

The Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU)



Statement on the new framework on expert groups

10 January 2010

New Rules on expert groups fail to prevent capture by business lobbies - setback for transparency

In November, the College of Commissioners quietly adopted the long-awaited revision of the 'Horizontal Rules on Expert Groups', the rules which govern the 1,000 plus advisory bodies set up by the Commission¹. These are powerful bodies which often determine the framework of EU legislation². Despite pressure from MEPs and civil society, the Commission has rejected a unique opportunity to solve the serious problems concerning the composition and transparency of its advisory groups.

The new rules do not include any safeguards against corporate capture of expert groups, whereas more than 100 of the existing groups are dominated by big business.

The new rules also limit the scope for transparency around expert group documents by applying irrelevant clauses on secrecy and confidentiality.

The new rules do include stronger wording regarding conflicts of interests³ but this doesn't solve the problem. Currently many individuals are members of expert groups 'in a personal capacity', even if they often represent corporations. As these individuals are more than likely to represent the interests of their employers, their membership of expert groups leads to clear conflicts of interest. A prime example is the 191 financial lobbyists who currently sit "in a personal capacity"⁴ in DG Internal Market's expert groups on financial regulation, while working for large financial enterprises. The Commission must act to prevent such obvious conflicts of interest.

The new rules fail to tackle the existing democratic deficit or to promote greater transparency or a more ethical approach to the Commission's work, which ALTER-EU finds deeply disappointing.

Commission ignores Parliament, civil society and Commissioner Barnier

The Commission has ignored the Parliament's call to "conduct a thorough review of the composition of its expert groups before the end of 2008"⁵. According to ALTER-EU's

¹ [The new rules \[C\(2010\) 7649\]](#) are supposed to implement the Commission's Guidelines on the Use of Expertise [[COM\(2002\)713](#)] and the Minimum Standards on Consultation [[COM\(2002\)704](#)] in the field of expert groups. Here is their [old version \[C\(2005\)2817\]](#)

² "[Expert groups – letting corporate interests set the agenda?](#)" Chapter in "Bursting the Brussels Bubble", August 2010

³ "The selection of experts shall be carried out in such a way as to avoid any conflict of interests." - [New Framework for Commission Expert Groups C\(2010\)7649](#)

⁴ [ALTER-EU letter to Commissioner Barnier, November 2010](#)

⁵ [European Parliament resolution of 19 February 2008 on transparency in financial matters](#)

assessment, more than 100 expert groups are dominated by large corporations and distort decision making in key policy areas⁶. These biased groups are concentrated in crucial Commission departments, such as Enterprise and Industry, Agriculture and Internal Market.

The European Parliament asked the Commission “to take action to ensure a balanced representation of interest groups in the membership of expert groups” in 2008⁷. MEPs like Sven Giegold⁸, Dennis de Jong and PES leader Poul Nyrup Rasmussen have repeatedly stressed the importance of this issue⁹. The ALTER-EU coalition, but also Transparency International and other civil society groups like BEUC¹⁰ and an expert group of financial services users set up by the Commission (FIN-USE)¹¹ have demanded safeguards against industry lobbyists dominating expert groups. In October 2010, the European Ombudsman opened an inquiry into the unbalanced composition of Commission expert groups¹². Commissioner Barnier’s officials have recently recognised that the expert groups on financial sector regulation operating under the Internal Market department are unbalanced¹³. Commissioner Barnier himself has officially said that more needs to be done to ensure a fair representation of civil society organisations in expert groups¹⁴.

Despite these developments, the Commission’s new rules lack any form of safeguard against industry dominance of expert groups, with merely a vague statement mentioning that “Commission services shall, as far as possible, ensure a balanced representation”. This is clearly far weaker than Commissioner Barnier’s promises of fair representation for civil society organisations. Barnier’s announcement to rebalance the expert groups working under his DG goes much further than merely seeking balance “as far as possible”. ALTER-EU believes that it is always possible to achieve fair representation and that no expert group should be dominated by business interests. This formulation by the Commission also fails to meet the European Parliament’s demands for balanced representation. MEP de Jong who gave input to the Commission during the preparation of new rules said that he was extremely disappointed by the final outcome, precisely because of the Commission’s unwillingness to eliminate corporate capture¹⁵.

Corporate capture of finance, climate and trade not tackled

This is a missed opportunity for the Commission to prevent the scandalous industry capture of advisory groups. Dominance of expert groups by corporate interests has

⁶ ALTER-EU groups have conducted several studies and filed complaints on the problematic composition of a large number of expert groups: [ALTER-EU’s complaint to the Ombudsman on expert groups](#), “[A captive Commission: the role of the financial industry in shaping EU regulation](#)” November 2009, “[Would you bank on them?](#)” February 2009, “[Whose views count?](#)” FoEE 2008

⁷ [European Parliament resolution of 19 February 2008 on transparency in financial matters](#)

⁸ Wissen.de; “[EU sogt sich um Demokratie](#)” 21 Juni 2010, Euractiv; “[Lawmakers scold City lobbying on EU finance rules](#)” 9 November 2009

⁹ Brussels Sunshine blog; “[Commission’s advisers on financial markets: bankers only?](#)” 9 November 2009

¹⁰ Public Affairs News; “[Commissioner Barnier moves to achieve ‘fair balance’ in composition of expert groups](#)” 29 November 2010

¹¹ EU Observer; “[Commission finance experts same bankers that caused](#)” 5 November 2009 and [FIN-USE Forum web page](#)

¹² European Ombudsman: [Inquiry on expert groups, 20 October 2010](#)

¹³ ALTER-EU’s meeting with Barnier’s cabinet and DG Internal Market, 10 June 2010, [mentioned here](#).

¹⁴ [Commissioner Barnier’s letter to ALTER-EU, October 2010](#)

¹⁵ MEP de Jong: [Major corporations still dominate Brussels back rooms](#)

repeatedly led to flawed policies for which European citizens pick up the bill. Among the most striking recent examples are the De Larosière High Level Group on the financial crisis and expert groups on derivatives and other aspects of banking regulation that suggest that in terms of expert advice, the Commission seems to be ignoring lessons from the crisis. While openly acknowledging the need to reform financial regulation in practically all areas, the Commission hasn't grasped the connection between corporate-dominated expert groups and flawed regulation¹⁶. As a result the Commission has put forward anaemic measures that are inadequate in addressing the challenges posed by the continuing crisis. Expert groups dominated by corporate lobbyists are blocking effective financial reform just as they blocked substantial climate policies in the past (CARS21, Group on Competitiveness, Energy and Environment and more).

While the new rules provide a uniform approach and more clarity regarding what is an expert group and what is not, they also seem to leave some grey areas, such as DG Trade's market access working groups. These should fall under the definition of expert groups as they deal with the implementation of a Commission's policy (the Market Access Strategy), which is one of the functions of expert groups¹⁷. The Commission itself has sometimes called these groups "expert working groups"¹⁸. Composed exclusively of business representatives, member states and Commission officials, with not a single non-industry non-governmental advisor, these groups are scandalous examples of privileged access that violate even the existing provisions on composition¹⁹.

The Commission has ignored calls for safeguards to ensure that commercial interests are never more than a minority in any expert group.

A far reaching roll-back of the presence of commercial interests in the Commission's expert groups and safeguards against dominance are essential in order to secure both a sound knowledge basis, undistorted by vested interests, for EU laws and policies and to secure the respect of elementary democratic principles. The fact that big business massively outnumbers civil society, trade union and independent academic advisors is seriously at odds with the EU Treaty stressing that all citizens "shall receive equal attention from its institutions".

A backwards step for transparency

The Commission has also missed a crucial opportunity to enhance transparency. After positive steps taken in 2009 when the membership of most groups was revealed, the Commission seems now to be barricading itself against further transparency. New rules do not improve anything in terms of disclosure of expert groups' documents (minutes, agendas, contributions etc). On the contrary, the Commission has tried to extend clauses on 'professional secrecy' and 'confidentiality of classified documents' which are normally applied only to EU staff member, to members of expert groups as well. This is at

¹⁶ ALTER-EU; ["A captive Commission: the role of the financial industry in shaping EU regulation". November 2010.](#)

¹⁷"The role of expert groups is to provide advice and expertise to the Commission and its services in relation to: [...] (3) the implementation of existing EU legislation, programmes and policies..." - [New Framework for Commission Expert Groups C\(2010\)7649](#)

¹⁸ European Commission (2009): [Report to the 133 Committee. Implementing the Commission Communication Global Europe: A Stronger Partnership to Deliver Market Access for European Exporters. Progress Report 2008, Trade/G/1/SL-D \(2009\) 1209.](#)

¹⁹ Stressed by the Commission's Guidelines on the Use of Expertise [COM(2002)713] and the Minimum Standards on Consultation [COM(2002)704]

odds with existing EU legislation and ALTER-EU is asking the removal of these clauses²⁰.

There is also no improvement in transparency surrounding the composition of expert groups. The new rules divide expert group members into four categories: 1) individuals in a personal capacity, 2) individuals representing a common interest shared by stakeholders, 3) organisations (companies, associations, NGOs, trade unions, universities, EU and international bodies), 4) member states. In order to assess whether the groups are balanced, it is necessary to establish sub-categories for categories 2 and 3 so that citizens can easily see respectively how many NGOs, unions, universities or companies and business lobby groups are in each group.

Hundreds of lobbyists still in a 'personal capacity'

In response to criticism from MEPs and civil society, the new rules include reinforced wording against conflicts of interests among members of expert groups acting "in [a] personal capacity". The new wording does not solve the problem. The rules lack any definition of what is a conflict of interest and will not prevent lobbyists with clear conflicts of interest from joining advisory groups. Nevertheless, any serious definition of conflicts of interests would mean that the 191 banking lobbyists currently sitting in eight expert groups dealing with financial regulation, in a 'personal capacity' would have to be removed.

ALTER-EU calls on Parliament and civil society to act

ALTER-EU is calling on MEPs and civil society to undertake a common initiative in order to push the Commission to end the capture of its advisory structure by corporate interests.

²⁰ Clauses on 'professional secrecy' and 'confidentiality of classified documents' included in the Treaty and Commission Decision C(2001)3031 respectively refer to EU institutions staff members only. It is arbitrary to change the scope of the Treaty or even a Commission's Decision with just a Communication (such as the new 'Horizontal Rules' on expert groups). Instead of looking for legal tricks to keep expert groups' proceedings away from public scrutiny, the Commission should rather implement the regulation 1049/2001 on access to documents which stresses that documents relating to the development of policy or strategy should be directly accessible to the public in electronic form or through a register (Article 12). For expert groups' documents are documents related to the development of policies, strategies and legislation.