already functions as a portal.

Creating a single searchable portal for all relevant documents related to expert groups would entail a huge, disproportionate workload, as all documents currently only published on dedicated websites would then also have to be uploaded on the Register of expert groups. This would entail duplication of work, as many DGs would wish to continue and publish the same documents also on their websites, because that is where many stakeholders would usually search for and find not only documents related to expert groups, but also more information concerning the relevant policy area. For those users, who would start their search not via the Register but the DG websites, there would also be no advantage in the creation of a single ‘searchable’ portal. The Commission, therefore, considers that these flexible arrangements are justified and should be maintained, as they ensure sufficient transparency on the activities of expert groups.

The Commission would like to point out that transparency and user-friendliness have been increased by the already existing possibility for citizens and organisations to subscribe for notifications. This allows them to be automatically informed about new published calls for applications, or about changes in specific expert groups and to get other updates about the work of the groups to which they have subscribed.

Transparency and the ease of finding documents are also supported by information being made available elsewhere, where relevant. For instance, the Commission may consult expert groups with regard to different kinds of initiatives that it may take and, therefore, the existence or activities of expert groups may be reflected also in other registers that the Commission keeps. For example, the inter-institutional ‘Register of delegated and implementing acts’ also has a section on expert group meetings related to delegated and implementing acts⁹.

- c. How can the Commission improve the search options for documents related to expert groups in the short term? For example, does the Commission provide guidance to its staff on producing keywords that are linked to documents, as well as on giving titles to documents, to optimise document searches?**

In the Register of expert groups, documents can be easily found under the respective expert groups or under specific meetings. Furthermore, already now, the Register provides users with a wide range of search options. So far, the Commission has not received requests for additional search options.

The Commission is, however, open to examining the possibility to develop additional search facilities for documents published on the Register, taking into account the available budget, and based on a dedicated analysis, including of the usefulness for users of such additional search facilities.

4. Finally, concerning the 4th block of questions on the transparency of uptake of stakeholders’ views, the Commission wishes to provide the following reply:

⁹ <https://webgate.ec.europa.eu/regdel/#/meetings?lang=en>

- a. **How does the Commission ensure that it is clear to stakeholders how their views (and the views of other stakeholders) expressed in writing have been taken into account? For example, how often and in which circumstances does the Commission issue a table of “responses to comments”? If the Commission has issued guidance on this, please could it provide the relevant documents.**

Expert groups are tasked to provide the Commission with advice and expertise in a collective way, not per category of members or observers. As pointed out above, according to the horizontal rules, observers may be permitted by the Chair to take part in the discussions and provide expertise, but they do not participate in the formulation of recommendations or advice of the expert groups. The input produced by the expert groups is never binding on the Commission and, therefore, there is no Commission guidance to DGs about ‘reporting’ to the group on how its input has been taken into consideration nor a general practice of circulating a ‘response to comments’ – as done for stakeholder consultations (see explanation further below). Nevertheless, the Commission closely interacts with expert groups and steers their work with a view to gathering the advice and expertise that it needs to perform its functions. In this context, the Commission often informs the expert groups about how their views would be taken into account, while Commission documents often refer to the recommendations of expert groups.

It should also be recalled that expert groups are one among various sources of advice and expertise for the Commission. The final legislative proposals, policy initiatives, or other initiatives taken by the Commission may also benefit from other views received by the Commission, and they are, of course, also based on the Commission’s autonomous assessment and views.

As for the individual positions of members of expert groups, Article 13(8) of the horizontal rules provides that, in the event of a vote, the members that voted against or abstained shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports. The Commission is then fully aware of possible diverging views.

Finally, the explanatory memorandum for legislative and non-legislative proposals that the Commission submits to the European Parliament and the Council and the explanatory memorandum for delegated acts should describe how the act complies with the principles of better regulation, and in particular the stakeholder consultations and how the Commission has collected and used the expertise. For the preparation of delegated acts specifically, the Common Understanding on Delegated Acts (attached as Annex to the Interinstitutional Agreement on Better Law-Making¹⁰) provides that at the end of any meeting with Member States’ experts or in the follow-up to such meetings, the Commission services state the conclusions they have drawn from the discussions, including how they will take the experts’ views into consideration and how they intend to proceed and that those conclusions will be recorded in the minutes of the meeting (point II.5 of the said Annex).

As pointed out above, the purpose of expert groups is to advise and assist the Commission in relation to specific tasks, not to engage in public consultations with

¹⁰ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

relevant stakeholders. It is, therefore, important to distinguish the two aspects.

Outside the framework of expert groups, a ‘response to comments’ similar to the one referred to in the question, takes place in the framework of the stakeholder engagement approach of the Commission and it is widely made available and published online. All stakeholders who contributed to a public consultation activity in the context of better regulation receive feedback on how their contributions are used¹¹.

As a general rule, within 8 weeks from the closure of public consultations, the Commission provides a factual summary report. That gives already information at an early stage of the key results of the consultation. At a later stage, a synopsis report analysing, in more details, the results of all consultation activities (public or targeted) in relation to a particular initiative is annexed to the impact assessment report, evaluation (when relevant) or fitness check staff working document and it is also published. In that way, citizens and stakeholders have timely information on how their contribution was used in the policymaking process. These documents are available on *Have your Say* web portal¹², where citizens and businesses can share their views on public consultations and provide ideas and feedback on new and existing EU policies and laws.

The aim of the Commission is to promote the participation of Europeans and civil society in policymaking activities. According to the OECD, the Commission is among global leaders in stakeholder engagement. The OECD’s comparative assessment ranked the Commission’s stakeholder engagement system first in its most recent reports¹³.

b. Are stakeholders’ views anonymised in such documents and if so, why?

Article 23 of the horizontal rules lays down the rules about the publication of names of participants on the Register, and provides for a possibility that personal data of certain participants is not published, upon the respective individual’s request and provided that it is justified on compelling legitimate grounds in relation to his/her specific situation. More explanations about data protection aspects are provided also in Section 7 of the SG Guidelines (Annex 1), as well as in the relevant data protection records and the corresponding privacy statements.

As laid down in Articles 11(6) and 23 of the horizontal rules, personal data of certain types of experts, namely types A and B (individuals appointed in a personal capacity and individuals appointed to represent a common interest shared by stakeholders) is published on the Register and is not anonymised in the documents provided therein.

For other members (type C, D and E), the rule in Article 23(1) (c) and (d) of the horizontal rules is that the name of members’ or observers’ permanent representatives (i.e. individuals who have been appointed as permanent representatives of organisations, Member States’ authorities and other public entities) may be published on the Register. In practice, the name of members’ or observers’ representatives of

¹¹ See [Better Regulation Toolbox, chapter 7 on stakeholder consultation](#), notably Tool#54, Sections 2.1 and 2.2, pp.483-488

¹² https://ec.europa.eu/info/law/better-regulation/have-your-say_en

¹³ For instance, OECD OECD Regulatory Policy Outlook 2021, available at https://www.oecd.org/en/publications/oecd-regulatory-policy-outlook-2021_38b0fdb1-en.html

expert groups is published on the Register if the individual concerned consents. Therefore, often documents published would not include the personal data of members' representatives and would only refer to the name of the member, i.e. a legal entity/name of an authority/body or the organisation concerned whose position the appointed representative expresses.

The dedicated template for minutes, referred to by point 113 of the SG Guidelines (both annexed to this reply), also recalls this guidance.

Personal data of participants in the work of expert groups are to be managed in compliance with relevant data protection records: *Providing a public register of Commission expert groups and other similar entities* (Reference: [DPR-EC-00656.3](#)); and *Selection of members of Commission expert groups and other similar entities* (Reference: [DPR-EC-01066.6](#)). According to these records, personal data that are not published on the Register, such as email addresses, contact details, are to be processed only by the relevant Commission officials on a 'need to know' basis. In particular, section 5 of record DPR-EC-01066 explains that the only recipients of personal data of experts are Commission staff who are responsible for the selection of members and observers in Commission expert groups.

III. CONCLUSIONS

Since the adoption of the horizontal rules on expert groups in 2016 the Commission has put in place or improved several important measures aiming at ensuring a coherent implementation of the horizontal rules, including the transparency-related provisions laid down in them. This includes a comprehensive package of materials and instructions, significant administrative initiatives and arrangements, as well as major IT improvements in relation to the Register of expert groups. The Commission is open to consider possible further proportionate improvements as regards additional search facilities for documents published on the Register of expert groups.

For the Commission
Maroš ŠEFČOVIČ
Executive Vice-President



Enclosures

Annex 1: Guidelines for the services of the Commission ‘Implementation of the Commission’s horizontal rules on expert groups’, SEC(2022)353.

Annex 2: Standard Template ‘Minutes of the meetings of expert groups’



IMPLEMENTATION OF THE COMMISSION'S HORIZONTAL RULES ON EXPERT GROUPS

Guidelines for the services
of the Commission

Secretariat-General, October 2023

This version cancels and replaces the previous version from September 2022

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Guidelines for the services of the Commission

1. These guidelines aim to promote correct and coherent implementation of the horizontal rules on expert groups established by Commission Decision C(2016)3301 (**'the horizontal rules'**)¹.
2. Expert groups are **advisory bodies** providing the Commission and its services with advice and expertise², and which operate at technical and/or administrative level. Expert groups are published on a public, dedicated Register³.
3. **These guidelines should be read together with the horizontal rules** as they do not fully replicate the provisions or definitions in the horizontal rules.

1 SCOPE

4. The guidelines apply to **all Commission expert groups** and their sub-groups, as defined in Articles 2(1) and 14 of the horizontal rules.
5. **Informal expert groups**, i.e. groups established at the level of the DG⁴, have to comply with the horizontal rules regardless of whether they were created before or after the adoption of the horizontal rules.
6. In principle, the same applies to **formal expert groups**, i.e. groups set up by a Commission decision⁵. In the case of formal expert groups created by Commission decisions before the horizontal rules entered into force, they remain valid and are to be fully implemented even if some provisions they include differ from the horizontal rules. However, as far as possible, when those decisions are being amended or replaced for the first time they should be brought into compliance with the horizontal rules.
7. The horizontal rules also apply to the **'other similar entities'**, as defined in Article 2(2) of the horizontal rules, for any aspect which is not regulated in the legislative act which created them. However, the creation of advisory bodies to the Commission should be the prerogative of the Commission itself. Thus, Commission services should not introduce or accept provisions in legislative acts which establish or ask the Commission to establish expert groups. Services should contact the Unit 'Institutional Affairs' in the Secretariat-General (functional mailbox 'SG EXPERT GROUPS') and the 'Institutional Team' in the Legal Service (either the functional mailbox 'SJ-CI-INST@ec.europa.eu' or if sent via Ares the

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¹ Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups, C(2016) 3301. [Register of Commission Documents - C\(2016\)3301 \(europa.eu\)](#)

² C(2016) 3301, Articles 2 and 3.

³ [Register of Commission expert groups and other similar entities \(europa.eu\)](#)

⁴ C(2016) 3301, Article 4.1.

⁵ Ibidem.

virtual entity 've_sj.inst')⁶, as soon as any such provision is proposed by the Parliament and/or the Council.

8. The horizontal rules **do not apply to other types of groups**, such as comitology committees, sector and cross-industry social dialogue committees and 'special groups' as referred to in Annex 1 of these guidelines, as well as to *ad hoc* events. For more detailed information on these aspects, please see Article 1.2 of the horizontal rules and Annex 1 to these guidelines.

2 SETTING UP OF EXPERT GROUPS AND SUB-GROUPS

2.1 Procedure to set up expert groups and sub-groups

FORMAL EXPERT GROUPS

9. The preparation and adoption of a Commission decision setting up a formal expert group take place according to existing administrative requirements which generally apply to Commission decisions (formal interservice consultation, translation, written procedure). Before launching the formal interservice consultation, Commission services are encouraged to consult informally per email the Unit 'Institutional Affairs' in the Secretariat-General on the draft Commission decision, by writing to the functional mailbox 'SG EXPERT GROUPS'.

INFORMAL EXPERT GROUPS

10. Within the responsible service, the setting up of informal expert groups should be approved at the level of the Director-General. The relevant documents (terms of reference, calls for applications, rules of procedure) should be approved at least by the middle management.

AGREEMENT OF THE RESPONSIBLE COMMISSIONER AND VICE-PRESIDENT TO ESTABLISH AN INFORMAL EXPERT GROUP

11. The **agreement of the responsible Commissioner and Vice-President** (Article 4.1 of the horizontal rules) is required for the setting up of informal expert groups, unless the College has already adopted a financing decision or work programme to set up the expert group.
12. Depending on the working arrangements between the service and its Cabinet, the agreement of the Commissioner and Vice-President to set up an informal expert group may be asked **either per email⁷ or by a note registered in Ares**. A good practice is to ask for the agreement of the Commissioner and Vice-President on the basis of the draft **terms of reference ('ToR')** drawn up in accordance

.....
⁶ In that case, please add in the subject of the message/note 'expert group'.

⁷ From a document management perspective, it is good administrative practice to register also the email exchanges in ARES.

with the template and already agreed with the Unit 'Institutional Affairs' in the Secretariat-General (see point 14). If the Commissioner's or Vice-President's Cabinet requires changes on substance to the ToR, the service should check with the Secretariat-General whether those changes are acceptable from an institutional point of view. **The agreement** of the Commissioner and Vice-President to set up an informal expert group has to be provided **in writing** (an email from a member of the Cabinet is enough) and **must be uploaded in the Register of expert groups** as a condition for the group to be established and published. This agreement will not be publicly available, and will remain in the Register's back office.

13. The **agreement** of the Commissioner and Vice-President is **not required for the creation of sub-groups**, because these always operate within the mandate of the main expert group which has already been approved. The setting up of a sub-group should be approved at least at the level of the middle management. In sensitive cases, the respective Cabinets should be informed.

AGREEMENT OF THE SECRETARIAT-GENERAL TO ESTABLISH AN INFORMAL EXPERT GROUP OR SUB-GROUP

14. The agreement of the Secretariat-General (Article 4.5 of the horizontal rules) is needed to set up an informal expert group or sub-group. Commission services should consult per email the Unit 'Institutional Affairs' in the Secretariat-General, by writing to the functional mailbox '**SG EXPERT GROUPS**' and **obtain its agreement** on relevant draft documents (terms of reference, rules of procedure, call for applications), **before** uploading them for validation in the Register of expert groups.
15. Services should envisage a **minimum deadline of 5 working days** for this consultation. Depending on the complexity and overall number of documents/issues on which the Secretariat-General is being consulted, **the time for response might be longer**. Therefore, **DGs are kindly requested to consult the Secretariat-General in good time**.
16. Commission services must upload in the Register of expert groups the email of the Secretariat-General approving the documents for the group; this agreement will **not** be **publicly available** and will remain in the Register's back office.

MODIFICATIONS OF EXISTING GROUPS

17. **When there is a change** in the name, mission, tasks, membership, duration or other aspects of the expert group or sub-group, the Commission service should prepare modifications in the Commission decision, **ToR** and/or rules of procedure ('**RoP**'). In this case, services should consult the Unit 'Institutional Affairs' in the Secretariat-General. The agreement of the Commissioner and Vice-President is not required for **minor modifications** of the ToR or RoP for informal expert groups or sub-groups, which may be approved by the middle management of the

DG concerned. However, **substantial amendments to the ToR concerning key elements**, such as the tasks or the type of membership of the group, do require the agreement of the responsible Cabinets and should be approved by the Director-General.

2.2 Documents: Commission decisions, terms of reference and rules of procedure

18. According to Article 5 of the horizontal rules, when setting up an expert group the Commission or its services should define the **mandate** and the tasks of the expert group as precisely as possible, while also indicating the area of activity and the type of advice required.
19. Thus, in principle, all expert groups, regardless of the date when they were created, should have their own mandate. In practice, the document which sets out the mandate of any given group is either the **Commission decision** setting up a formal group or the **ToR** in the case of informal expert groups. The Commission (in the case of formal groups) or its services in agreement with the Secretariat-General (in the case of informal groups), adopt these documents alone, without drafting or negotiating them with current or future members of the expert group or sub-group. As laid down in Article 3 of the horizontal rules, Commission services wishing to set up an expert group shall also informally consult other relevant services, in order to ensure coordination and avoid duplication.
20. Templates are available on My IntraComm expert groups' page for both a Commission decision and ToR⁸. Most of the provisions included in these templates are mandatory, as they flow from the horizontal rules. Commission services are required to adapt the templates only concerning those aspects which may vary from one group to another (such as background, tasks and composition), to the extent necessary, and always in compliance with the horizontal rules.
21. **Sub-groups**, i.e. working groups set up by competent Commission services under the main expert groups, should also have a defined mandate. In practice, services setting up sub-groups are in charge of drafting ToR for them. A **simplified template for ToR of sub-groups** describing their specific aspects is available on My IntraComm⁹. For anything not explicitly mentioned in the sub-group's ToR, the sub-group should operate in compliance with the Commission decision or ToR and the RoP of the main expert group to which the sub-group belongs.
22. As regards the '**other similar entities**', the legislative act which set them up would usually define their mandate and composition and may also sufficiently define relevant aspects concerning their functioning. If so, ToR are not needed. Instead, if the legislative act in question does not sufficiently specify key aspects concerning the operation of a given 'other similar entity', the responsible

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⁸ Templates are available at : [Expert groups \(europa.eu\)](https://expert-groups.europa.eu)

⁹ Ibidem.

Commission services should discuss with the Unit 'Institutional Affairs' in the Secretariat-General (functional mailbox 'SG EXPERT GROUPS') the necessity to prepare ToR. If needed, these ToR, which must always comply with the provisions of the basic act, should be drafted on the basis of the relevant template (see point 20), and should contain provisions on aspects which are not regulated in the basic act, always within the limits of what is provided for in the basic act.

23. Concerning **transparency**, it is not mandatory to publish the Commission decision setting up an expert group in the Official Journal of the European Union. This is optional. However, in the interest of transparency, relevant Commission decisions setting up formal expert groups, ToR for informal expert groups, as well as a link to EUR-Lex with legislative acts establishing 'other similar entities' **must be made available** on the Register of Commission expert groups and other similar entities ('the Register of expert groups'). Commission decisions setting up formal expert groups, as well as ToR for informal expert groups should be made available in Pdf format.
24. The RoP are an operational document governing only the **procedural aspects of the work of the group**. Thus, **RoP should not introduce new elements on substance**, compared to the provisions included in relevant Commission decisions or ToR creating the group in question. Commission services should obtain **the agreement of the Secretariat-General** (functional mailbox 'SG EXPERT GROUPS'), **before** submitting draft RoP to the group for approval (see below). Furthermore, services should resist any attempt from the group's members to include provisions going against the group's mandate and/or the horizontal rules. The RoP are adopted by a simple majority of the group's members, on a proposal by and in agreement with the Commission service¹⁰. **Once the group adopts the RoP, the service must publish them in Pdf format on the Register of expert groups**. Commission services should draft RoP by using the **template**¹¹. As for other templates, most of the provisions it includes are mandatory, as they flow from the horizontal rules. Commission services are required to adapt the content of the template for RoP only for operational aspects, to the extent necessary, and always in compliance with the horizontal rules. As some provisions are to be included both in the RoP and in the group's mandate, it is **essential to ensure full coherence between RoP and the Commission decision setting up a formal expert group or ToR related to an informal group**.

10 Ibidem.

11 Expert groups (europa.eu)

25. **Rules of Procedure (RoP) are mandatory for all groups set up as of the date of the adoption of the horizontal rules** (30 May 2016). Groups existing at the time of adoption of the horizontal rules may continue operating without rules of procedure¹².
26. **RoP are not required for sub-groups**, as these should operate in compliance with the RoP of the main expert group to which sub-groups belong. If, for well justified reasons, Commission services wish to have different RoP for sub-groups in relation to specific aspects (for example, deadlines for sending documents to the sub-group members), this should be spelled out in the main expert group's RoP.

2.3 Date of creation of groups

27. **Formal** Commission expert groups are created when the respective Commission decisions enter into force.
28. For **informal** Commission expert groups, the day of their validation in the Register of expert groups is usually considered as the day on which they start existing. Should an informal expert group be published on the Register, due to an administrative error, only after it has started operating, it is considered that the day of the first meeting is the day of the group's creation.
29. The '**other similar entities**' start existing on the day of entry into force of the legislative act which established them, unless otherwise provided.

3 PARTICIPANTS IN EXPERT GROUPS

3.1 Members, observers, invited experts

30. The horizontal rules clearly distinguish between **members, observers** and **invited experts**.
31. **Members and observers have permanent status**, although they have **different rights** and are subject to different administrative procedures.
32. On the one hand, **members** can participate in the discussions and in votes, and they may be appointed as rapporteurs and participate in the formulation of the recommendations or advice of the expert groups or sub-groups.

.....
¹² C(2016) 3301, Article 17.

33. **Observers**, on the other hand, can participate in the discussion and provide expertise, but they have no voting rights and are not allowed to participate in the formulation of the recommendations or advice of the expert group or sub-group¹³.
34. Even though members and observers have permanent status, **it is not mandatory for Commission services to invite them to every meeting of the group or sub-group**. The service may decide which members and observers to invite, depending on the expertise it needs in light of the topics on the agenda. Services should inform members and observers, if possible from the beginning that this is the case to avoid any misunderstanding. Nevertheless, even if not all members have participated in the discussion on certain issues, all of them have the right to participate in all votes.
35. **Member states' authorities** can **only** participate as **members** in expert groups and sub-groups.
36. **'Invited experts'**¹⁴ are individuals invited to meetings of the expert group or sub-group **on an ad hoc basis**. They are usually independent experts or representatives of stakeholders or public entities with special knowledge on a topic on the meeting's agenda; they would usually be invited to make a presentation on that topic.
37. Members or observers in the group may ask for external experts to be invited to a meeting. The Commission service decides whether or not to do so. .
38. The participation of invited experts should be reflected in the minutes of the meeting. As they do not have permanent status, they are not registered in the Register of expert groups and they are not required to register in the Transparency Register.

3.2 Difference between members and representatives

39. Article 7.2 of the horizontal rules describes the different categories of possible members, while Article 16.1, by way of reference to Article 7.2, defines the possible categories of observers.
40. Accordingly, members can be either individuals (**type A and B**) or private/public bodies: organisations in the broad sense of the word (**type C**); Member States' authorities (**type D**); or other public entities (**type E**)¹⁵. Type C, D and E members nominate one or more individuals to represent them in the group or sub-group. As a consequence, those individuals are not members, but merely **members' representatives**. It is key to make this distinction from a legal, administrative and IT perspective. Type C, D and E members may nominate **different types of**

¹³ C(2016) 3301, Article 16.

¹⁴ Ibidem, Article 15.

¹⁵ Type A, B, C and E can also be appointed as observers. Type D may only be members.

representatives, such as main/permanent representatives, alternate representatives or representatives nominated on *ad hoc* basis, depending on the provisions included in relevant documents related to the group at stake (Commission decisions, ToR, calls).

41. The horizontal rules do not prescribe a maximum number of representatives per Type C, D or E member; this is for Commission services to establish in relevant documents (Commission decisions, ToR, calls). The maximum number of representatives allowed to participate should not be confused with the maximum number of participants who may be reimbursed, as the latter is governed by Commission Decision C(2007) 5858, not by the horizontal rules.
42. **For type A and B members only**, Commission services may appoint individuals as **alternate members**¹⁶ who replace **on an ad-hoc basis** any members who cannot participate. The name of alternate members must be published in the Register of expert groups at the same time as the name of members. The horizontal rules do not link the invitation of the alternate member with the absence of a particular member; instead, whenever a member is unable to attend a meeting, the responsible service may choose which of the alternate members to invite. The same rules apply to alternate members as for type A and B members, notably with regard to conflict of interests (Type A) and registration in the Transparency Register (Type B). **There are no alternate Type C, D and E members.**
43. A Commission service may establish a **reserve list of suitable candidates**. This list may be used for the appointment of members' replacements. Contrary to alternate members, these **replacements are of a permanent nature** and are not limited to Type A and B members, as they may also concern Type C members. The reserve list is not published on the Register of expert groups, and the **individuals and organisations included in such list are not members until they are appointed**. Thus, their names should be published on the Register **only** when they actually become members.

3.3 Term of office of members and observers

44. The start and duration of the term of office of **Type A, B and C** members and observers should be indicated in the letter which appoints them. If there is no appointment letter or where services have no trace of them, for example in relation to old groups, it may be assumed that the first meeting of the group marks the start date of the term of office.

¹⁶ C(2016) 3301, Article 10(8).

45. **Type D and E** become members or observers from the moment of the creation of the group or when the responsible DG appoints them; they would usually keep their status for the entire mandate of the group.

3.4 Participation of experts from third countries in expert groups

PARTICIPATION OF PUBLIC AUTHORITIES FROM THIRD COUNTRIES (TYPE E)

46. In relation to the participation of third country public authorities in Commission expert groups, the horizontal rules lay down a flexible approach, subject to certain conditions.
47. First, Article 7.3 of the horizontal rules indicates that third countries' authorities **may be members** of expert groups where an **international agreement** provides for the consultation of experts from the third country in preparing measures in an area covered by the agreement and under the conditions the agreement sets out in. In addition, third countries' authorities may also be appointed as members of expert groups where, for **geographical or other objective reasons, the advice and expertise provided to the Commission would not be complete** without their participation.
48. Secondly, in accordance with Article 16 of the horizontal rules, the Commission's representative in the group may grant **observer status** to third countries' public authorities. Paragraph 2 of that Article indicates that authorities from third countries which are not candidate countries¹⁷ may be granted **observer status if their participation is in the interest of the Union**, in particular in the light of the application of any international agreement, Union legislation or administrative arrangement.
49. If an international agreement concluded by the Union provides for a right of a third country to participate in expert groups active in a certain area and lays down the conditions for this participation, **the international agreement prevails over the horizontal rules** and the participation of the third country is governed by the international agreement in question. It is possible that the conditions of participation under the international agreement¹⁸ do not fit exactly with the categories of members and observers established under the horizontal rules, for example because the third country would have more rights in the group than observers, but fewer rights than a member. In these cases, it has to be assessed on case-by-case whether the third country should be indicated as a member or as an observer in the Register of expert groups.

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¹⁷ Participation of candidate countries in Commission expert groups is subject to the conditions provided in relevant bilateral agreements or Commission documents.

¹⁸ See, for example, Article 1(2) of Protocol 30 to the EEA Agreement.

PARTICIPATION OF THIRD COUNTRY INDIVIDUALS OR ORGANISATIONS (TYPE A, B, C)

50. **The horizontal rules do not contain any limitation** concerning the nationality of individuals, nor regarding the place of establishment or the ownership of/control over organisations appointed as members or observers of expert groups.
51. **When setting up new expert groups**, services are free to define the conditions for the participation in the group, be it with regard to participants' qualification or with regard to their nationality, so that the group may best serve its task of providing advice and assistance to the Commission. These conditions are to be laid down in the constitutive documents of the group, i.e. in the Commission decision setting up a formal group or in the ToR of an informal group. The same conditions should also be reflected in the call for applications for the selection of individuals and organisations as members or observers.
52. There could be cases where services should carefully assess the participation of individual experts or organisations from third countries in an expert group, by taking into account various factors, such as the objectives of the expert group, the topics of discussion or confidentiality considerations. In that context, **the loss of expert input that a limitation based on nationality might cause should also be assessed**, as well as the implications that the continued participation may have for the EU's objectives in relation to the development of its relations with a specific third country. The following, non-exhaustive conditions/selection criteria could be used with respect to the participation of third country organisations or individual experts to expert groups, as members or observers:
- **Requiring the nationality of an EU Member State** for individuals participating in the group or requesting that the organisations are established and/or operate within the EU, in particular where it is deemed that participation from third countries would undermine the protection of any public or private interest protected by EU law¹⁹.
 - Requiring that organisations formally established in an EU Member State are not under foreign control and are not part of consortia in which companies under foreign control participate.
 - **Setting eligibility limitations by defining narrowly the expertise required**, such as concrete experience in a specific field, which is for example strictly EU-related, or requirement to be active on the EU market.
 - **Setting a general security-related clause**, which would allow the Commission to exclude candidates for reasons related to security.

.....

¹⁹ If a nationality requirement is deemed to be relevant for a group, it should be considered whether it would be appropriate to allow in specific cases experts and/or organisations from regular partner countries, such as the EEA/EFTA States to participate in the group.

53. Imposing one or more of the above-mentioned requirements or similar ones should be assessed carefully, **on a case-by case basis, on the basis of solid, justified reasons**, in particular reflecting the group's mandate, the expertise needed to perform the group's work or on the basis of EU legislation, programmes or strategies.
54. These requirements should preferably be introduced when setting up a new expert group. However, this may take place as well at the point in time when the term of membership of current members expires or when the responsible service deems it justified to renew the group's membership or mandate.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

69. Concerning the participation in the meetings of **expert groups or sub-groups performing other tasks**, where all Member States are invited, services should operate according to the following guidance.

70. [REDACTED]

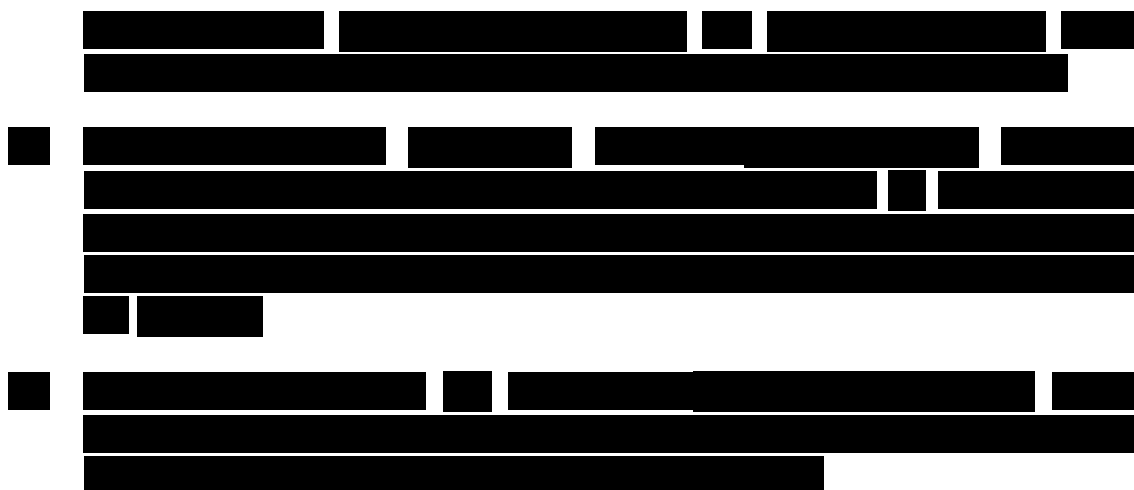
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



TRANSMISSION OF DOCUMENTS TO THE EUROPEAN PARLIAMENT

76. **Commission services should send Parliament the same documents** concerning expert groups or sub-groups that they send to the **Member States' authorities**. Services should transmit those documents, including agendas, to the Parliament functional mailbox Reunions-Comm-ExpNat@europarl.europa.eu. One practical way of informing the Parliament is to put this functional mailbox in copy of all emails sent to the Member States.

3.6 Relationship with the Council

77. As regards the participation of Council's experts in expert groups, Article 19 of the horizontal rules refers to the Inter-institutional Agreement on Better Law Making from 2016²⁹. Pursuant to Paragraph 28 of the Inter-institutional Agreement, experts **from the Council** (and from the European Parliament, see above) shall **systematically have access** to the meetings of Commission expert groups to which Member States' experts are invited and which concern the **preparation of delegated acts**.
78. Point 10 and 11 of the Common Understanding between the European Parliament, the Council and the Commission on Delegated Acts, annexed to the above mentioned Inter-institutional Agreement of 2016, provides further details on the modalities to be applied:
- When preparing and drawing up delegated acts, the Commission shall ensure a timely and **simultaneous transmission** of all documents, including the draft acts, to the European Parliament and the Council **at the same time as to Member States' experts**;

.....

²⁹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1). [EUR-Lex - 32016Q0512\(01\) - EN - EUR-Lex \(europa.eu\)](#)

- The following functional mailboxes of the Council must be put in copy (along with the functional mailbox of the Parliament mentioned in point 68): service.courrier-actesdelegates@consilium.europa.eu;
 - **Where they consider it necessary**, the European Parliament and the Council may each send experts to meetings of Commission expert groups dealing with the preparation of delegated acts to which Member States' experts are invited. To allow this, the European Parliament and the Council should receive the planning for the following months and invitations for all experts' meetings.
79. Therefore, in relation to the preparation of delegated acts, the rules for participation of Council's experts in expert groups or sub-groups to which Member States' experts are invited are identical to the rules of participation of Parliament's experts (section 3.5 above).
80. The Council as such does not participate in the work of Commission expert groups or sub-groups performing tasks other than the preparation of delegated acts. In this case, where Member States' authorities are members of an expert group or sub-group, the Commission interacts directly with these authorities, **not with the Council or the Council Secretariat**. If needed, the competent authorities of the Member State holding the rotating Presidency may ensure proper coordination at Council level.

3.7 Difference between organisations and public entities other than Member States' authorities

81. In certain cases, the question arises whether a body which carries out both public and private functions should be appointed as a type C or E member (or observer). The distinction is particularly important in the case of members because, in principle, type C members should only be appointed following a public call for applications, whereas type E members are always to be appointed by direct invitation.
82. In order to determine in which category a given body should be classified, Commission services need to assess the degree of influence which public bodies exert over the activities of the organisation which are of relevance for its participation in the group, and whether for those activities the organisation takes decisions independently, which would lead to classifying it as a Type C, or it acts as an extension of the public body under the control of which it operates, in which case the organisation should rather be classified as a Type E.

3.8 European standardisation organisations

83. European standardisation organisations have **a hybrid nature**, as they are private bodies which in certain cases are entrusted with tasks in the public interest. They should in all cases be classified as type C members in expert groups.

84. However, when it comes to their selection and appointment as members, two scenarios can be distinguished:
- In certain cases, the European standardisation organisations have been entrusted with tasks related to the work of the expert group either in Union legislation or through a mandate of the Commission³⁰, and they are needed as members of the expert group because of these tasks that they are given. Their specific situation in those cases justifies that they are **appointed as members of the group by direct invitation**, i.e. without selecting them through a public call, because in fact there are no other organisations from which Commission services could choose to obtain the expertise required. The reasons for appointing them directly need to be briefly described in relevant documents, such as Commission decisions setting up the groups formally or ToR of informal groups, as well as in relevant calls for applications.
 - In other cases, European standardisation organisations are just like any other stakeholder providing the Commission with advice and expertise, and are not entrusted with any particular tasks with regard to the issues falling in the scope of the expert group. In this case, it would not be justified to appoint them by direct invitation as members of the expert group. They can, however, apply **in response to a public call for applications** and be appointed as members if the responsible Commission service considers that their membership would be beneficial for the accomplishment of the tasks of the expert group or sub-group.
85. European standardisation organisations can also be appointed as **observers**, either directly or following a public call for applications, just like any other observer. In such cases, the modalities of their participation are laid down in Article 16.4 of the horizontal rules.

3.9 Social partners

86. The **sector and cross-industry social dialogue committees** established by Commission Decision 98/500/EC³¹ are not expert groups and the horizontal rules do not apply to them³². Hence, when the European sectoral social partners' organisations are consulted under Article 154 TFEU in the 43 sectoral social dialogue committees, there is no need for a public call.
87. However, if the European sectoral social partners' organisations wish to take part in expert groups as Type C members, they should be selected following a public

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³⁰ See in particular Article 10 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25.10.2012 on European standardisation, OJ L 316, 14.11.2012, p. 12.

³¹ Commission Decision 98/500/EC of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (notified under document number C(1998) 2334), OJ L 225, 12.8.1998, p.27.

³² C(2016) 3301, Article 1.2 (c).

93. Commission services can choose between a **call with a deadline** and a **continuously open call**.
94. A **call with a deadline** must be open for at least 4 weeks³⁷, and has to indicate clearly when the application deadline expires. Any application received after the deadline of the call has expired is **not admissible**. The minimum four-week deadline runs independently of whether the call is published through a 'holiday' season, such as the summer months or over the Christmas period. Unless otherwise provided for, the conditions set out in the call (selection criteria, eligibility criteria) must be fulfilled within the deadline. Members and observers appointed as a result of the call should continue complying with those conditions throughout the duration of their mandate, without which Commission services should terminate their participation in the work of the group/sub-group at stake.
95. In certain cases, **it may be necessary to publish the call for a longer period than initially envisaged**, for example in order to try and reach a more balanced representation of interests, and/or to collect more applications with the required expertise, and/or simply to collect more applications altogether. In those cases, if the original **deadline of the call has not expired yet**, the Commission service managing the group may choose to **prolong the deadline**. This prolongation has to be clearly indicated in the title of the call published on the Register of expert groups and on other websites, if any, and in the text of the call. In particular, the title of the call should contain the following expression 'NEW DEADLINE: [date]'. Furthermore, Commission services should include at the beginning of the text of the call some information indicating **why** a prolongation was decided (see above-mentioned necessities). Finally, the text of the call should always include a paragraph along the following lines, preferably in a dedicated box, at the beginning of the document:

'The Commission's Directorate-General XXX extends the call for applications and welcomes further applications until [date] included.

The applicants who already sent their applications between [date] and [date] do not need to re-apply under this extended call.'

96. If the period of validity of the originally published **call has already expired**, the Commission service in charge of the group may launch **a new call shortly after**, with the same text as the previous one. This new call will have a new deadline, which can be shorter than four weeks. The applications submitted during the period of validity of the first call remain valid, and the Commission service in charge should assess them. Services should provide in the text of the call some information on the reasons leading to its republication, along the lines indicated above on the prolongation of calls.

.....
³⁷ C(2016) 3301, Article 10.2.

97. A **continuously open call** does not have a deadline and remains open for an unlimited duration. Continuously open calls are typically used to select Type A members (or observers), but may also be used to select Type B or C members (or observers). Applicants may send their application at any time, and the Commission service in charge of the group will consider it **if additional or new expertise is needed in the group**. A continuously open call may indicate a date by which applicants have to submit their applications to be considered for the first or any other additional **round of selection**, which has to be at least four weeks from the date of publication of the call.

4.2 Selection of members and observers

98. Commission services select members (or observers) on their own and under their own responsibility. The **Secretariat-General is not involved in the selection procedure**.
99. The **selection should be performed in light of the selection criteria included in the call** and should be properly documented for the sake of good administration, and also so that, in case of an inquiry, the service can explain why certain candidates have been selected over others. Other than this, there is no form or procedure imposed by the Secretariat-General on how selection of members or observers should be carried out from among the applicants that have responded to a call for applications.
100. During the assessment of applications, services may conclude that they are incomplete. **Incomplete applications are not automatically inadmissible**. The admissibility criteria should be applied with due respect of the principles of **proportionality** and **equal treatment**. For example, if a CV which was not submitted in Europass format still has all necessary elements, it would seem disproportionate to reject an application on that basis. On the other hand, a missing CV would probably make it impossible for the Commission service to make the full assessment and would therefore be a ground for inadmissibility. To take another example, if the application of an individual applying to be appointed in a personal capacity does not include the declaration of interests (DOI) form, the application is incomplete and should be rejected. However, if the DOI has been submitted, but the information it includes is not sufficiently detailed, Commission services should in principle accept to treat the application in question, while asking the applicant to provide additional information, even after the deadline, in order for services to take a decision in full awareness.
101. The Commission service in charge of the group must inform all applicants of the result of the selection procedure. In particular, the Director-General or another Commission official acting on his/her behalf should send letters to applicants informing them that: (1) they are selected as members, alternate members or observers; (2) they are proposed to be included in a reserve list or (3) their

applications has been rejected. **Annex 2 provides for standard letters which services are encouraged to use.**

4.3 Appointment of type B and C members and observers

102. Although registration in the Transparency Register is required to be appointed as a **Type B or C member** of an expert group³⁸, it is not a mandatory requirement for the purpose of submitting an application. Thus, interested individuals and organisations that at the time of the application are not yet registered on the Transparency Register and, as a consequence, do not have a Transparency Register identification number, may still apply. However, should the applicants be selected as a result of the call for applications, they should register in the Transparency Register as a condition to be appointed as a Type B or C member.
103. According to Article 8.4 of the horizontal rules, where Type B and C members are suspended or removed from the Transparency Register, the Commission services shall suspend them from the expert group of which they are members, as long as their registration in the Transparency Register is not re-established. During suspension or removal, those members **should not be invited** to participate in any meeting of the group and **should not receive any document**. If after six months from suspension or removal from the Transparency Register registration on the Transparency Register is not re-established, the Commission services should exclude relevant members from the group.
104. Type B and C **observers are not required to register** in the Transparency Register.

5 MANAGEMENT OF CONFLICTS OF INTERESTS

105. In the framework of the selection procedure for shaping the group's membership, responsible services must require individuals applying to be appointed as Type A members to submit **a declaration of interests** (DOI form), in accordance with Article 11 of the horizontal rules. The service managing the group is responsible for assessing whether a conflict of interests exists and for taking all appropriate measures, in compliance with the horizontal rules. This process should be properly documented, for the sake of good administration, and with a view to being in a position to explain how conflicts of interests were managed, in case of an inquiry. In fact, this issue often draws the attention of the European Ombudsman, NGOs and the press.
106. The above-mentioned provisions on declarations of interests **apply only to type A members and alternate members**, as explained in Article 11.8 of the horizontal rules. Other types of members and observers (including Type A observers) are not required to submit such declarations.

³⁸ C(2016) 3301, Article 8.1.

6 OPERATION OF EXPERT GROUPS

6.1 Chair

107. Experience shows that **in the vast majority of cases** expert groups are **chaired by a Commission official**. Very few groups are chaired by Commissioners, and this should be regarded as an exception.
108. As an alternative, the horizontal rules³⁹ also provide for the possibility that **the Commission or its services appoint a person to chair the group** or that **the group elects its chair by simple majority of its members**. In these situations, although the horizontal rules do not provide for further details, the chair should be a physical person appointed *ad personam* because of his/her knowledge or his/her capacity to represent an interest.
109. **The chair of an expert group may be someone who is not a member**. In this case, the chair would not have the prerogatives and rights of a member, but would merely operate as chair, in accordance with the Commission decision or ToR setting up the group, and the horizontal rules. This implies, for example, that the chair who is not a member would not be allowed to participate in the formulation of recommendations or advice of the expert group or to vote.
110. In principle, a representative of a national authority (Member States or third countries) should not be appointed by the Commission service or elected by the group as chair, as this would not be in line with the spirit of the horizontal rules. **Exceptionally**, on the basis of well justified specificities, there may be a need for a **co-chair**, whereby the Commission's representative would co-chair the group with a representative of a Member State or other public entity. Services should bring such cases to the attention of the 'Institutional Affairs' Unit in the Secretariat-General for assessment (functional mailbox 'SG EXPERT GROUPS').

6.2 Management of expert groups

111. Article 13.1 of the horizontal rules provides that expert groups act at the request of the Commission service or at the request of its chair with the agreement of the Commission service. In practical terms this means that, in principle, **the management of the group**, including the steering of the groups' work, for example by defining the meeting agenda(s), **should be provided by the competent Commission service**.
112. If not otherwise provided, the service in charge of the group should also provide secretarial services for the group and its sub-groups.

³⁹ C(2016) 3301, Article 12.

113. Article 13.7 of the horizontal rules indicates that **minutes** on the discussion on each point on the agenda and on the opinions delivered by the group should be **meaningful and complete**. This means that, in principle, minutes should be drafted so as to allow for a thorough comprehension of the topics discussed at the meeting, as well as of the positions expressed by participants and of possible conclusions. However, the horizontal rules do not require a *verbatim*, i.e. a 'word for word' report. A template for minutes is available on the expert groups' page on My IntraComm⁴⁰.
114. As regards participants from the Commission, the **name of officials below Director level** should **not** be published in the minutes. Reference to the relevant Unit/Directorate should be made.
115. Article 13.5 of the horizontal rules provides that groups **may be on-hold for a maximum of twelve months**, after which their situation should be reviewed by the service concerned, in consultation with the Secretariat-General, with a view to deciding whether they should be closed or re-activated. Services are, therefore, invited to make this assessment at least on an annual basis and inform the Unit 'Institutional Affairs' in the Secretariat-General (functional mailbox 'SG EXPERT GROUPS') accordingly.

7 DATA PROTECTION ASPECTS

116. **Specific data protection records** and corresponding **privacy statements** cover the processing of personal data in the context of the selection of members⁴¹, the publication of information on the Register of expert groups⁴², and the organisation of meetings of expert groups⁴³ ensuring compliance with Regulation 2018/1725⁴⁴.
117. The record on providing a public Register of expert groups is corporate centralised⁴⁵, whereas the records on selection of members and on organisation of meetings of expert groups are corporate decentralised⁴⁶. All three of them are

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⁴⁰ <https://myintracomm.ec.europa.eu/sg/expert/Pages/templates.aspx>

⁴¹ [DPR-EC-01066](#), Selection of members of Commission expert groups and other similar entities.

⁴² [DPR-EC.00656](#), Providing a public register of Commission expert groups and other similar entities.

⁴³ [DPR-EC.00744](#), Organisation and management of Commission expert groups meetings.

⁴⁴ [EUR-Lex - 32018R1725 - EN - EUR-Lex \(europa.eu\)](#) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, of 21.11.2018, p. 39–98.

⁴⁵ The record covers a processing operation of an operational controller who is a domain leader and has concluded an internal arrangement with other operational controllers that carry out that (corporate centralised) processing operation in line with domain leader's instructions.

⁴⁶ The processing activity is conducted in several or all Directorates-General and Services of the Commission, who are the ultimate controllers.

provided by the Secretariat-General and **Commission services do not need to create records of their own.**

118. The above-mentioned records and privacy statements describe in a detailed way the type of personal data that is being processed and in which way. Commission services should comply with them strictly.
119. In particular, the record of processing for expert group meetings covers the organisation, preparation, management and follow-up of those meetings . The privacy statement for expert groups meetings provides that, in certain cases, the participants need to know each other's names and contact details, so that they can discuss topics on the agenda of the meetings before or after the meetings. Each Unit managing an expert group needs to decide whether sharing of email addresses among the group members is necessary for achieving the objectives of the group (which in turn correspond to the objectives of the meetings); if so, such sharing can be based on the legal basis that is indicated in the record and without consent. In groups where the exchange of information and messages is fully done through CIRCABC/AGM, sharing email addresses cannot be considered necessary.
120. For data protection reasons, the calls for application should indicate a functional mailbox for contact and not names of physical persons.
121. When Commission services do not chair a group and appoint a physical person as a chair of the group instead, they may make the name of that person public only subject to her or his consent within the meaning of Article 3(15), Article 5(1)(d) and Article 7 of Regulation 2018/1725. The horizontal rules do not provide a legal basis for publishing the name of an external chair without their consent.
122. In case of questions on data protection aspects, services should **as a first step** turn to their respective **data protection coordinator**.

8 TRANSPARENCY

8.1 Public deliberations (public meetings)

123. Article 13.6 of the horizontal rules provides for the **possibility** that, in agreement with the competent Commission service, the group may, by simple majority of its members, decide that **deliberations**, i.e. its meetings, shall be **public**. This provision must be included in relevant documents for all Commission expert groups, in compliance with relevant templates. It cannot be derogated from, either to make it easier or more difficult to hold public meetings of the group.

8.2 Transparency on documents

124. The default rule for documents concerning expert groups is **transparency**. In accordance with Article 26 of the horizontal rules, all documents relevant to the work of the expert groups and sub-groups should be proactively published either on the Register of expert groups or via a link from the Register to a dedicated website. It is the responsibility of the services to prepare and publish these documents in a timely fashion. An exception to publication can only be envisaged if Commission services deem that the disclosure of the document would undermine the protection of any public or private interest as defined in **Article 4 of Regulation (EC) No 1049/2001**⁴⁷. In such a case, the document is not published⁴⁸. This procedure should not be confused with the procedure for access to documents, which is triggered by a specific request to the Commission.
125. Commission services are not required to ask authorisation from the Secretariat-General not to publish a given document. However, they should be prepared to provide a justification in that respect, in case any stakeholder/body (European Ombudsman, MEPs, NGOs, press, etc.) should enquire about it.

.....

⁴⁷ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

⁴⁸ Also in the cases where an exception justifies that certain documents are not published, those documents have to be prepared and properly registered internally.

ANNEX 1 – SPECIAL GROUPS

Special groups are **sui generis bodies** that for various reasons do not fit in any existing framework, such as the one on expert groups or comitology committees. A **list of special groups** is kept by the Unit 'Institutional Affairs' in the Secretariat-General and is available **on GoPro** [Special groups - Guide to procedures - EC Extranet Wiki \(europa.eu\)](https://ec.europa.eu/extranet/wiki/special-groups-guide-to-procedures)

Special groups do not qualify as "Commission expert groups" or "other similar entities" in the sense of Commission Decision C(2016)3301 establishing horizontal rules on expert groups, for one or more of the following reasons:

- ✓ **the type of activities which they perform** – in particular because their primary role is not to provide advice and assistance to the Commission;
- ✓ **their membership**, because they are not composed of members in the sense of the horizontal rules, for example where the political level is involved, including members of national Parliaments, MEPs and members of Government. In fact, Commission expert groups and other similar entities, as defined in Article 2 of the horizontal rules, are to be understood as advisory bodies operating at technical and/or administrative level.

The classification of the group and, in particular, the decision whether it is an expert group in the sense of the horizontal rules or a special group has to be based on its nature and the tasks which it performs, and cannot flow from an attempt to avoid full compliance with the horizontal rules.

Special groups can be either **formal**, when they are created by an act of the College or by a legislative act, or informal, when they are created by Commission services.

Strictly speaking, the **horizontal rules do not apply to special groups**, but services may decide to apply them **by analogy**.

Special groups are not published on the Register of expert groups. However, following a commitment towards the Ombudsman, Commission services should ensure an **equivalent degree of transparency** to that applicable to expert groups, through dedicated webpages. Unless provided in specific rules governing the group in question, the processing of personal data has to be based on the consent of the data subject, in compliance with Article 3(15), Article 5(1)(d) and Article 7 of Regulation 2018/1725. The generic template for a privacy statement for meetings held by the Commission services should be used when meetings of special groups are organised.

In order for a group to be registered as a special group, the Commission service in charge of the group should fill in a **dedicated form** and send it for agreement to the Unit 'Institutional Affairs' in the Secretariat-General (functional mailbox '**SG EXPERT GROUPS**'). In particular, services should clearly explain in section E of that form **how the group's role/mandate differ(s) from that of a Commission expert group or other similar entity** as defined in Article 3 of the horizontal rules. If the Unit 'Institutional Affairs' agrees, the group in question is classified as a special group and the Unit 'Institutional Affairs' provides the DG

with an **'S' code** which can be used for various purposes, including in relation to reimbursement of expenses and booking of meeting rooms.

Subject to what may be provided in the provisions governing the special group in question – if such exist, it is a policy choice of the services to decide who would participate in the special group, including which third countries, without prejudice to all obligations under international agreements providing for participation rights. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ANNEX 2 – STANDARD LETTERS

1. Standard letter to Type A/B member/observer not selected
2. Standard letter to Type A/B member/observer put on the reserve list
3. Standard letter to Type A/B member/observer appointed
4. Standard letter to Type C member/observer not selected
5. Standard letter to Type C member/observer put on the reserve list
6. Standard letter to Type C member/observer appointed

1. Standard letter to Type A/B member/alternate member/observer not selected



EUROPEAN COMMISSION

DIRECTORATE-GENERAL [DG name]

The Director-General

Brussels,

DG [acronym- /Unit acronym/ initials of the author –
Ares ref] – example:
AGRI.R.5/WB/pg/mm Ares(2022)11111

Type the address here.

Subject: Outcome of the selection procedure for members/alternate members/observers of the group or sub-group name

Dear Ms / Mr [name],

I would like to thank you for your application in response to the public call for the selection of members/alternate members/observers of the expert group/sub-group name of the group/sub-group].

The responsible Commission services have assessed all admissible and eligible applications in accordance with the procedure and selection criteria laid down in chapters 4 and 5 of the call.

In light of the results of this assessment, I regret to inform you that you have not been selected as a member/alternate member/observer of the expert group [name of the group/sub-group].

If you require further information about the selection process, you may contact us at the following e-mail: [address@FMB].

Thank you for your interest to participate in the work of [name of the group/sub-group].

Yours sincerely,

[Name Director-General]

Contact:

Enclosure: List the enclosure(s) here. Use Shift+Return to add lines.

c.c.: Type the recipient(s) you are copying to. Use Shift+Return to add lines.

2. Standard letter to Type A/B member/observer put on the reserve list



EUROPEAN COMMISSION

DIRECTORATE-GENERAL [DG name]

The Director-General

Brussels,

DG [acronym– /Unit acronym/ initials of the author –
Ares ref] – example:
AGRI.R.5/WB/pg/mm Ares(2022)11111

Type the address here.

Subject: Outcome of the selection procedure for members/alternate members/observers of the [group or sub-group name]

Dear Ms / Mr [name],

I would like to thank you for your application in response to the public call for the selection of members/alternate members/observers of the expert group/sub-group [name of the group/sub-group].

The responsible Commission services have assessed all admissible and eligible applications in accordance with the procedure and selection criteria laid down in chapters 4 and 5 of the call.

In light of the results of this assessment, I have decided to include your name in the experts' reserve list of the [group/sub-group name], subject to your consent. The reserve list may be used for possible future replacements of the appointed members.

Please note that the reserve list is not published on the [Register of Commission expert groups and other similar entities](#), and that applicants included in such list are not members until they are appointed. Thus, their names shall be published on the Register only when they actually become members.

Please acknowledge receipt of this letter and confirm your acceptance for the inclusion of your name in the reserve list by sending an e-mail to [\[address@FMB\]](#) by [dd/mm/yyyy](#).

Yours sincerely,

[Name Director-General]

Contact:

Enclosure: List the enclosure(s) here. Use Shift+Return to add lines.

c.c.: Type the recipient(s) you are copying to. Use Shift+Return to add lines.

3. Standard letter to Type A/B member/alternate member/observer appointed



EUROPEAN COMMISSION

DIRECTORATE-GENERAL [DG name]

The Director-General

Brussels,

DG [acronym- /Unit acronym/ initials of the author –
Ares ref] - example:
AGRI.R.5/WB/pg/mm Ares(2022)11111

Type the address here.

Subject: Outcome of the selection procedure for members/alternate members/observers of the [group/sub-group name]

Dear Ms / Mr [name],

I would like to thank you for your application in response to the public call for the selection of members/alternate members/observers of the expert group/sub-group [name of the group/sub-group].

The responsible Commission services have assessed all admissible and eligible applications in accordance with the procedure and selection criteria laid down in chapters 4 and 5 of the call.

In light of the results of this assessment, I am pleased to inform you that I have decided to appoint you as a member/alternate member/observer of the [group/sub-group].

The names of the experts appointed as members/alternate members/observers will be published on the [Register of Commission expert groups and other similar entities](#). The declarations of interests ('DOI') of experts appointed as members/alternate members acting in a personal capacity will also be published in the Register.

Please acknowledge receipt of this letter and confirm your acceptance of the appointment by sending an e-mail to [\[address@FMB\]](#) by [dd/mm/yyyy](#).

Following your acceptance, you will receive details in due time of the exact date of the first meeting of the [group/sub-group], together with relevant documentation.

Yours sincerely,

[Name Director-General]

Contact:

Enclosure: List the enclosure(s) here. Use Shift+Return to add lines.

c.c.: Type the recipient(s) you are copying to. Use Shift+Return to add lines.

4. Standard letter to Type C member/observer not selected



EUROPEAN COMMISSION

DIRECTORATE-GENERAL [DG name]

The Director-General

Brussels,

DG [acronym- /Unit acronym/ initials of the author –
Ares ref] – example:
AGRI.R.5/WB/pg/mm Ares(2022)11111

Type the address here.

**Subject: Outcome of the selection procedure for members/observers of the
[group or sub-group name]**

Dear Ms/Mr [name],

I would like to thank you for the application of [name organisation] in response to the public call for the selection of members/observers of the expert group [name of the group/sub-group].

The responsible Commission services have assessed all admissible and eligible applications in accordance with the procedure and selection criteria laid down in chapters 4 and 5 of the call.

In light of the results of this assessment, I regret to inform you that [name organisation] has not been selected as a member/observer of the [group or sub-group name].

If you require further information about the selection process, you may contact us at the following e-mail: [address@FMB].

We thank you for the interest that [name organisation] has shown to participate in the work of [group or sub-group name].

Yours sincerely,

[Name Director-General]

Contact:

Enclosure: List the enclosure(s) here. Use Shift+Return to add lines.

c.c.: Type the recipient(s) you are copying to. Use Shift+Return to add lines.

5. Standard letter to Type C member/observer put on the reserve list



EUROPEAN COMMISSION

DIRECTORATE-GENERAL [name DG]

The Director-General

Brussels,

DG [acronym- /Unit acronym/ initials of the author –
Ares ref] - example:
AGRI.R.5/WB/pg/mm Ares(2022)11111

Type the address here.

Subject: Outcome of the selection procedure for members/observers of the [group or sub-group name]

Dear Ms / Mr [name],

I would like to thank you for the application of [name organisation] in response to the public call for the selection of members/observers of the [group or sub-group name].

The responsible Commission services have assessed all admissible and eligible applications in accordance with the procedure and selection criteria laid down in chapters 4 and 5 of the call.

In light of the results of this assessment, I have decided to include [name organisation] in the reserve list of the [group/sub-group name], subject to [name organisation] consent. The reserve list may be used for possible future replacements of the appointed member organisations.

Please note that the reserve list is not published on the [Register of Commission expert groups and other similar entities](#), and that applicants included in such list are not members until they are appointed. Thus, the names of organisations included in the reserve list shall be published on the Register only when they actually become members.

Please acknowledge receipt of this letter and confirm the acceptance of [name organisation] to be included in the reserve list by sending an e-mail to [address@FMB] by dd/mm/yyyy.

Yours sincerely,

[Name Director-General]

Contact:

Enclosure: List the enclosure(s) here. Use Shift+Return to add lines.

c.c.: Type the recipient(s) you are copying to. Use Shift+Return to add lines.

6. Standard letter to Type C member/observer appointed



EUROPEAN COMMISSION
SECRETARIAT-GENERAL
The Secretary-General

Brussels

DG [acronym- /Unit acronym/ initials of the author –
Ares ref] – example: AGRI.R.5/WB/pg/mm
Ares(2022)11111DG

Type the address here.

Subject: Outcome of the selection procedure for members/observers of the [group/sub-group name]

Dear Ms/Mr [name],

I would like to thank you for the application of [name organisation] in response to the public call for the selection of members/observers of the [group or sub-group name].

The responsible Commission services have assessed all admissible and eligible applications in accordance with the procedure and selection criteria laid down in chapters 4 and 5 of the Call.

In light of the results of this assessment, I am pleased to inform you that I have decided to appoint [name organisation] as a member/observer of the [group/sub-group name].

Please acknowledge receipt of this letter and confirm the acceptance of [name organisation] to be appointed as a member/observer of the group/sub-group [group/sub-group name] by sending an e-mail to [address@FMB] by dd/mm/yyyy.

Following the acceptance of [name organisation], you/the proposed representatives of the organisation will receive details in due time of the exact date of the first meeting of the [group/sub-group name], together with relevant documentation.

Yours sincerely,

[Name Director-General]

Contact:

Enclosure: List the enclosure(s) here. Use Shift+Return to add lines.

c.c.: Type the recipient(s) you are copying to. Use Shift+Return to add lines.