



March 2013

## **ALTER-EU commentary on progress in reforming Expert Groups in advance of the Informal Dialogue**

Two explanatory footnotes have been added to this document in light of seeing the Commission's own State of Play from 28 February 2013, which has now been made public by ALTER-EU but was not previously.

In November 2011 the European Parliament imposed a budget reserve on committees, asking the Commission to “[modify the rules on expert groups](#)” according to four conditions: **balanced composition; ban lobbyists sitting in a personal capacity; common selection criteria and public calls for applications; full transparency.**

When the European Parliament lifted the budget reserve in September 2012, MEPs agreed in a meeting with the Commission (5/9/2012) to establish an informal dialogue to explore ways to avoid a lengthy process of changing the horizontal rules, “as long as the necessary changes and clarifications are being implemented by all DGs of the EC.”

Before the budget reserve was lifted, the Commission released a '[state of play](#)' (06/09/2012), outlining where it thought the problem lay, and steps it was taking to meet the Parliament's conditions. However, ALTER-EU's [response](#) (16/10/12) highlighted that the Commission had missed problematic expert groups and suggested concrete steps for improving the situation.

On 13<sup>th</sup> March the European Commission will meet MEPs for the first time in 2013 to discuss this issue. In advance of the next Informal Dialogue, ALTER-EU would like to comment on the current progress made by the Commission with regards to its commitments, as well as highlight further examples of problematic expert groups and the need for concrete actions on behalf of the Commission. The evidence presented and the recommendations that follow should be taken into account by MEPs during the informal dialogue.

### **Condition No1: Balanced composition**

Despite identifying 'more than fifty groups' in its review that were imbalanced, the Commission has still not made this list public. Nor has it made public the full list of expert groups that are not exclusively composed of public authorities.

#### DG Enterprise and Industry (DG ENTR)

From the list of 19 groups with industry over-representation in DG ENTR that the Commission did provide, not a single group has been successfully rebalanced, with some increasing their industry domination.

Four groups were to be scrapped, but three remain on hold (CARS21, High Level Forum for a better functioning of the food supply chain, STRABO). There is no information in the registry or on the Commission website about the fourth (Ferrous and non-ferrous metals competitiveness expert group). The only two groups that have been officially scrapped were supposed to be rebalanced (Ad-hoc Advisory Group on Non-Annex I Products, Annual European Tourism Forum).

Of the 13 remaining groups identified, an open call for applications closed on 31<sup>st</sup> October with all new members supposed to be in place by 31<sup>st</sup> January. According to the Register of

Commission Expert Groups, no membership change has taken place in six of the 13 identified groups<sup>1</sup>:

Advisory Committee on Community Policy Regarding Forestry and Forest-based Industries  
Eco-design Consultation forum  
European Multi-Stakeholders Platform on ICT Standardisation<sup>2</sup>  
Working Group on Fertilisers  
Working Group Measuring Instruments  
WG on Agricultural Tractors

In seven of the 13 groups, changes have taken place, but they remain imbalanced:

- i. Mission Evolution Advisory Group
- ii. Raw Materials Supply Groups
- iii. EG on the Revision of the LeaderSHIP strategy
- iv. WG Gas Appliances
- v. WG on explosives
- vi. WG on Motor Vehicles
- vii. WG on Motorcycles

In WG Gas Appliances, 10 extra industry representatives were added with no addition of civil society.<sup>3</sup> This is not in line with the Commission's commitment to rectify the incidence of industry over-representation.

ALTER-EU also presented the Commission with a further 14 groups which contained industry over-representation, to which it has not publicly responded (to date, two have been scrapped).

#### *DG Agriculture (DG AGRI)*

The Commission also identified in its July state of play (09/07/12) that 30 groups within DG AGRI would undergo “a revision and better balancing” to meet the European Parliament's conditions. Currently 80 per cent of the experts in the Advisory Groups created through a Commission decision in 2004 (23/04/2004) come from large farming organisations and industry, with only 22 out of 943 places going to small-scale farmers.

DG AGRI declared in the most recent Commission state of play (06/09/12) that “a modernized and rationalized Civil Society Dialogue-system based on principles of openness, transparency and flexibility will be devised”, after which, “Members will be selected following public calls for application. This bottom-up approach will need time, meaning that the process is likely to last until some point in 2013.”

However, recent indications from DG AGRI during a stakeholder meeting (16/01/13) are that reform of the expert groups – which includes reducing industry over-representation – will not occur until the CAP reform is completed. This is unlikely to be before 2015, and contradicts both DG AGRI's previous commitments as well as the findings from their formal consultation of stakeholders (16/6/12), where a broad majority called for groups to be opened to a wider

<sup>1</sup>According to a state of play by the commission which has not been made public, Working Group Fertilisers was also modified, although not rebalanced. Between July 2012 and February 2013, the Commission added five additional industry representatives and one trade union.

<sup>2</sup>The Commission claims the European Multi-Stakeholders Platform on ICT Standardisation also added another NGO, not affecting the imbalance of five NGOs compared to 18 industry representatives. However, this information is not in the register, which maintains that the group still contains 55 members.

<sup>3</sup> WG Gas Appliances extra industry members are compared to when ALTER-EU published its report 'Who's Driving the Agenda at DG Enterprise and Industry?', the last time data was analysed. The Commission claims it added no new entrants during the recent call, which suggests these members were added before the call (there is no public record of this). This is despite the Commission budget being frozen at the time by the EP, with an explicit condition that expert groups be rebalanced.

variety of stakeholders.

### New Groups

Even if one accepts DG AGRI's new line of argument, the difficulty of reforming existing groups should not inhibit newly established groups from meeting the conditions set by the European Parliament. However, new groups are being established with industry over-representation in DG AGRI and elsewhere:

- 1) DG AGRI Expert Group on Agricultural Commodity Derivatives and Spot Markets, created 26 November 2012 (16 industry, 0 other)
- 2) VAT Expert Group, created 25 September 2012 (39 industry, 1 Academic)

In both these cases, NGOs applied to join the groups but were refused. The VAT Expert Group was explicitly searching for "VAT practitioners and academics", while the Expert Group on Agricultural Commodity Derivatives and Spot Markets explicitly outlined "The need to strike a balance within the group of experts in terms of representativeness of interests, relevant expertise, gender and geographical origin." The numbers above show neither groups fulfilled their stated criteria.<sup>4</sup>

The High Level Group on Administrative Burden (also known as the Stoiber Group) agreed its third mandate in December 2012 (C(2012)8881 of 5 December 2012). The first meeting of the new mandate took place on January 2013. However, the group currently comprises nine members, all of whom are from the private sector. The decision on whether civil society representatives will be granted membership of the group – environment, trade union, consumer, public health and human rights organisations have applied – has been delayed until April. Yet the imbalanced group continues to meet. This is particularly worrying given the highly political nature of its subject matter.

### **Condition No.2 Ban lobbyists sitting in Expert Groups in a personal capacity**

The Commission says that it has reviewed its groups and relabelled as stakeholder interests those who may have previously been sitting in a personal capacity. However, in the Mission Evaluation Advisory Group the number of interested stakeholders sitting in a personal capacity has increased (David Bowen, SESAR Joint Undertaking, has been added).

In the VAT Expert Group, there are 18 experts in their personal capacity. 16 are from industry, representing accountancy firms, consultancies and law firms, as well as BusinessEurope and the private industry interests of Hewlett-Packard, Hutchinson 3G, GE and Volvo. The importance of each individual's expertise – rather than their place of work and sectoral interests – is undermined by their alternative invariably working for the same organisation.

Equally, the Stoiber Group, which has labelled five members as 'individual experts appointed as a representative of an interest', still appoints members in their personal capacity who come from a clear industry background:

- ⇒ Roland Berger, honorary chair of his own consultancy firm and a chair or member of numerous industry boards;
- ⇒ Johannes Ludwig was until January 2012 the Executive Director of CER, a railways industry lobby association, as well as continuing to be on the advisory board of Deloitte;
- ⇒ Pavel Telicka is Director of BXL Consulting, which has or continues to lobby on behalf of organisations such as British American Tobacco, Microsoft and RWE;

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<sup>4</sup> The Commission's state of play reveals that they have decided to reclassify industry members sitting in a personal capacity as representatives of a specific organisation.

### Condition No.3 Common selection criteria and public calls for applications

Concerning common selection criteria that guarantees balance among different stakeholders and avoids conflict of interest, while establishing an obligatory open selection process for all groups including non-member states, the Commission said in its State of Play that it is “committed to ensure that all relevant provisions concerning selection of members of expert groups are fully implemented, including selection via public calls for application.”

However, this has not yet resulted in concrete outcomes such as more balanced groups. Both the calls for applications for DG AGRI's [Expert Group on agricultural commodity derivatives and spot markets](#) (which closed on 19 October) and DG TAXUD's VAT Expert Group (which closed on 24 August) expressed a “need to strike a balance within the group of experts in terms of representativeness”. Yet both groups have subsequently refused entrance to civil society stakeholder(s), with all non-governmental places going to industry interests (either in a stakeholder or a personal capacity).

The recent experience of DG ENTR also shows the system of public calls for applications is not working. 13 calls for expressions of interest were issued, with a deadline of 31 October, and no group has subsequently been reformed to deal with industry over-representation. Whether this is because potential members did not come forward, or if they were refused membership by the Commission, it indicates a problem. The limited visibility of the public call may also be a contributing factor. In the case of the European Multi-Stakeholders Platform on ICT Standardisation Expert Group, the public call for applications was not even announced to its serving members.

If the Commission is genuinely committed to guaranteeing balance through an open selection process, it must take a pro-active approach in publicising the public call, as well as adhering to its own criteria around balanced representatives, realising the dual political and technical dimension of Expert Group work. A cultural shift may be necessary in order for Expert Groups to provide the necessary expertise to the Commission while allowing it to fulfil its policy-making tasks as a European public institution. This entails serving the public interest of all stakeholders and not just narrow interests, therefore obliging the Commission to accept that the expertise must represent the interests of all stakeholders. This should be clear in the selection criteria and then the resulting selection.

### Condition No.4 Full transparency

The Register of Commission Expert Groups and Other Similar Entities has improved transparency of Expert Groups, but huge discrepancies remain:

- **Some Expert Groups are not in the register**, such as the Ferrous and Non-Ferrous Metals Competitiveness Expert Group, despite being pointed out by ALTER-EU and MEPs.<sup>5</sup> CARS21 was mysteriously removed from the register and then re-instated.<sup>6</sup>
- **Other 'similar entities' are not in the register**, and they do not appear to be subject to the same horizontal rules. DG Internal Market's Structured Stakeholder Dialogue Working Group of Licences for Europe is absent, a group in which 78% of seats are held by industry, trade associations or lobbyists.

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<sup>5</sup>The Commission claims that the group has now finished its work. However, there was no trace of the group ending within the register.

<sup>6</sup>CARS21 is to be replaced by CARS2020, but only two extra non-industry representatives have been invited to this group, which doesn't sufficiently rebalance the membership (there are 10 industry representatives and only 6 civil society representatives). This also suggests that the Commission is not following the agreed rules on open calls for applications with common criteria.

- **Information within the register is inconsistent**, as some groups are kept up-to-date by including agendas and minutes while other have not been updated since the beginning of 2012 (Advisory Committee on Community Policy Regarding Forestry and Forest-based Industries, Eco-design Consultation forum, Raw Materials Supply Groups).
- **Membership is not always published**. DG SANCO-SCENIHR, after closing the call for its Expert Group on Nano Materials in Medical Devices, has claimed that the membership of its working groups do not become public until after the work is completed, preventing any independent scrutiny and accountability.
- **DG websites inconsistent with register**, with some DG websites containing more information (DG ENTR Automotive groups - CIRCABC - have a separate document library), while others have no mention of the group on the website (e.g. Mission Evolution AG, WG on Gas Appliances or Eco-design Consultation forum).
- **Inconsistent labelling of members** from one group to the next – even within the same DG – make it impossible for the public to know if expert groups are balanced. In DG ENTR, ACEM (the Motorcycle Industry in Europe), AECC (Association for Emissions Control by Catalyst) and CLEPA (European Association of Automotive Suppliers) are all listed as associations in CARS21, but in the WG on Motorcycles they are all listed as NGOs. This undermines public confidence that the Commission is applying rules in a consistent way and taking the problem of industry over-representation seriously.
- **Minority opinions and contributions of groups members are rarely published**, which prevents civil society and other European institutions from seeing whether the commission is acting on a consensual view or on the interests of certain stakeholders, while claiming legitimacy for decisions from the presence of all stakeholders. This undermines the positive efforts made towards rebalancing groups.

### **Some other considerations**

Financing of expert group members needs to take into account each member's ability to pay, as well as the relative cost to their organisation in time sacrificed, e.g. smaller organisations are less able to absorb the impact of a staff member spending a day in Brussels compared to a larger organisation. This is an important reason holding back the participation of many potential civil society experts.

A broader question exists on whether expert groups are conducted in a way that maximises the expertise available and positively influences the Commission's work. If groups do not feel that Expert Groups are a good use of their often-limited time, it may inhibit their participation. The Commission should clearly show how expert group reports and decisions have impacted on legislation through producing legislative footprints.

**As the Commission has to date not fulfilled its commitments to reform Expert Groups, MEPs should ensure they are provided with a clear agenda and timetable by which time all conditions outlined by the European Parliament will be met. This should be underwritten by a Memorandum of Understanding (MoU) between the Commission and the Parliament outlining the new set of guidelines by which all expert groups should adhere to. The MoU should then be integrated into the horizontal rules on expert groups when these are revised, likely to be in 2015.**