Fiche 19: Access to documents relating to Commission expert groups and other similar entities

Main issues:

Commission expert groups and other similar entities (‘expert groups’) as defined in the Commission’s horizontal rules on expert groups1 (‘horizontal rules’) play an important role in enabling the Commission to collect advice and expertise from a variety of actors. These include Member States’ authorities and other public entities, experts appointed in a personal capacity, such as scientists and professionals, and stakeholders. There are currently around 750 active groups published on a dedicated Register2.

This fiché addresses the Commission’s practice as regards access to documents in the context of expert groups. The Commission’s decisions on access following applications under Regulation (EC) No 1049/2001 complement the Commission’s pro-active publication policy in this respect, which is set out below.

This fiché also addresses pro-active publication of documents based on relevant provisions laid down in the horizontal rules. However, Directorates-General and services should always check whether the Commission decision or EU legislation formally setting up the expert group in question are fully in line with the horizontal rules or depart from them as to the publication of documents.

Current administrative practice:

Pro-active publication - general rules:

Article 26 of the horizontal rules provides for detailed rules on the publication of documents related to expert groups:

- Directorates-General and services shall make available all relevant documents of expert groups and sub-groups, including the agendas, the minutes and the submissions by participants, either in the Register of expert groups or via a link from the Register to a dedicated website where this information can be found.

- Directorates-General and services shall ensure publication of the agenda and other relevant background documents in due time ahead of the meeting, followed by timely publication of minutes. Minutes should be meaningful and complete.3

- Exceptions to rules on publication of documents are possible only where it is deemed that disclosure of a document would undermine the protection of any public or private interest as defined in Article 4 of Regulation 1049/2001. This is not an implementation of Regulation (EC) No 1049/2001 in itself, as in this case the Commission does not react to a request for access to documents but rather assesses whether to proactively publish documents related to the work of expert groups.

Article 23 of the horizontal rules provides for rules on publication of the expert’s names:

- There is a greater rationale for openness where the individuals concerned have been appointed to the expert group ad personam, i.e. as the so-called “Type A members” (individuals appointed in their personal capacity who are to act independently and in the public interest) or as the so-called “Type B members” (individuals appointed to represent a common interest shared by stakeholders in a particular policy area). In these two cases, the name of the expert must be published.

- Where individuals have been appointed as representatives of specific private or public bodies, such as organisations

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2 http://ec.europa.eu/transparency/regexpert/index.cfm

3 When DGs upload documents on the Register of expert groups, which are related to a specific meeting, the dedicated meeting section must be used. In particular, DGs must indicate the date of the meeting and if the meeting is public or not. They must also upload documents by selecting the relevant document type. For documents added for general information, not related to a specific meeting, DGs must add them under the relevant section in the Group Details tab (Activity report).
in the broad sense of the word (“Type C members”, including companies, associations, NGOs, trade unions, universities, research institutes, law firms and consultancies) or Member States’ authorities (“Type D members”) or other public entities (“Type E members”, including third countries authorities, Union bodies, offices or agencies and international organisations), publishing the name of the organisation, the Member State or the other public entity is in principle sufficient\(^4\). The same applies to observers and their representatives (article 16 of the horizontal rules).

- Article 23(2) of the horizontal rules provides that “individuals who do not wish to have their names disclosed may submit a request to the competent Commission departments for a derogation from the rules on publication. A derogation shall be granted where justified on compelling legitimate grounds in relation to the specific situation of the individual, in particular where disclosure of the experts’ name could endanger their security or integrity”.

Pro-active publication: specific rules for expert groups preparing delegated acts\(^5\):

- The general rules on publication of documents laid down in Article 26 of the horizontal rules, as described in the first part of this fiche, also apply for expert groups preparing delegated acts, subject to certain modifications\(^6\) which take into account the nature of this type of act.\(^7\)

- As a general rule, documents discussed by the expert groups are public (Article 26 of the horizontal rules, see above), including draft delegated acts. Still, the responsible DG must indicate whether the draft delegated act can be made public\(^8\) or, in the cases where Article 26(2) of the horizontal rules applies, needs to be kept private. The drafts marked as ‘private’ are not made available on the public interface of the Register of expert groups, but only on the ‘private’ interface (accessible to specifically designated staff from the Commission, European Parliament and Council).

- The meeting information and the relevant documents uploaded on the Register of expert groups are automatically transmitted to another register: the Interinstitutional Register of Delegated Acts. Similarly, the drafts marked as ‘private’ are not made available on the public interface of this last Register, but only on the ‘private’ interface (accessible to specifically designated staff from the Commission, European Parliament and Council).

- Draft Delegated Acts which have passed through inter-service consultation and for which public feedback is requested through the Better Regulation Portal\(^9\) before adoption by the Commission, are accessible as from their publication on the Better Regulation Portal.

Access to documents following a request under Regulation (EC) No 1049/2001

Applications for access to documents, which are not published on the Register of expert groups, shall be handled in accordance with Regulation (EC) No 1049/2001.

The EU Court has generally urged for openness with regard to the publication of expert group documents and experts’ names.

Nevertheless, it cannot be excluded that expert group documents or certain specific parts of these documents need protection under one or several exceptions of Regulation (EC) No 1049/2001, for instance if their release would undermine

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\(^4\) See articles 7 and 23 of the horizontal rules.


\(^6\) Meetings concerning draft Delegated Acts must be registered in the Register of expert groups, by creating the meeting in the relevant tab and uploading the relevant documents, including the draft delegated act(s) under discussion. When the expert group discusses draft delegated acts, relevant documents must be uploaded in the Register of expert groups; the option to upload them on a website linked to the Register may not be used in this case.

\(^7\) The Inter-Institutional Agreement on Better Law-Making contains the general rules and principles on the preparation of delegated acts. It does not contain any obligation as regards publication of draft delegated acts in addition to the one contained in Article 26 of the horizontal rules; it contains however specific obligations for the Commission vis-à-vis the Parliament and the Council.

\(^8\) In this case, the relevant draft delegated act(s) must be uploaded in the relevant field and linked to the Decide Planning number corresponding to the draft in question.

\(^9\) https://ec.europa.eu/info/law/better-regulation/have-your-say_en
public security or, in specific cases, seriously harm the decision-making process.

Case law:

Judgment of 29 June 2010 in Case C-28/08 P, Commission v Bavarian Lager, EU:C:2010:378;


Judgment of 7 June 2013 in Case T-93/11, Stichting Corporate Europe Observatory v European Commission, EU:T:2013:308;


Reference documents/links:

- Examples of confirmatory decisions and a summary of relevant case-law are available on the Commission's access-to-documents webpages on My Intracomm\(^\text{10}\);

- The full text of judgments of the EU Courts can be consulted on the website of the ECJ: www.curia.eu.