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Letter to the Secretariat-General of the European Commission on Expert Groups

Dear Madams, dear sirs,

Following correspondence with the European Ombudsman (please find it attached in the same email) we would like to request an answer to the following questions.

<p>A. We complain that the Commission does not provide adequate transparency on the composition of expert groups and has not taken sufficient action to remedy the unbalanced composition of certain expert groups.</p>

Specifically, the complaint is about the Commission's position in relation to six points on the issue of expert groups. These reflect key points of the Commission's interpretation of its obligations vis-à-vis transparency, standards for consultation and membership selection criteria for expert groups. The Commission's position was laid out in:

a) a response, dated March 9, 2009, from Jens Nymand Christensen, a director in the Commission's Secretariat General (AM/ptp D(2009)590) to Erik Wesselius, a campaigner with Corporate Europe Observatory and a member of the Steering Committee of ALTER-EU on March 9, 2009

b) a response from President Barroso to a Parliamentary question by MEP Erik Meijer (E-7074/08) on March 6, 2009

c) a response from President Barroso to a Parliamentary question by MEP Erik Meijer (E-6705/08, E-6706/08) on February 9, 2009

The six points are:

1. Disclosure of membership of expert groups is complete

The Commission argued that “The disclosure of membership of expert groups in the public register was completed in January 2009”.

We believe and will illustrate that this is not correct.

2. Consultation rules do not apply for groups dealing with technical issues

According to the Commission “The principles and guidelines on the collection and use of expertise and the minimum standards for consultation of interested parties apply to expert groups involved in the different stages of the policy-making cycle, while those provisions are not relevant when expert groups address purely **technical issues**.” [our emphasis]

We believe that there is no basis for such an approach and that the Commission should apply the rules to all expert groups, ‘technical’ or not.

3. A number of industry dominated groups do comply with the rules

The Commission says that the following expert groups “*comply* [or complied at the time of the question and reply or when they were active] *with the principles and guidelines on the collection and use of expertise and with minimum standards for consultation of interested parties*”: (1) the High Level Group on Competitiveness Energy and the Environment, (2) the High Level Group on the Competitiveness of the Chemical Industry, (3) the Competitiveness in Biotechnology Advisory Group, (4) the expert group on the “Surveillance de la moyenne des émissions spécifiques de CO₂ dues aux véhicules particuliers neufs”.

We disagree that this is the case.

4. We do not need new selection criteria

The Commission says that it “does not consider it necessary to draw up general selection criteria”.

We disagree and argue that there is a need for such selection criteria.

5. Grounds for exceptions from disclosure should not be published

The Commission states that “a member who opposes publication must provide valid grounds. If the Commission services consider that the objection put forward by members of expert groups to publish their names is not based on justified grounds, the Commission’s practice is that the individuals concerned can no longer be members of expert groups.”

The Commission does not publish the “justified grounds” in cases where it decides not to publish the name of a member of an expert group. We believe that these grounds should be published.

6. Corporate representatives can participate “in a personal capacity”

According to the Commission, expert group members who are there in a personal capacity “have to act independently and, each year, they have to make a written declaration of commitment to act in the public interest, together with a declaration as to whether there is any interest which would prejudice their independence”(E-6705/08, E-6706/08).

In the expert groups register there are many groups¹ where most of the members work for corporations or industry associations active in the field the expert group is advising on. We believe that experts working for corporations, industry associations, NGOs or trade unions with financial or other interests in the issues dealt with by the expert group, cannot be member of such expert group ‘in a personal capacity’. As they have a clear interest, it should be clear that they act on behalf of that interest.

B. We consider the European Commission has acted wrongly in six cases:
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1. Disclosure of membership of expert groups is complete

The Commission says that the disclosure of membership of expert groups was completed in January 2009. We have found evidence of expert groups that are still active today but which are not included in the register, as for example CARS 21². In September 2008, the General-Secretary Catherine Day informed us that the Alternative Fuels group had been dormant since 2003 and that it would be removed from the register. However, in April 2009 this group was still there. These examples indicate that the register does not give accurate or up-to-date information on which expert groups are currently advising the Commission, since it contains groups that no longer exist and other existing groups are missing.

¹ Some examples: 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, 4) Clearing and Settlement Advisory and Monitoring Expert Group, 5) Contrôle des installations, problèmes sociaux et environnementaux/Factory-wide control, social and environmental issues, 6) Casting, reheating and direct rolling, 7) Coal preparation, conversion and upgrading, 8) FP7 Expert Advisory Group on SMEs, 9) Strategic Advisory Board on Competitiveness and Innovation.

² CARS21 had a sherpa meeting scheduled in February 2009

658 out of the 987 groups (two thirds) that were in the register in April 2009 were composed only of government representatives. We have not focused on these groups. Our main concerns over transparency refer to the groups with non-governmental participation, as they require special attention in relation to the balance of the different interests represented. Going through the register at the end of March and beginning of April 2009, we found 329 groups with non-governmental participation in the register (one third). Please see the overview of these groups in the Annex of this complaint (attached in the same email). We have found that:

- Nearly one third of them - 105 out of 329 - are not transparent, and therefore their public scrutiny and evaluation is not possible.
- There is no membership list at all for seven of the groups (ie. no names of persons or organisations).
- In at least 26 groups, industry is listed as participating, but no names of the organisation or individuals involved are given.
- In 8 groups, the total number of the participants is unclear. So it is unclear whether information on all the members is provided.
- In 24 groups, the Commission claims that industry participants are there in a personal capacity. The declarations made on independence (?) are not available, and it is not specified which individuals have links with industry. It is therefore impossible to see if any particular interest is favoured.
- No names at all are given for 40 groups, sometimes with no explanation, and sometimes with reference to Regulation 1049/2001 but without any justification of the grounds for non disclosure. This is equivalent with blanking out names of lobbyists and therefore it is contrary to the July 2007 decision of the European Ombudsman³ and the November 2007 judgement of the Court of First Instance against this practice.⁴

All these facts and figures show that membership disclosure for expert groups is far from complete. ALTER-EU wrote to the Commission in December 2008, pointing out that basic information was missing in 2/3 of the groups on the register.⁵ In April 2009, much of that information was still not available.

³ Decision of the European Ombudsman on complaint 3269/2005/TN against the European Commission - <http://www.ombudsman.europa.eu/decision/en/053269.htm>

⁴ Case T-194/04; The Bavarian Lager Co. Ltd v Commission of the European Communities - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004A0194:EN:HTML>

⁵ ALTER-EU's letter to Ms Catherine Day Secretary General of the European Commission, December 2008 http://www.alter-eu.org/en/system/files/files/alter-eu/publications/expert_groups_dec_2008.pdf

Therefore, the Commission's statement that the disclosure of the membership of expert groups was completed in January 2009 is not correct. The fact that the Commission made this statement shows maladministration.

2. Consultation rules do not apply for groups dealing with technical issues

According to the Commission “The principles and guidelines on the collection and use of expertise and the minimum standards for consultation of interested parties apply to expert groups involved in the different stages of the policy-making cycle, while those provisions are not relevant when expert groups address purely **technical issues**.” [our emphasis]

The Commission said in a letter to MEP Erik Meijer that these principles and guidelines were not relevant for all expert groups dealing with technical issues and specifically to the group ‘Coal Combustion, Clean and Efficient Coal Technologies, Carbon Dioxide (CO₂) Capture’.⁶

However, no distinction between ‘technical’ and other expert groups is mentioned in any of the documents framing the function of expert groups. There is no reference to technical details being beyond the scope of policy making in the following documents:

- The Framework for Commission's expert groups: Horizontal rules and public register, C(2005)2817
- The principles and guidelines on the collection use of expertise, COM(2002)713
- The General principles and minimum standards for consultation of interested parties by the Commission, COM(2002)704
- The White Paper on European Governance, COM(2001)428

There appears to be no justification for the Commission making the distinction between technical and non technical groups. There is therefore also no justification for not applying the principles and minimum standards to groups that are qualified by the Commission as ‘technical’ groups.

What is more, we specifically disagree with the qualification of the ‘Coal Combustion’ group as technical. The issues discussed in the group are highly controversial and the members of the groups have a direct interest in EU policies in this area, for instance in relation to research funds for CCS. Based on that, this group can in no way be considered as a ‘technical’ group.

The ‘Coal Combustion, Clean and Efficient Coal Technologies, Carbon Dioxide (CO₂) Capture’ group cannot be considered as a ‘technical’ group. In general, **no expert group**

⁶ President Barroso to a Parliamentary question by MEP Erik Meijer (E-7074/08) on March 6, 2009

should be excluded from the scope of the principles and guidelines on the collection and use of expertise and the minimum standards for consultation of interested parties upon grounds that it deals with technical issues.

3. Industry dominated groups comply with the rules

In its letter to MEP Erik Meijer (E-7074/08) on March 6, 2009, the Commission says it considers the High Level Group on Competitiveness Energy and the Environment, the High Level Group on the Competitiveness of the Chemical Industry, the Competitiveness in Biotechnology Advisory Group and the expert group on Surveillance de la moyenne des émission spécifiques de CO2 dues aux véhicules particuliers neufs to be in compliance with its codes of conduct. Let's take a look on these groups one by one:

The High Level Group on Competitiveness Energy and the Environment is currently not active. It is still in the register but its non-governmental members have been deleted. This change in the registration is questionable. From earlier documentation we found that the group had 13 industry members and only 4 non governmental members.⁷

The High Level Group on the Competitiveness of the Chemical Industry has 14 industry representatives, two representatives from consumer organisations, one NGO and one academic member.

The Competitiveness in Biotechnology Advisory Group has been removed from the register. According to a response in an Access to Documents request received on March 19, 2007 it had 20 industry representatives and six academics.⁸

The expert group on Surveillance de la moyenne des émission spécifiques de CO2 dues aux véhicules particuliers neufs previously included only governmental and industry representatives. In September 2008, General-Secretary Catherine Day informed us that it would resume work in 2010 with the same membership.⁹

In all these groups industry members largely outnumber(ed) other non governmental representatives. According to the Commission these groups comply with the Principles and Guidelines on the Collection and Use of Expertise and the Minimum Standards for Consultation of Interested Parties.

⁷ Whose views count? Business influence and the European Commission's High Level Groups, Christine Pohl, Friends of the Earth Europe, February 2009 - http://www.foeeurope.org/corporates/pdf/whose_views_count.pdf

⁸ Secrecy and corporate dominance – a study on the composition and transparency of European Commission Expert Groups, Yiorgos Vassalos, ALTER-EU, March 2008 - <http://www.alter-eu.org/en/system/files/files/alter-eu/publications/expertgroupsreport.pdf>, p. 20

⁹ [European Commission Secretary-General Catherine Day to ALTER-EU](#), 19 September 2008, D(2008)7434

Nevertheless, the Principles and Guidelines on the Collection and Use of Expertise state that:

- “The final determinant of quality [of 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.”

ALTER-EU has consistently argued that there is no real pluralism when industry is dominant over other types of non-governmental interests, such as independent academics, consumer groups, social and environmental organisations or trade unions. By giving the majority of the seats of an expert group to corporations who have an interest in the policy area at hand, there is a risk that they will distort the advice given.

There is no real diversity of viewpoints when people representing a single type of interest outnumber so largely other viewpoints. The Commission has not given any reason why it hasn't been possible to have such diversity in these four groups.

According to the General Principles and Minimum Standards for Consultation of Interested Parties, the Commission departments should:

- “reduce the risk of policymakers just listening to one side of the argument or of particular groups getting privileged access”
- and not underestimate “the challenge of ensuring an adequate and equitable treatment of participants”

Industry interests do get privileged access when they far outnumber other non-governmental groups.

Commission departments underestimate the challenge of ensuring equitable treatment when they let commercial points of view prevail over all other considerations.

In April 2009, there were 110 groups in the register in which industry made up more than half of the non-governmental members. In 40 of these groups industry had the absolute majority of the seats, including representatives from governments.

This makes up nearly half of all the groups that have industry participation and for the membership of which there is public information (110 of 224 groups with industry

participation). Only 72 of the groups with industry participation are both fully transparent and balanced.¹⁰ There are also clear indications that other industry-dominated groups exist but are not included in the register at all (f.i. CARS 21).

These figures indicate that the problem of non compliance with the Commission's codes of conduct [COM(2002)713 and COM(2002)704] is not limited to four groups but could expand to 40, 110 or even more groups [please find the full list in the Annex attached to the same email].

The Commission is not applying its own guidelines for use of expertise and minimum standards for consultation. As a result, a large number of expert groups have a biased composition which favours industry representatives. The composition of these groups chosen by the Commission is a matter of maladministration.

4. We do not need new selection criteria

According to President Barroso "the Commission does not consider it necessary to draw up general selection criteria".

The guidelines on use of expertise, however, provide that "transparency is required; particularly in relation to the way [...] experts are selected". They also say that transparency "also implies a strategy for proactive communication [...] in which the Commission should constantly seek ways to better publicise and explain its use of expertise to interested parties and the public at large".

The General Principles and Minimum Standards for Consultation of Interested Parties state that the Commission should "ensure that there is consistency and transparency in the way its departments operate their consultation processes".

However, the Commission has failed to explain to ALTER-EU or the public at large how members of experts groups were selected. Concentration of industry dominated expert groups in specific DGs (Research or Enterprise and Industry)¹¹ shows also that there is no consistency in the way that the Commission selects members of expert groups.

In 2008, the European Parliament asked the Commission to develop, before the end of 2008, "*an open, transparent and inclusive process for selecting members of new expert groups*" and to "*inform Parliament no later than February 2009 of the new selection criteria*"¹²

¹⁰ There are two groups with industry participation dominated by other types of interest: The group 'Macroeconomic Dialogue at technical level' is dominated by trade unions and the 'Education and Training Stakeholders' Forum' is dominated by NGOs.

¹¹ Secrecy and Corporate Domimance, ALTER-EU, p. 9 & Gornitzka, Åse and Sverdrup, Ulf (2008) 'Who consults? The configuration of expert groups in the European union', West European Politics, 31:4, 725 — 750 - <http://www.informaworld.com/smpp/content~db=all?content=10.1080/01402380801905991>

The current selection process for expert groups members is not in line with the Commission's codes of conduct [COM(2002)713 and COM(2002)704] or the EP's 2008 request. The Commission should therefore develop general criteria and processes for selecting members for expert groups.

5. Grounds for exceptions from disclosure should not be published

The Commission does not clarify whether the “justified grounds” for allowing the name of an expert to remain undisclosed should be communicated to the public. Currently, this is not the practice.

The guidelines on use of expertise state: “There are circumstances when too much openness could be detrimental to the quality of advice, or may damage the legitimate interests of those concerned with the process. [...] Nevertheless, in all these circumstances it is important to be as transparent as possible about the *reasons for not being open*.”

The public should be able to scrutinise whether grounds for keeping an expert's name secret are really justified. This can only happen if the specific reason for this is provided by the Commission.

The Commission does not give reasons for not disclosing the name of a member of an expert group. This contradicts the provisions of the guidelines on use of expertise.

6. Corporate representatives can participate “in a personal capacity”

According to the Commission, expert groups members acting in a personal capacity “have to act independently and, each year, they have to make a written declaration of commitment to act in the public interest, together with a declaration as to whether there is any interest which would prejudice their independence”(E-6705/08, E-6706/08). In the expert groups register there are many groups¹³ where most members work for corporations or industry associations which work in the field that the expert group is advising on. This clearly prejudices their independence. The phenomenon of corporate executives and industry lobbyists who act in a personal capacity and commit to act in the public interest on expert groups which are advising on issues where they have a

12 (2007/2141(INI)) Committee on Budgetary Control, Rapporteur: Jose Javier Pomes Ruiz A6-0010/2008 <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0051&language=EN&ring=A6-2008-0010>

13 For example: 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, 4) Clearing and Settlement Advisory and Monitoring Expert Group, 5) Contrôle des installations, problèmes sociaux et environnementaux/Factory-wide control, social and environmental issues, 6) Casting, reheating and direct rolling, 7) Coal preparation, conversion and upgrading, 8) FP7 Expert Advisory Group on SMEs, 9) Strategic Advisory Board on Competitiveness and Innovation

commercial interest creates a major contradiction. Public scrutiny of this situation is impossible because their written commitment declarations are not available to the public.

The guidelines on use of expertise suggest that “a possible general rule would be to exclude an expert declaring a conflict of interest from chairing a group or acting as its rapporteur. It may also be necessary to replace such experts or to require them to abstain from part of the discussion”.

The Commission’s rules on Special Advisers’ conflicts of interest¹⁴ should also be taken into consideration when dealing with this matter.

The Commission has not taken any steps to prevent experts’ conflicts of interest or to permit public scrutiny of its actions in this field. In this way, it is neglecting the suggestions put forward in the guidelines on use of expertise and contradicting its own policy on related issues such as conflicts of interests for Commissioners’ Special Advisers. ALTER-EU argues that experts working for corporations, industry associations, NGOs and trade unions with financial or other interests in the issues dealt by an expert group can not be its members in a personal capacity.

C. We ask whether the Commission is willing to take the following steps:
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1. Complete disclosure

The Commission has not completed the disclosure of expert groups’ membership. It should provide a functional public register with “more accurate and transparent information” as it has promised (E-6705/08, E-6706/08). When this work is really finalised, it should officially inform the public.

2. Apply consultation rules to all the groups, including those dealing with technical issues

The Commission should recognise that the Principles and Guidelines on the collection and use of Expertise and the Minimum Standards for Consultation of Interested Parties apply in all expert groups and there is no exception for ‘technical’ groups. It should review the membership of the expert group Coal Combustion, Clean and Efficient Coal Technologies, Carbon Dioxide (CO2) Capture and bring it in line with the standards in its own codes of conduct COM(2002)713 and COM(2002)704] or dissolve it.

¹⁴ Rules on special advisers to the Commission - http://ec.europa.eu/civil_service/docs/special_advisers/comm_c_2007_6655_1_en.pdf

3. Accept that industry dominated groups do not comply with the rules and then act accordingly

The Commission should recognise that expert groups where more than half of the non governmental membership comes from a single type of interest (f.i. industry, trade unions or NGOs) do not comply with the guidelines on use of expertise and the standards on consultation. Their membership should be reviewed and be brought in line with the standards in its own codes of conduct [COM(2002)713 and COM(2002)704] or they should be dissolved.

4. Introduce new selection criteria

In order to substantially implement its codes of conduct the Commission needs to draw up new general selection criteria as requested by the European Parliament.

5. Publicise the reasons why the names of some experts remain undisclosed

The Commission should include the number of unnamed experts in each group and the reason why their names are not provided in the experts groups register.

6. Ban lobbyists and corporate executives from sitting in expert groups in a “personal capacity”

The Commission should publicise the “declarations of commitment to act in the public interest” and “declarations as to whether there is any interest which would prejudice their independence” signed by individuals participating to expert groups in a “personal capacity”. Experts working for corporations, industry associations, NGOs or trade unions with financial or other interests in the issues being dealt with by the expert group should not be permitted to be members of an expert group in a personal capacity. As they have a clear interest, it should be clear that they act on behalf of that interest.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Yiorgos Vassalos', with a long horizontal stroke extending to the right.

Yiorgos Vassalos

On behalf of the ALTER-EU Steering Committee