

Reply of the European Commission to the European Ombudsman's decision regarding the European Commission decision on the composition of the EU Energy Platform Industry Advisory Group - Complaint by Corporate Europe Observatory and Food and Water Action Europe - reference 1886/2023/ALB

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

In February 2023, the European Commission (hereafter the “**Commission**”) received a formal complaint about the EU Energy Platform Industry Advisory Group (hereafter the “**IAG**”) from the Corporate Europe Observatory group (hereafter the “**Complainant**”). The complaint concerned the composition of the IAG, an expert group on energy that assists the Commission in delivering on the REPowerEU Plan. ⁽¹⁾

The Complainant alleged the IAG violated the commitments made in the Commission's 2019-2024 political guidelines ⁽²⁾ which state that “Members of the Commission should seek to ensure an appropriate balance and representativeness in the stakeholders they meet”. The Complainant additionally pointed at a violation of the Commission's horizontal rules on expert groups. ⁽³⁾ As a remedy, the Complainant requested the “immediate dissolution” of the IAG and an “overhaul of the Commission's rules and practices around the creation of formal or informal advisory groups”.

In May 2023, the Commission replied and considered the membership of the IAG to be fully justified considering the specific knowledge and expertise required for setting up a mechanism for demand aggregation and joint purchasing in time for the storage filling season. The Commission concluded that the dissolution of the IAG was therefore not justified.

In its reply, the Commission explained that members of the IAG were appointed following a public call for applications, in compliance with the Commission's horizontal rules on expert groups. The Commission recalled that the aim of the IAG is to receive technical and non-binding feedback from companies with experience in buying gas on international markets. The IAG could not, in any way, be considered as a decision-making body.

The Commission further highlighted that the IAG is only one of the multiple fora set up under the EU Energy Platform and that its composition covers stakeholders along the trading chain, such as energy suppliers, energy traders, and end energy consumers. Moreover, the Commission explained that the involvement of commercial actors with significant experience in buying or selling gas on international markets was essential to develop an IT tool to be used by companies (AggregateEU).

In the same reply, the Commission agreed on the importance to include stakeholders, such

⁽¹⁾ Documents related to the AIG are available on the Register of Commission Expert Groups and Other Similar Entities [\[link here\]](#)

⁽²⁾ Political guidelines for the next European Commission 2019-2024 [\[link here\]](#)

⁽³⁾ Commission Decision C(2016)3301 establishing horizontal rules on the creation and operation of Commission expert groups [\[link here\]](#)

as civil society groups, in the EU Energy Platform to gather expertise that is consistent with its mission. As a follow-up, the Commission organised dedicated meetings with other stakeholders, including NGOs and academics, to collect feedback, and address questions from participants. ⁽⁴⁾

II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN

In September 2023, the European Ombudsman received a joint complaint against the Commission from the Corporate Europe Observatory and Food and Water Action Europe (*see attached*). This complaint followed up on the initial complaint to the Commission from February 2023 (*see background above*).

In their application to the European Ombudsman, the Complainants reinstated that the decision of the Commission on the composition of the IAG violated the commitments made in the political guidelines and the Commission’s horizontal rules on expert groups. The Complainants requested to:

1. “Immediately dissolve the IAG;
2. initiate an overhaul of the Commission’s rules and practices around the creation of formal or informal advisory groups in order to prevent a repetition in the future;
3. create an EU task force of climate and social advisors, including NGOs, energy poverty groups and trade unions, to advise the EU on how to meet its energy needs and deliver REPowerEU while respecting the climate and social rights.”

III. EUROPEAN OMBUDSMAN’S INQUIRY

In November 2023, the European Ombudsman opened an inquiry into the Commission’s decision on the composition of the IAG.

In December 2023, the European Ombudsman’s inquiry team met with the relevant staff of the Commission. The Commission answered questions from the European Ombudsman’s inquiry team. A meeting report was issued in February 2024. ⁽⁵⁾

In March 2024, the European Ombudsman’s inquiry team decided to inspect the following documents:

1. “The detailed minutes of all IAG meetings;
2. All documents that were circulated to members and observers of the IAG prior to, during, and after the 8th, 9th, 10th, and 11th meetings of the IAG;
3. The minutes of bilateral meetings held by the Commission with “other market players” (companies) on the margins of official IAG meetings, as well as

⁽⁴⁾ A first meeting took place on 04 July 2023.

A second meeting took place on 28 June 2024.

⁽⁵⁾ Written record available on the website of the European Ombudsman [[link here](#)]

documents exchanged in that context.”⁽⁶⁾

In April 2024, the Commission transmitted the requested documents to the European Ombudsman and signalled that some documents are marked as confidential and should not be forwarded to third parties. The Commission also explained that the 11th meeting of the IAG never took place.

In September 2024, the European Ombudsman issued a decision to close the inquiry and considered that no further inquiries were justified (*see attached*). The European Ombudsman made the following suggestions for improvement to the Commission:

1. “The Commission should reassess whether the mandate and the composition of the IAG, or of any similar future expert group set up under the Gas and Hydrogen Regulation, is appropriate in light of any actual tasks the group may perform in the future. If needed, these elements should be updated.
2. The Commission should ensure that, where expert groups contain only corporate members for duly justifiable reasons, other interested stakeholders are granted observer status whenever possible.”

The arguments provided by the European Ombudsman in support of its position can be summarised as follows.

On the composition of the IAG

The European Ombudsman notes that the information sought from the members of the IAG largely relate to technical elements of gas trading and procurement necessary to the design of an IT tool for demand aggregation and joint purchasing. The European Ombudsman finds it reasonable to assume that this type of specific information is only held by experts within the gas industry itself.

The European Ombudsman accepts that the Commission has provided a reasonable explanation for the corporate-only composition of the group’s membership at the time of its creation, as it appears reasonable to assume that only companies, as the end users of AggregateEU, could have provided meaningful feedback on the design and development of the tool.

On the mandate of the IAG

The European Ombudsman considers that the mandate of the IAG is not limited to the provision of technical feedback on the IT tool AggregateEU, but also contains tasks that are more general in nature. According to the European Ombudsman, it cannot be excluded that discussions around energy supply and international cooperation agreements could take place in future meetings of the IAG, in particular if the need for user feedback on the design of AggregateEU diminishes over time.

⁽⁶⁾ Text of the request for inspection available on the website of the European Ombudsman [[link here](#)]

At the same time, the European Ombudsman notes that the new Regulation on Gas and Hydrogen adopted in June 2024 makes the gas aggregation mechanism a permanent feature of the EU energy framework and envisages its extension to hydrogen. The European Ombudsman believes the role of the IAG to be unclear regarding the implementation of future EU energy policies.

For this reason, the European Ombudsman believes the Commission should reassess whether the mandate and the composition of the IAG, or of any similar future expert group set up under the Gas and Hydrogen Regulation, is appropriate in light of any actual tasks the group may perform in the future. If needed, these elements should be updated.

On granting an observer status to other interested stakeholders in expert groups containing only corporate members

The European Ombudsman notes that the status of an observer is more flexible than that of group member, in the sense that those rules do not lay down specific preconditions - for instance in terms of know-how - for their appointment. The European Ombudsman considers that an observer status can usefully complement transparency efforts.

In the case of the IAG, the European Ombudsman acknowledges the Commission's efforts in terms of transparency as the minutes and the documents discussed in meetings are widely available on the Register of Expert Groups and Other Similar Entities.

Yet, the European Ombudsman is not convinced by the explanations provided by the Commission to exclude civil society and academics. To support this argument, the European Ombudsman points out that considering that entities with no first-hand expertise in gas purchases were invited as observers, it is not clear why non-corporate stakeholders such as think tanks, researchers, consumer associations or more broadly civil society organisations could not attend the group's deliberations. Furthermore, the Ombudsman underlines that it has been possible for the Commission to disclose to the public, on an ex-post basis, a significant part of the information discussed during IAG meetings (most notably in the PowerPoints published online), which implies that the information shared in the IAG is not of such a sensitive nature that the presence of non-corporate stakeholders would have made it impossible to exchange it.

For the above-mentioned reasons, the European Ombudsman takes the view that opening the observer status to non-corporate stakeholders would have dispelled part of the doubts that led to this inquiry and would have been a good practice in light of the restricted membership of the group.

IV. THE REPLY OF THE EUROPEAN COMMISSION

The Commission hereby submits the following observations on the European Ombudsman's suggestions for improvement.

On the composition of the IAG

The Commission welcomes the view of the European Ombudsman that it is reasonable to assume that only companies, as final users of AggregateEU, could have provided meaningful user feedback on the design and development of the tool.

The Commission would like to reaffirm that members of the IAG were appointed following a public call for applications, in compliance with the Commission's horizontal rules on expert groups.

The selection process for the IAG reflects the letter and spirit of the Commission's horizontal rules on expert groups which lay down that Commission departments should aim at ensuring, as far as possible, a high level of expertise, a geographical balance, as well as a balanced representation of relevant know-how and areas of interest, while taking into account the specific tasks of each expert group, the type of expertise required and the response received to calls for applications.

On the mandate of the IAG

The Commission takes note of the first suggestion for improvement of the European Ombudsman.

The Commission underlines that the mandate of the members of the IAG expired at the end of October 2024. The Commission believes there is no need to reassess the expert group's mandate or composition at this stage.

Currently, the Commission is not working on the establishment of expert groups of similar profile to the IAG, but agrees on the need for aligning the mandate and composition of possible new future expert groups under the Gas and Hydrogen Regulation with the tasks that these groups would actually perform.

On granting an observer status to other interested stakeholders in expert groups containing only corporate members whenever possible

The Commission takes note of the second suggestion for improvement of the European Ombudsman.

The Commission agrees with the general objective of promoting transparency efforts and building public trust. For this reason, and as positively noted by the European Ombudsman, the Commission made the minutes and the other documents discussed during the IAG publicly available in due and timely manner on the Register of Commission Expert Groups and Other Similar Entities.

The Commission should point out that, outside the IAG, it engaged with the views of a broader set of stakeholders, through established channels (Ad-hoc Steering Board, Regional Groups), as well as through additional meetings (including with NGOs), and the review of academic papers.

Should the Commission set up in the future expert groups exclusively composed by business organisations for reasons linked to the mandate of those groups, the Commission will shape their composition on a case-by-case basis, including as regards the appropriateness of appointing observers, in compliance with the above-mentioned provisions laid down in the Commission's horizontal rules on expert groups. In this respect, the Commission takes the view that the presence of observers in an expert group should not be linked to transparency-related aspects or to some general requirements on public consultations, but to the mandate of the group and the expertise possessed by potential observers. In fact, the Commission points out that, according to Article 16 (4) of the horizontal rules, observers not only may be permitted by the Chair to take part in the discussions, but they may also provide expertise, orally, at the meeting. This shows that in

the spirit of the horizontal rules, observers are somehow expected to have at least some general, relevant expertise as regards the issues to be discussed in the group, although to a lesser extent compared to members, which then justifies that observers are not allowed to participate in the formulation of recommendations or advice provided to the Commission.

As regards observers to the IAG, entities granted with this status represented energy suppliers, energy traders, energy consumers, as well as transmission or distribution system operators. Observers to the IAG had therefore direct and operational expertise on international gas markets. The Commission considers that NGOs would not have been able to provide such operational and direct expertise of international gas markets. Their presence as observer was therefore not justified in the specific case of the IAG.

The composition of the IAG was established as a result of a public call inviting interested parties to express their interest in joining the IAG. Given the significant interest in the IAG, a number of observers were included in addition to formal members. While expressing interest was not a formal requirement to become an observer, all entities that were granted observer status had, in fact, expressed their interest. Only one NGO formally applied for membership, though its application was dismissed on eligibility grounds.

V. CONCLUSION

The Commission takes note of the decision of the European Ombudsman to close its inquiry on the decision of the Commission regarding the composition of the IAG.

The Commission takes notes that no finding of maladministration was reported by the European Ombudsman.

The Commission points out that the mandate of the members of the IAG expired at the end of October 2024. The Commission believes there is no need to reassess the group's mandate or composition at this stage for the reasons given above.

The Commission agrees on the need for aligning the mandate and composition of possible future expert groups under the Gas and Hydrogen Regulation with the tasks that these group would actually perform.

Should the Commission set up in the future expert groups exclusively composed by business organisations, the Commission will shape their composition on a case-by-case basis, including as regards the appropriateness of appointing observers, in compliance with the Commission's horizontal rules on expert groups.

For the Commission

Dan JØRGENSEN

Member of the Commission

List of enclosures

- European Ombudsman's decision on how the Commission decided on the composition of the EU Energy Platform Industry Advisory Group (case 1886/2023/AML), dated 18 September 2024.
- Copy of complaint 1886/2023/AML, dated 28 September 2023.