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expert groups – letting corporate interests set the agenda?

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The European Commission relies on external advice to fulfil its legislative and policy-making tasks, convening so-called expert groups which bring together government representatives and industry, plus some academics and representatives from trade unions and NGOs. The high level of industry involvement shows how the Commission is prioritising corporate interests, giving corporations a formal role in EU decision making to an extent reserved for no other sector.

Expert groups are the European Commission's most frequently used consultation method.¹ Their input frequently forms the backbone of Commission proposals and, through a process that often involves very little change, eventually becomes adopted in European legislation.

In 2009 there were more than 1,000 expert groups (with an estimated 38,000 members) co-drafting the Commission's policies and legislative proposals on a wide range of policy areas including research, environment, enterprise and industry, and the financial regulatory framework. Business is the most strongly represented sector among the non-governmental participants in expert groups, with an estimated 7,500 members. Business representatives dominate more than 100 expert groups.²

The Commission made substantial progress in improving the transparency of expert groups in 2009, although few had revealed any details about their membership until then. Details have now been published for the vast majority.³ But expert groups still remain opaque, meeting behind closed doors, seldom publishing minutes and consulting only a limited number of outsiders.

Powerful bodies

Expert groups or ‘High Level Groups’ (expert groups involving Commissioners, MEPs, and top-level executives) have played a key role in a number of examples of EU decision making:

- The High Level Group CARS-21 was jointly set up in January 2005 by then Enterprise & Industry Commissioner Günter Verheugen and the president of the European Automobile Manufacturers’ Association (ACEA). Its membership was dominated by big automobile and petrol corporations. The group introduced what is described as the ‘integrated approach’ for assessing CO₂ emissions, which went on to be adopted as EU methodology. This approach separates the main responsibility for car emissions from the car industry, arguing that emissions are the responsibility of all actors involved (i.e. drivers, public authorities etc).⁴
- The High Level Group on Competitiveness, Energy and Environment (2006 to 2007) was made up of representatives from eight Member States, fourteen corporate representatives, one trade union, and two environmental organisations. The European Parliament was invited but refused to participate saying that such groups “were undermining the independence of EU institutions”. Through this group companies like Areva, BP, and Siemens managed to persuade the EU that technologies such as nuclear energy and carbon capture and storage were solutions to climate change.⁵
- The De Larosière Group (High Level Group on EU Financial Supervision) was set up in late 2008 by Heads of States and Government and European Commission President Barroso, to look at reform of Europe’s financial system. Five of the eight members work for the private financial sector, while the other three comprise the former head of the UK Financial Services Authority (which failed to prevent the crisis), an ardent advocate of deregulation, and an employee of a public bank. The Commission “broadly endorsed” the group’s report after just two weeks’ consideration, putting it forward as a solution to the global financial crisis.⁶

Ignoring calls for transparency

For the last 40 years, the number of expert groups has grown as the competencies of the EU have extended.⁷ But the role of expert groups remained shrouded in secrecy.

Jens-Peter Bonde, a former Danish MEP (1979–2008), has persistently pushed for greater transparency of the various committees and working groups set up by European institutions, including expert groups.⁸

In 1999 he received the first ever ‘draft’ list with the names of over 1,500 working groups. This was the first chink in the layer of secrecy that had until then surrounded them. The Commission Secretary-General however refused to disclose details of who was on these working groups.

In the run-up to the 2004 European elections, Bonde raised the issue with the new Commission President Barroso, who ordered the Secretariat-General to provide him with a comprehensive list of expert groups. Bonde received a list that had 3,000 groups on it, but again no membership details.⁹ Barroso promised to provide this information “as soon as possible”.

The Commission then launched an online register of expert groups, listing some 1,200 groups. This categorised members as scientists, academics, industry representatives, NGOs, trade unions, etc.¹⁰ This list only included half the groups from the previous list because it did not include sub-groups. Barroso didn’t fulfil his promise to provide membership details.¹¹

Although expert groups involve lobbyists, they were not included in the European Transparency Initiative launched in November 2005 designed to increase lobbying transparency.¹²

Following concerns about bias in expert groups, the Conference of the Presidents of the European Parliament decided in January 2006 that MEPs should no longer take part in High-Level Groups.¹³ The leaders of the political groups argued that this bias was undermining the independence of EU institutions. But this instruction was not followed by all MEPs.¹⁴

The following year, the European Parliament threatened to block the budget for travel expenses for meetings of expert groups unless full transparency was provided.¹⁵ But at the last minute Barroso announced “a database with names, title and sex of most experts”, saying it would be completed in 2008. Commission Vice-President Kallas repeated the commitment.¹⁶

ALTER-EU analysis shows extent of problem

A study of the composition of expert groups undertaken by ALTER-EU in March 2008 revealed that MEPs had cause for concern. The study¹⁷ analysed the

membership of 44 expert groups, using regulations on access to documents. The Commission released the names of the organisations involved for just 25 of these groups (60 per cent) and the names of individuals for 18 of them (43 per cent).

More than half (54 per cent) of all 1,214 expert groups on the register had members from outside European, national, regional, and local governments. Sixty per cent of these groups included business representatives.

Responding to journalists' questions on the report, the Commission said it would make full details of membership available by summer 2008.¹⁸ This deadline was later deferred to the end of 2008.

In a letter to ALTER-EU, the Commission suggested that the number of expert groups had fallen to "less than 1,200 today" (there were 1,400 in 2006). This would mean that a 40-year trend of ever-increasing numbers of expert groups had been reversed. The Commission also denied that the unbalanced composition of some expert groups was a problem.¹⁹

Fewer groups – or groups still in the shadows?

In March 2009, the Commission told ALTER-EU that all membership details had been disclosed "in January 2009".²⁰

ALTER-EU went through the Commission's online Register of Expert Groups during March and April 2009. By then there were only 987 groups listed. So, the number of expert groups – which had increased by 40 per cent from 2000 to 2006 – had, according to the Commission, decreased by 30 per cent (1,400 to 987) between 2006 and 2009 and by 20 per cent (1,214 to 987) in just one year.²¹ According to the data there were 224 fewer groups in March 2009 than at the start of 2008.

The biggest drop was in the number of groups with non-governmental participation.²² These groups raised the greatest concerns about their legitimacy because of questions regarding the balance of their composition. Yet their decline seems to have coincided precisely with the point where the Commission had to publish all the names of the participants in order to meet its previous commitments.

ALTER-EU's assessment of the register also revealed that it was still far from complete, with expert groups that were still active (e.g. CARS 21) not

included.²³ Conversely, groups which had been said to have been dissolved were still listed.²⁴ ALTER-EU focused its final assessment on the 328 groups with non-governmental participation and discovered transparency problems with a third of them at that point.²⁵

Corporate dominance seen as normal by the Commission

ALTER-EU has repeatedly raised concerns about the fact that corporate representatives dominate in more than 100 expert groups. This clearly contradicts the Commission's rules on consultation²⁶ and use of expertise²⁷ that stress that:

- “The final determinant of quality [for expert advice] is pluralism.”
- [Commission] “departments should aim to ensure that the different disciplines and/or sectors concerned are duly reflected in the advice provided.”
- “The aim is to minimise the risk of vested interests distorting the advice.”
- “Wherever possible, a diversity of viewpoints should be assembled. This diversity may result from differences in scientific approach, different types of expertise, different institutional affiliations, or contrasting opinions over the fundamental assumptions underlying the issue.”
- This diversity will: “reduce the risk of policymakers just listening to one side of the argument or of particular groups getting privileged access”.
- Groups should not underestimate: “the challenge of ensuring an adequate and equitable treatment of participants”.

ALTER-EU has consistently argued that there is no real pluralism when industry interests dominate over other types of non-governmental interests (independent academics, consumer groups, social movements, environmental organisations, or trade unions). When most non-governmental seats in an expert group are granted to corporations or lobby groups with an interest in the policy area in question, there is clearly a risk that the advice they provide will be distorted by vested interests. The Commission is inviting advice based on the business side of the argument rather than ensuring diversity of viewpoints.

The Commission's Secretariat-General has repeatedly responded that it does not consider the dominance of business to be a problem or in breach of its own rules.²⁸

This goes against the will of the European Parliament, which has called “upon the Commission to conduct a thorough review of the composition of its expert groups before the end of 2008 and to take action to ensure a balanced representation of interest groups in the membership of expert groups”.²⁹

Hiding lobbyists under the carpet

Before 2008, it was impossible for the public to check whether the rules on consultation and use of expertise were really being followed, since there was little public information on the composition of the groups. The Commission is now trying to limit the scope of these rules and exempt a large number of groups from transparency requirements. It is doing so by using two main assumptions:

- ‘Experts’ in some groups are there in a “personal capacity”
- The codes of conduct do not apply to groups that “address purely technical issues”.³⁰

The Commission claims that people who work for companies which allow them to join expert groups and take part in them in work time are acting in a personal capacity – and that they have put aside their employers commercial interests.

In April 2009 there were 24 groups with members from industry who participated “in a personal capacity”. The balance of most of these groups cannot be judged as full details are not clear, but in some cases there is plainly cause for concern.³¹

The Coal Combustion, Clean and Efficient Coal Technologies Carbon Dioxide (CO₂) Capture group, for example, justifies its pro-industry bias on the basis of “technical issues”, with most members from companies involved in the coal industry.³²

This group deals with controversial carbon capture and sequestration (CCS) technology, which has been given substantial EU funding since December 2008. The group has continued lobbying to get more EU research funding for this technology. Should the question of how to use limited resources to fight climate change be classified as a technical issue?

ALTER-EU has argued that no group should be exempt from the rules and that corporate executives and the staff of trade associations should never be considered as acting in a personal or purely technical capacity.

What are expert groups really about?

Expert groups are supposedly needed to supplement the Commission's lack of in-house expertise.³³ There are fewer than 3,500 people on the staff of the Commission's research and statistical facilities serving half a billion EU citizens. This is a small administration with limited staff and administrative capabilities, particularly when compared with the size of national governments.³⁴

This explains why the Commission has become so dependent on external advice. It doesn't, however, explain why this should be done in relative secrecy, drawing primarily on national governments and big corporations. Why not, for example, involve more European Community agencies, other public research facilities (universities and foundations), public-interest groups, consumers, and workers?

The reason why the Commission uses these advisers, as pointed out by a number of academics who have researched the issue of expert groups, is that they allow the European Commission to develop policy proposals that are 'pre-approved' by Member States and by powerful interest groups.³⁵

The Commission prefers dealing with Member States at a technocratic level to avoid the politicisation of the Council of Ministers' negotiations with their complex voting system. The process of using expert groups means that the Commission is less likely to meet huge resistance from the larger Member States which have more voting power.

Securing the support of big business lobby groups also makes the Commission's life easier. Some 70 per cent of the 15,000-plus lobbyists in Brussels represent big business interests. They follow the legislative procedures and can intervene as proposals pass through the different European institutions. Involving them in expert groups means they are more likely to support the process.

Engaging with national administrations at a technical and apolitical level is a characteristic of a technocratic system that wants to avoid confrontational scientific and social debates that in fact involve large parts of society.

Engaging with corporations as the second-biggest 'expert' category, way ahead of the other non-governmental categories, reflects the Commission's somewhat skewed understanding of who makes up 'civil society' and what counts as 'participatory democracy'. The Commission is not seeking its legitimacy in society at large but solely within the business community.

In March 2008, a Commission spokesperson said that business represented 20 per cent of all 'experts'.³⁶ In August 2008, the think tank Open Europe conducted a survey that found there was an average of 38 members per expert group.³⁷ If we combine these two figures with the number of groups listed in the register in April 2009 (987) this would give us 7,500 business advisers. There are 12,648 Commission officials (A–D grade) dealing with policy making.³⁸ This would mean there is more than one corporate policy adviser for every two in-house policy makers in the Commission.

These business 'experts' do not of course work full time on drafting policy. The frequency of their meetings varies from monthly to yearly, although some also have email contact. The most crucial element for business participants, however, is the privileged access to Commission officials and the official status they obtain as advisers.

It is exactly because of this status that lobbyists consider expert groups a cornerstone of their strategies and receive training in how to use them. The European Training Institute, founded by veteran lobbyist Daniel Guéguen, organises such training courses. On one such course lobbyists were advised to lobby for a new expert group to be set up, giving them control of its agenda. Gaining control of expert groups' agendas is a routine part of the commercial lobbyists' toolbox.³⁹

Conclusions

The importance of the Commission's expert groups is such that they can in some cases make an even greater contribution to the final legislation than the European Parliament. The composition of expert groups involving non-governmental actors demonstrates the European Commission's clear preference to consult with corporate interests.

There are currently at least 100 expert groups in which most of the non-governmental participants come from business, and where the existing rules on fair composition are breached. ALTER-EU believes that these groups should either to be dissolved or the composition amended to give more balance.

The Commission has continually denied the need for common rules across all the Directorates-General, as called for by the Parliament. Given the current bias in favour of business interests the Commission should introduce new criteria that ensure a fair and open selection process and apply a moratorium on the creation of new groups until these criteria are in place.

The low turnout in the 2009 European elections and growing public mistrust of European institutions⁴⁰ should sound a warning to the new College of Commissioners that voters are disengaged from the EU process and that transparency and accountability need to be improved. The College must act to overcome the resistance from some Directorates who seem to prefer to keep expert groups in the shadows.

On the other side of the Atlantic, the US Congress is considering legislation on ensuring that participants in its expert panels are free of conflicts of interest and disclose financial ties. Will the new Commission go in the same direction, or will it remain anchored to the status quo?

The Commission's approach stands in stark contrast with the efforts of the Obama Administration. In autumn 2009, Obama's Special Counsel for Ethics and Government Reform proposed restrictions on the presence of lobbyists in federal agency advisory boards and commissions, fulfilling a commitment made in the election campaign.⁴¹ During the Bush Administration, industry control of federal advisory bodies had reached disturbing levels, in many cases worse than many of the Commission's expert groups. How this new initiative will be put into practice remains to be seen, but the substantial steps taken by the Obama Administration to prevent regulatory capture sets an example for the European Commission to follow.

ALTER-EU believes the Commission should acknowledge that corporate dominance of advisory bodies is a problem and address this through its framework policies to improve transparency and democratic governance.

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- 1 Torbjörn Larsson, *Precooking in the European Union – The World of Expert Groups* (Brussels/Stockholm: 2003).
- 2 In April 2009, there were 182 groups with business participation and 105 with other non-governmental presence but no business representatives. The composition of 110 groups was clearly biased in favour of industry. Even if all the other 105 groups were controlled by NGOs or trade unions, for instance, (which is far from the case), there would still be fewer of these than those dominated by industry.
- 3 In October 2009, the Commission acknowledged that in 38 cases the information presented in the Register needed to be corrected, as ALTER-EU pointed out in a formal complaint.
- 4 Agnes de Rooij, Nina Schulz, Andy Rowell, *Driving Climate Change; How the car industry is lobbying to undermine EU fuel efficiency legislation* (Amsterdam: Greenpeace International, 2008);
Christine Pohl, *Whose views count? Business influence and the European Commission's High Level Groups* (Brussels: Friends of the Earth Europe, February 2009);
European Parliament, *Legislative resolution of 17 December 2008 on the proposal for a regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles* [COM(2007)0856 – C6-0022/2008 – 2007/0297(COD)] (Brussels 17 December 2008).
- 5 Christine Pohl, *Whose views count?* (Brussels: 2009)
- 6 European Commission, "High Level Expert Group on EU financial supervision to hold first meeting on 12 November", press release, 11 November 2008.
Kenneth Haar, Andy Rowell, Yiorgos Vassalos, *Would you bank on them?* (Brussels: Corporate Europe Observatory, Friends of the Earth, LobbyControl and SpinWatch, February 2009).
High Level Group on Financial Supervision, *Report* (Brussels: 25 February 2009);
Yiorgos Vassalos, "Commission's advisers on financial markets: bankers only", *Brussels Sunshine blog*, 9 November 2009.
- 7 In 1975 it was reported that there were 537 groups. In 1990 the number had increased to 602 (W. Wessels, "Comitology: Fusion in action. Politico-administrative trends in thsystem", *Journal of European Public Policy* 5 (2008), pp. 209-34 – quoted in Gornitzka and Sverdrup, *Who consults? By 2000 the number had reached 851* (Torbjörn Larsson, *Precooking in the European Union*, Stockholm, 2003). This gradual growth has been replaced by a radical increase of 40 per cent from 2000 to January 2007 when they were 1,237. Academics Gornitzka and Sverdrup collected data from academic surveys published before 2005 when there was no public data at all and compared them with what they found in the Commission's Expert Groups Register in January 2007. Åse Gornitzka and Ulf Sverdrup, Centre of European Studies, (University of Oslo, 2007 -2008).
- 8 Corporate Europe Observatory, *Lobbying the European Union by Committee* (Amsterdam: July 2007).
See table "The European Union's Committee System".
- 9 "LISTE DES GROUPES D'EXPERTS ET DES AUTRES ORGANISMES 2004".
http://fairchair.eu/fileadmin/user_upload/pdf/WorkgroupsCommission.pdf
- 10 Around 200 more groups were found dispersed across different websites (Social Dialogue Committees and the Scientific Committees).
- 11 This also stated that the "list shall be updated on a regular basis and made public". European Parliament, *Framework agreement on EP-Commission relations* (Brussels: 26 May 2005).
- 12 European Commission, *Communication to the Commission from the President, Ms Wallström, Mr Kallas, Ms Hübner and Ms Fischer Boel proposing the launch of a European Transparency Initiative*, 9 November 2005.
- 13 The Conference of Presidents consists of the President of Parliament and the chairmen of the political groups.
- 14 European Public Health Alliance, "European Commission High Level Groups questioned by the European Parliament", update on website, February 2006;
Christine Pohl, *Whose views count?* (Brussels: 2009);
Claude Turmes (MEP, Verts/ALE), "Written question to the Commission", 5 January 2006.
- 15 European Parliament Committee on Budgetary Control, "2005 discharge - Member States' responsibility in question", press release, 26 March 2007.
- 16 Discussion on the European Transparency Initiative in the European Parliament's AFCO committee, 16 July 2007.
- 17 ALTER-EU, *Secrecy and corporate dominance - a study on the composition and transparency of European Commission Expert Groups* (Brussels: 2008).
- 18 "The process of collecting and publishing the names of members of the different groups shall be completed by the summer", Commission spokesperson Valerie Rampi told the *Financial Times* on 25 March 2008. On the same date Associated Press and the *International Herald Tribune* wrote: "EU Commission spokeswoman Valerie Rampi told reporters the EU's executive office was going to make public online the names of expert group members and who they represent by the summer".
- 19 Letter from Catherine Day, Secretary-General of the European Commission to Erik Wesseliuss of ALTER-EU [D(2008)7434].
- 20 Jens Nymand Christensen (of the Commission's Secretariat-General), letter to Erik Wesseliuss, 9 March 2009 [D(2009)590].
- 21 The register was checked between 28 November and 3 December 2008 and 1022 groups were listed. So, 35 groups were dissolved between December 2008 and April 2009, meaning that 189 groups were dissolved between the first months of 2008 and April 2009.
- 22 The number of expert groups with non-governmental participation also appeared to have decreased from 652 (53.7 per cent) in 2008 to 328 (33 per cent) in 2009, while there were 61 more only with government participation in March 2009.
- 23 CARS21 had a sherpa meeting (ie a guidance meeting) scheduled to take place in February 2009.
- 24 In September 2008, the Commission's General-Secretary Catherine Day informed ALTER-EU that the Alternative Fuels group had been dormant since 2003, yet in April 2009 this group was still listed on the register.
- 25 Of the 328 groups, 105 groups were not fully transparent, making public scrutiny and evaluation impossible: 1) There was no membership list at all for seven of the groups (i.e. no names of individuals or organisations), 2) in at least 26 groups, industry was listed as participating, but no names of the organisations or individuals involved were given; 3) in eight groups, the total number

- of the participants was unclear, making it impossible to determine whether the information was complete; 4) For 24 groups, the Commission claimed that industry participants were there in a personal capacity. The declarations about their supposed independence were not available, and it was not specified which individuals had links with industry. It was therefore impossible to see if any particular interest was favoured; 5) There were no names at all for 40 groups, sometimes with no explanation, and sometimes with reference to the Regulation on personal data protection, but with no justification of the grounds for non-disclosure.
- 26 European Commission, *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission* [COM(2002) 704] (Brussels: 11 December 2002).
 - 27 European Commission, *The collection and use of expertise by the Commission: principles and guidelines; "Improving the knowledge base for better policies"* [COM(2002) 713] (Brussels: 11 December 2002).
 - 28 See correspondence with the European Commission on the ALTER-EU website (www.alter-eu.org).
 - 29 Committee on Budgetary Control, *Transparency in financial matters* ((2007/2141(INI)) (Brussels: 19 February 2008).
 - 30 Reply by Mr Barroso on behalf of the Commission to a written question by MEP Erik Meijer (E-7074/08), March 2009.
 - 31 In the following groups, for example, there are many corporate employees supposed to be there 'in a personal capacity': 1) Groupe Politique d'entreprise - Chambre Professionnelle; 2) ISTAG - Information Society Technology Advisory Group; 3) ESMEG – European Securities Market Expert Group; 4) Ore agglomeration and Ironmaking; 5) Clearing and Settlement Advisory and Monitoring Expert Group; 6) Contrôle des installations, problèmes sociaux et environnementaux/Factory-wide control, social and environmental issues; 7) Casting, reheating and direct rolling; 8) Coal preparation, conversion and upgrading; 9) FP7 Expert Advisory Group on SMEs; 10) Strategic Advisory Board on Competitiveness and Innovation.
 - 32 Details on expert group on "Coal combustion, clean and efficient coal technologies, CO₂ capture" in the Commission's online Register of Expert Groups.
 - 33 This is how the Commission describes it on its website: "The preparation and implementation of EU policies by the Commission rely increasingly on expert advice" and "the collection of expert knowledge is crucial to secure a sound knowledge base for better policies". *Expert Groups Explained*, (Brussels: undated). Accessed at <http://ec.europa.eu/transparency>, last accessed 24 March 2010
 - 34 Åse Gornitzka and Ulf Sverdrup, *Who consults?* (University of Oslo, 2007).
 - 35 Expert groups are more about the substance of policy and linkages with the interest groups and Member States, as shown in Torbjörn Larsson, *Precooking in the European Union*, 2003. Eighty-seven per cent of expert groups relate to policies and not to 'general services', 'external relations', or 'internal services', according to Åse Gornitzka and Ulf Sverdrup, *Who consults?* (2008).
 - 36 Les experts de l'ombre sur la sellette", La Libre, 26 March 2008.
 - 37 Open Europe, *The EU's 170,000-strong army of bureaucrats* (London: August 2008).
 - 38 The distribution of officials and temporary agents by Directorates-General and categories (all budgets) can be found on the Commission's website.
 - 39 Corporate Europe Observatory, *Lobbying the European Union by Committee* (Amsterdam: July 2007).
 - 40 Distrust of the European Institutions increased by 10 per cent between 2007 and 2009, according to Eurobarometer, *Attitudes of Europeans towards Corruption* (Brussels: November 2009).
 - 41 Norm Eisen (Special Counsel to the President for Ethics and Government Reform), "Lobbyists on Agency Boards and Commissions", *Open Government Initiative weblog*, 23 September 2009.
The initial proposal was for narrowly focusing on federally registered lobbyists, while these are not the only ones influencing government on behalf of special interests. The proposal also failed to make a distinction between lobbyists working for nonprofit public-interest groups and those working for for-profit concerns. See: OMBWatch, "White House Moves to Limit Lobbyists on Federal Advisory Committees", 29 September 2009.