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COMMUNICATION TO THE COMMISSION

**FRAMEWORK FOR COMMISSION EXPERT GROUPS:
HORIZONTAL RULES AND PUBLIC REGISTER**

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I. INTRODUCTION

In July 2005 the Commission defined a new institutional framework for expert groups¹ replacing the annual authorisation system introduced in the 1980s. This framework provided for horizontal rules on the creation and operation of expert groups and the setting up of an on-line public Register of these groups.

In October 2005 the Commission launched this Register making publicly available valuable information such as the name, mission and tasks of expert groups, as well as the policy areas concerned. Over the years, the Commission has constantly improved the amount, quality and reliability of data published on the Register through new releases.

In November 2010 the Commission established a new framework for Commission expert groups² providing for a new set of horizontal rules, which have ensured a well-functioning system.

With Decision C(2016) 3301, the Commission has decided to establish revised horizontal rules on the creation and operation of Commission expert groups³, drawing on the Commission's experience in the implementation of the previous framework and taking into account suggestions⁴ put forward by the European Parliament, the European Ombudsman and civil society organisations. That Decision and its annexes, which should be read in conjunction with this Communication, replace Commission Communication C(2010) 7649, together with Commission Staff Working Document SEC(2010) 1360, as well as Commission Decision C(2014) 2220⁵.

II. NEW FRAMEWORK FOR COMMISSION EXPERT GROUPS

1. Key principles

The key principles relating to Commission expert groups as included in the previous framework remain valid. Expert groups are consultative bodies set up by the Commission or its departments, composed of public and/or private-sector members,

¹ C(2005) 2817 of 27.7.2005.

² C(2010) 7649 final of 10.11.2010

³ Commission Decision C(2016) 3301.

⁴ Idem, see in particular Articles 7, 8, 10, 11 and 24-26.

⁵ Commission Decision C(2014) 2220 final of 8 April 2014 on conditions for granting a special allowance to participants in the activities of a Commission expert group, as provided for in the horizontal rules for Commission expert groups (C(2010)7649).

which are foreseen to meet more than once⁶. Expert groups are not set up to engage in a debate of a general nature with stakeholders or public opinion. Their primary role⁷ is to provide specific advice and expertise to the Commission and its departments on a given subject and in light of a specific mandate, in relation to:

- (1) the preparation of legislative proposals and policy initiatives;
- (2) the preparation of delegated acts;
- (3) the implementation of existing Union legislation, programmes and policies, as well as the coordination and cooperation with Member States and stakeholders in that regard;
- (4) where necessary, the early preparation of implementing acts, before submission to the committee.

As already foreseen in the previous framework, gathering expertise from various sources may also include gathering the views from different stakeholders.

Expert groups do not take any binding decisions, but they may formulate opinions or recommendations and submit reports. The Commission and its departments remain fully independent regarding the way they take into account the expertise and views gathered from the experts and, when proposing a new policy or measure, they always aim at finding the best solution in the general interest of the European Union and its Member States. As regards the preparation of delegated acts, the Commission has taken in the Interinstitutional Agreement on Better Law-Making⁸ and in the Common Understanding annexed to that agreement a number of specific commitments in relation to the consultation of Member State experts and the information of the European Parliament and the Council.

2. Revised horizontal rules and new version of the Register of expert groups

The revised horizontal rules laid down by Commission Decision C(2016) 3301, which are designed to operate within the diversity of circumstances faced by expert groups, provide Commission departments with a set of specific instructions, with the aim of ensuring a coherent implementation. The Secretariat-General is tasked with promoting the implementation of the horizontal rules.

Existing consultative bodies, which were not covered by the previous horizontal rules for the sole reason that they are composed of less than six members⁹, shall be subject

⁶ Commission Decision C(2016) 3301, Article 2.1.

⁷ Idem, Article 3.

⁸ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016 (OJ L 123, 12.5.2016, p. 1).

⁹ This was the threshold established by the previous horizontal rules (C(2010) 7649, Rule 2).

to the revised horizontal rules by the end of 2016¹⁰. The competent Commission departments shall take all appropriate measures to ensure that those entities operate in compliance with that Decision.

While maintaining many of the provisions included in the previous framework, the revised horizontal rules introduce a number of significant changes in different areas, such as the selection procedures for expert group members, the composition of the groups, transparency, and the prevention and management of conflict of interest with respect to experts appointed in a personal capacity. These positive developments clearly signal the Commission's determination to improving the management of its expert groups.

The revised horizontal rules reconfirm the Commission's commitment to strive for a balanced composition of expert groups. When defining their membership, the Commission and its departments shall aim at ensuring, as far as possible, a balanced representation of the relevant areas of expertise and areas of interest, as well as a balanced representation of gender and geographical origin, while taking into account the specific tasks of every particular expert group, the type of expertise required, as well as the response received to calls for applications.

In addition, the revised horizontal rules ensure more inclusive and transparent selection procedures, compared to the previous framework, also with a view to contributing to balanced composition of expert groups, notably by:

(1) making it mandatory for Commission departments to select expert group members, other than public authorities and representative bodies established by Union legislation, by means of public calls for applications¹¹ to be published on the Register of expert groups;

(2) clearly outlining in public calls for applications the relevant expertise and interests' representation sought by the Commission and its departments in relation to the work to be performed.

The degree of involvement of stakeholders should be assessed in light of all initiatives taken by the Commission on a given subject. In fact, in order to ensure that the Commission obtains the full range of views and expertise on a given matter, over the years Commission departments have counted on instruments and processes, which have been used instead of or in addition to expert groups, such as studies, Green papers, public consultations and hearings, and have had recourse to different sources of expertise, like European agencies. In the future, Commission departments may continue to use such tools, in particular in order to gather the expertise and views of

¹⁰ Commission Decision C(2016) 3301, Article 1.2.

¹¹ Commission Decision C(2016) 3301, Article 10. For Type A members, calls for applications serve as calls for expression of interest in the sense of Article 204 of the Financial Regulation and Article 287 of its Rules of Application. Commission departments may also select the members of expert groups via a continuously open call, for example, the call published in OJ C 342 of 22.11.2013, p. 3.

those who, for different reasons, do not participate in the activities of a given expert group.

The previous horizontal rules grouped the members of expert groups in four categories, which have overall proven to constitute an appropriate framework for the classification of the groups' members¹². Still, those rules included under the category 'organisations' various bodies which are different in nature, such as private stakeholders together with public entities other than Member States. In order to bring more clarity and transparency with respect to the membership of expert groups, the revised horizontal rules distinguish “organisations” such as companies, NGOs and trade unions (Type C members) from “other public entities”, such as Union bodies, offices and agencies, third countries and international organisations, which are classified in a new category (Type E members)¹³. In addition, within the Type C category, the revised horizontal rules distinguish different types of organisations according to a set of more accurate sub-categories, compared to the previous framework¹⁴.

A new version of the Register of expert groups will be put in place, reflecting the revised horizontal rules and ensuring for the first time synergies¹⁵ between the Register of expert groups and the Transparency Register¹⁶. Furthermore, the availability and reliability of data published on the Register of expert groups will be improved, also as a result of the new classification of the members of expert groups.

The work carried out by expert groups is a collective one, which very often leads to conclusions being reached by consensus, in a spirit of mutual trust. Experts should be able to contribute freely to the work of expert groups in closed discussions. However, as was done under the previous framework, expert groups may, in agreement with the Commission departments concerned, decide that deliberations shall be public¹⁷. Furthermore, the revised horizontal rules foresee that in principle all relevant documents of an expert group, including their agendas, minutes and the participants' submissions, are to be published on the Register of expert groups¹⁸. In the event of a vote on opinions, recommendations or reports produced by the expert groups, the members that voted against or abstained shall have the right to have a document

¹² Individuals appointed in a personal capacity, individuals appointed to represent a common interest, organisations and Member States' authorities.

¹³ Commission Decision C(2016) 3301, Articles 7.2 (c) and (e).

¹⁴ Commission Decision C(2016) 3301, Annexes 2 and 8.

¹⁵ *Idem*, Articles 8 and 24.

¹⁶ The Transparency Register is one of the key tools for implementing the Commission's commitment to transparency. It provides information about organisations and self-employed individuals who approach the EU institutions with a view to influencing the formulation or implementation of policy and the decision-making processes of the EU institutions. Registrants describe, *inter alia*, the issues they follow and declare the human and financial resources they invest in EU public affairs. In light of this, it is appropriate to ensure synergies between the Transparency Register and the Register of expert groups.

¹⁷ Commission Decision C(2016) 3301, Article 13.6.

¹⁸ *Idem*, Article 26.1.

summarising the reasons for their position annexed to those opinions, recommendations or reports¹⁹.

The revised horizontal rules improve conflict of interest management²⁰ in relation to individuals appointed in a personal capacity, who are due to act independently and in the public interest. In particular, new provisions introduce a definition of 'conflict of interest'²¹ and provide for a specific conflict of interest assessment to be performed by all Commission departments concerned, on the basis of detailed standard declarations of interests to be completed by experts. These declarations shall be published on the Register of expert groups.

3. Publication of declarations of interest

The revised horizontal rules foresee that Commission departments shall require all individuals applying to be appointed as members of an expert group or sub-group in a personal capacity (Type A member) to submit a declaration of interests ('DOI') form in which they are to disclose any circumstances that could give rise to a conflict of interest. DOI forms shall be made publicly available on the Register of expert groups, as long as the experts in question are members of an expert group or sub-group acting in a personal capacity.

The processing of personal data related to Commission expert groups must comply with the Union rules applicable to data protection, in particular Regulation (EC) No 45/2001 of the European Parliament and of the Council.²² The handling of declarations of interests includes at least two processing activities, which are (1) the collection and screening of personal data submitted in declarations of interests and (2) the public disclosure of these declarations. Both activities should therefore comply with Regulation (EC) No 45/2001, including its Article 5(a), according to which personal data may be processed if that is *"necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof"*.

As regards the collection and screening of experts' personal data, it should be noted that the processing of personal data of experts appointed in a personal capacity serves the public interest of enabling the Commission to verify the experts' independence in providing advice to the Commission. This verification is necessary to ensure that the Commission is adequately assisted in relation to key activities entrusted to it, such as the preparation of legislative proposals, delegated acts, implementing acts and policy initiatives, as well as the implementation of existing Union legislation, programmes and policies.

¹⁹ Idem, Article 13.8

²⁰ Idem, Article 11.

²¹ Idem, Article 2.4.

²² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L8, 12.1.2001, p.1).

The public disclosure of declarations of interests allows for public scrutiny of the interests declared by experts appointed in a personal capacity to provide advice to the Commission, which is necessary in order to ensure public confidence in the experts' independence. The public disclosure of declarations of interests also ensures a high degree of transparency with respect to the membership of expert groups and aims at contributing to fostering the integrity of the experts in question. The disclosure of declarations of interests thus also serves the objectives enshrined in the Treaties of having the Union institutions conduct their work as openly as possible while ensuring transparency²³ and of having decisions made as openly as possible and as closely as possible to the citizen.²⁴

In its public disclosure of personal data of members of expert groups, the Commission should not go beyond what is necessary to ensure the experts' independence; therefore other personal data than those contained in the declarations of interests, such as the level of remuneration of the experts, which are not indispensable to ensure that independence, should not be published.

²³ Article 15 (1) and (3), third subparagraph, of the Treaty on the Functioning of the European Union.

²⁴ Article 1, second paragraph, of the Treaty on European Union.