

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.7.2005
C(2005)2817

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

**Communication from the President to the Commission
in agreement with the Vice-President responsible for administrative affairs and the
Member of the Commission responsible for financial programming and budget**

{SEC(2005)1004}

This communication defines an institutional framework intended to replace the annual authorisation system described in the working document SEC(2005)1004. This framework provides for the definition of *horizontal rules* governing the creation and operation of expert groups and the creation of a *public register* of these groups. Establishing this framework will make it possible to introduce transparency in the field of expert groups, while ensuring that the Commission remains in charge of the procedures for calling upon expertise.

To begin with, it is worthwhile defining the concept of an expert group, the methods for creating them and the scope of the new institutional framework.

(1) Definition and methods of creation

The new framework defined by this communication (horizontal rules, public register) applies to the Commission's expert groups, i.e. to groups comprising national and/or private-sector experts who assist the Commission in exercising its powers of initiative and in its tasks of monitoring and coordination or cooperation with the Member States.

A Commission expert group may be created in two different ways: either by a Commission Decision establishing the group (formally-established expert groups); or by a DG with the agreement of the SG (informal groups). The great majority of existing expert groups were created using this second method.

From an institutional point of view, it is important for the expert group to be created by a Commission Decision where its creation or the tasks entrusted to it are laid down in any formal act by the Commission (legislative proposal, preparatory work, including communications, White or Green Papers from the Commission, etc.).

The Commission creates its expert groups itself and gives them a title distinct from that used for groups created by the legislator. In its proposals addressed to other institutions, the Commission does not introduce the creation of expert groups intervening in the exercise of its own competences (application of acts and right of initiative) or organising coordination or cooperation with the Member States (with a view, for example, to developing a new policy). The Commission's expert groups, therefore, cannot in principle be created by the legislature.¹

Recourse to a Commission Decision for instituting the group should also be the general rule where:

- the creation of the expert group is announced publicly;
- the expert group is to exist for a certain time and it is a high-level group or a group dealing with sensitive matters.

In all other cases, creation of the group may be decided upon by the DG with the agreement of the SG. This will be the case in particular for many groups established in response to urgent or specific needs of the moment. Creation of the public register of expert groups will make it possible to establish a rapid and simplified procedure enabling the DGs to create, change or disband expert groups in line with their requirements.

¹ SEC(2000) 1230, 24 July 2000.

(2) Scope of the new framework for expert groups

The new framework applies to all expert groups consisting of more than five experts:

- formally established;
- informally established, in so far as it meets more than once.

The new framework is therefore not aimed at individual experts.

Also excluded from the scope of the framework are independent experts charged with assisting the Commission in the implementation of framework programmes for research and development. The activities of these experts form an integral part of programmes or studies financed by these framework programmes and are governed by rules adopted by the legislature.²

In addition, the sectoral and cross-industry social dialogue committees, whose work is particularly aimed at the conclusion of agreements implemented by the Council or autonomous agreements implemented by the social partners themselves and at adopting frameworks for action, are not classed as expert groups under the new framework. Specific rules have also been adopted by the Commission to govern the activities of committees dealing with the social dialogue.³

Finally, the new framework is also not aimed at mixed entities (and sub-entities) arising from international agreements. These entities differ from expert groups in terms of their creation and competence: they are created in accordance with methods laid down in international agreements and their role is to supervise their implementation.

(3) Horizontal rules

In order to increase consistency in the operation of expert groups, the DGs will in future be called upon to follow a number of *horizontal rules*. These rules are set out in this communication. For the expert groups, they complement the principles and guidelines already developed by the Commission with regard to obtaining and using expertise in general.⁴

Among these horizontal rules it is worthwhile pointing out a small number of *minimum* horizontal rules which must be complied with by all expert groups, whether formally or informally established. These minimum rules concern the title, task, composition and appointment of members, operation, duration and meeting expenses.

² Article 160(3) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p.1). This provision refers to the framework research programmes for the nomination procedures and the rules applicable to them, and particularly their rules governing participation.

³ Commission Decision of 20 May 1998 on the establishment of Sectoral Dialogue Committees promoting the Dialogue between the social partners at European level (OJ L 225, 12.08.1998, p. 27), and the Communication from the Commission - Partnership for change in an enlarged Europe - Enhancing the contribution of European social dialogue, COM(2004) 557 final, annexes 1 and 4.

⁴ COM(2002) 713, 11 December 2002.

3.1. Minimum horizontal rules:

- (a) Title: the title “*expert group*” is preferable; any title likely to lead to confusion with the “comitology” committees (such as “advisory committee”) should be avoided.
- (b) Task: the group’s task should be described precisely; it should be in line with the institutional role of an expert group, i.e. to assist the Commission in exercising its powers of initiative and in its tasks of monitoring and coordination or cooperation with the Member States.

The expert group shall act at the request of the Commission. However, the chairman of the group shall have the possibility of indicating to the Commission whether it is worthwhile consulting the group on a particular question.⁵

- (c) Composition and appointment:⁶
 - The members of the expert group shall consist of specialists with skills in the fields concerned, nominated:
 - * either as representatives of a *public authority* (national, regional or local), as representatives of civil society⁷ or as *interested parties*. They shall be appointed by the Commission or its departments. The Commission may also leave it to the authorities or organisations concerned to nominate experts to represent them, particularly where the composition of the group is likely to vary;
 - * or *in a personal capacity*. They shall then be appointed by the Commission or its departments and shall act completely independently. Each year they shall 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.
 - When creating the expert group, the DG concerned shall describe the composition of the group in general, indicating the categories of experts forming part of it: national, regional or local public authority represented, civil society organisation represented, interested parties, scientific or academic experts, etc. This general description of the composition of the group shall be placed in the register and shall in the future constitute the minimum information available concerning the composition of all expert groups.
 - Where the Commission or its departments appoint the members of the expert groups, they shall seek a *balance between men and women*; the medium-term aim

⁵ In certain exceptional cases, there may be justification for giving high-level expert groups the possibility of giving own-initiative opinions. This would be the case for groups consisting of representatives of national regulatory or monitoring authorities (“groups of regulators or monitors”) taking part in the implementation of the internal market in the financial sector.

⁶ COM(2002) 713 final, 11 December 2002.

⁷ The Economic and Social Committee proposes a useful definition of civil society (see http://www.esc.eu.int/sco/intro/index_en.asp).

shall be to have at least 40% of representatives of each gender in each expert group.⁸

- The number of members in the group should remain *limited* in order to guarantee the effective operation of the group and ensure the quality of expertise.⁹
- Members shall be appointed for a determined or indeterminate *period*. They shall remain in office until replaced, or until the end of their term of office. Their term of office may be renewed.

(d) Operation

- The group shall be chaired by the Commission, or shall elect its *chairman* by a simple majority of the members. The Commission may also appoint the chairman of the group.
- In agreement with the Commission, the group may establish *sub-groups*: these sub-groups shall be set up to examine specific questions on the basis of a clearly defined mandate; they shall be dissolved as soon as the mandate is fulfilled; they shall operate in accordance with the rules laid down by the group which created them.
- *Experts* or *observers*¹⁰ from outside the group with specific competence in a subject on the agenda may be invited by the Commission to take part in the work of the expert group or sub-groups.
- Information obtained as a result of participation in the work of the expert group or sub-groups may not be divulged where the Commission lays down that this information is *confidential*.
- The meetings of the expert group and sub-groups shall in principle *be held in one of the places where the Commission departments are located*;¹¹ the Commission departments shall *provide secretarial services* for the group and sub-groups.¹²

⁸ Commission Decision 2000/407/EC of 19 June 2000 relating to gender balance within the committees and expert groups established by it (OJ L 154, 27.6.2000, p. 34).

⁹ The regulations regarding the reimbursement of travel and subsistence expenses, and expenses incurred during travel by persons from outside the Commission invited as experts [SEC(94) 299 and SEC(94) 315/4 of 24 February 1994] limit the number of government and private-sector experts whose expenses may be reimbursed.

¹⁰ In particular, observer status may be used for inviting representatives of other European or international institutions or accession countries to take part in the work of the group.

¹¹ Any derogation from this rule, which would enable a meeting of an expert group to be held outside these places and would have a budgetary impact, is to be justified by exceptional circumstances and must be properly documented by the DGs in accordance with Commission internal control standard No 18, "Recording of exceptions" [SEC(2004) 120 of 11 March 2004, "Internal rules for the implementation of the general budget of the European Communities" - 2004, Annex V, item 6.4].

¹² The Commission has exceptionally admitted to not providing secretarial services for certain groups of regulators or supervisors taking part in the implementation of the internal market in the financial sector (Commission Decision 2001/527/EC of 6 June 2001 establishing the Committee of European Securities Regulators, OJ L 191, 13.7.2001, p. 43; Commission Decision of 5 November 2003 establishing the Committee of European Banking Supervisors, OJ L 3, 7.1.2004, p. 28; Commission Decision of 5 November 2003 establishing the Committee of European Insurance and Occupational Pensions Supervisors, OJ L 3, 7.1.2004, p. 30).

- The DGs *may publish on the Internet*, in the original language of the document concerned, any summary, conclusion, part of a conclusion or working document from the group.
- (e) Meeting expenses: travel and subsistence expenses incurred by members, experts and observers as part of the activities of the group shall normally be reimbursed by the Commission. Where reimbursement takes place, it shall be in accordance with the provisions in force within the Commission¹³ and within the limits of the available appropriations allocated to the DGs under the annual procedure for the allocation of resources. The tasks carried out shall not be subject to remuneration. Payment of a special allowance to members, experts and observers shall only be possible in duly justified exceptional cases and provided that it has been expressly authorised by a decision of the Commission.
- (f) Duration: the expert group may be established for a fixed or indeterminate duration. Where the group is established for a fixed duration, the Commission shall re-examine, at the end of this period, the need for a meeting of the expert group to decide upon a possible extension.

Data relating to the title, task, composition, operation and duration shall be entered in the public register. This will ensure a minimum level of transparency for all the expert groups.

3.2. Additional horizontal rules

Certain *additional* horizontal rules shall also apply where the expert group is formally created by a Commission Decision (formally-established expert groups). These additional rules shall concern the appointment and selection of experts, publication of their names and adoption of rules of procedure.

These *additional* horizontal rules are as follows:

- Members shall be *selected* in a transparent manner, on the basis of clearly defined objective criteria. Members appointed in a personal capacity shall be selected, as far as possible, through a call for applications.
- The names of members appointed in a personal capacity shall be *published* at least on the Internet site of the DG concerned and, where appropriate, in the Official Journal of the European Union, series C.¹⁴ Collection, management and publication of the names of members shall be carried out in accordance with the provisions of Regulation (EC) No 45/2001.¹⁵
- The groups formally established by the Commission shall adopt their *rules of procedure* on the basis of the standard rules of procedure adopted by the Commission.

In order to facilitate and accelerate the preparation by departments of draft Commission Decisions instituting expert groups, models are attached to this communication:

¹³ See note at foot of page 9.

¹⁴ In duly justified cases, a derogation may be made from the rule relating to the publication of the names of members.

¹⁵ 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 L 8, 12.1.2001, p. 1).

- a standard Decision instituting an expert group;¹⁶
- a standard call for applications;¹⁷
- standard rules of procedure.¹⁸

The Commission may depart from the models referred to above or supplement them, where the specific requirements of a determined expert group so justify.

Maximum transparency must be ensured where the expert group is formally established by the Commission. To this end, the Decision instituting the group, its rules of procedure and, where applicable, the call for applications and the list of designated experts shall be published at least on the Internet site of the DG concerned and, where appropriate, in the Official Journal of the European Union.

Finally, the DGs shall be free to go beyond the horizontal rules laid down in this communication.

(4) Implementation of the horizontal rules

The horizontal rules mentioned above shall apply from the date of their adoption; in principle, therefore, they shall apply to all new expert groups created after that date.

With regard to existing groups, and in order not to disturb their smooth operation, the horizontal rules shall be applied progressively over a two-year transition period, particularly when such groups are renewed or modified.

The Commission shall in addition retain the possibility of derogating from the horizontal rules where the specific requirements of a determined expert group so justify.

Moreover, the progressive application of the horizontal rules shall take account of the particular situation of a number of groups or bodies created by the legislature for historical reasons.

Finally, the horizontal rules shall be without prejudice to specific rules already adopted by the Commission in certain cases or particular sectors, such as those relating to the network of national competition authorities,¹⁹ advisory groups in the field of the common agricultural policy,²⁰ scientific committees in the field of consumer safety, public health and the

¹⁶ See Annex I to SEC(2005) XXX.

¹⁷ Also standard information relating to the results of the call for applications; see Annex II to SEC(2005) XXX.

¹⁸ See Annex III to SEC(2005) XXX.

¹⁹ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1); Joint statement of the Council and the Commission on the functioning of the network of competition authorities; Commission Notice on cooperation within the Network of Competition Authorities (OJ C 101, 27.4.2004, p. 43).

²⁰ Commission Decision 2004/391/EC of 23 April 2004 on the advisory groups dealing with matters covered by the common agricultural policy (OJ L 120, p. 50).

environment,²¹ and expert groups for the programmes “Customs 2007” and “Fiscalis 2003-2007”.²²

(5) The public register of expert groups

The establishment of horizontal rules will go hand in hand with the launch, in 2005, of a public register of expert groups. This register will also enable progress in the introduction of transparency: it will offer the European Parliament and the public an opportunity to obtain information on the operation of expert groups.

- (a) The register will be a computer database. It will be concerned only with expert groups, excluding “comitology” committees.²³ The register will contain a list of all expert groups, whether formally or informally established. It will also list all sub-groups.²⁴ The register will contain standard information on all expert groups (particularly title, area of action, DG, type of group, task, composition and, where applicable, establishing instrument, rules of procedure and sub-groups). It will refer at least to the composition of the group in general, indicating the categories of experts forming part of it.

In so far as the register involves the processing of personal data, such processing will need to be in accordance with the provisions of Regulation (EC) No 45/2001.²⁵

Once created, the register will be progressively upgraded with links to the DGs’ Internet sites offering structured information on the groups’ activities (minutes, reports, etc.). However, in contrast to the “comitology” register, the register of expert groups will not in itself be a register of documents.

- (b) The SG will administer the register in close collaboration with the departments. The register will be updated by the DGs. Updating of the data in the register will subsequently be carried out “online” by each DG. The introduction of transparency with regard to expert groups will certainly require additional effort from the DGs and departments. However, this effort will be partially compensated for by the disappearance of the administrative burden associated with the current annual authorisation system and by the fact that the new framework (horizontal rules, register) increases the autonomy of the DGs in administering expert groups.
- (c) For informally established expert groups, the register will enable DGs to create, dissolve or change a group using a rapid and simplified procedure: a request by a DG to create, change or dissolve a group will be deemed to be approved unless the SG

²¹ Commission Decision 2004/210/EC of 3 March 2004 setting up Scientific Committees in the field of consumer safety, public health and the environment (OJ L 66, p.45) and acts adopted in application of this Decision.

²² Decision No 253/2003/EC of the European Parliament and of the Council of 11 February 2003 adopting an action programme for customs in the Community (Customs 2007) (OJ L 36, 22.2.2003, p. 1) and Decision No 2235/2002/EC of the European Parliament and of the Council of 3 December 2002 adopting a Community programme to improve the operation of taxation systems in the internal market (Fiscalis programme 2003-2007) (OJ L 341, 17.12.2002, p.1).

²³ The operation of these committees is already covered by the “comitology” register and an annual report on their work.

²⁴ The information in the register for sub-groups will be limited to their mandate and duration as well as their composition (if it differs from that of the groups from which the sub-groups derive).

²⁵ See note at the foot of page 16.

raises an objection within five working days. The SG will ensure that an excessive multiplication of expert groups is avoided and verify that those whose creation is applied for fulfil their institutional role. The horizontal rules referred to in this communication will provide a reference for institutional verification carried out by the SG.

The SG will no longer intervene in the budgetary programming of the activities of expert groups, nor in the implementation of the rules for the reimbursement of travel and subsistence expenses.²⁶ The regulations applicable²⁷ will be reviewed by 1 January 2006 in order to examine the possibility of adopting a system of flat-rate reimbursement.

The absence of an objection by the SG within the deadline given will not imply any budgetary authorisation; in accordance with the rules in force since budgetary decentralisation, it is the task of the DGs to ensure that expenditure on meetings engendered by the expert groups remains within the limits of their available allocations under the annual procedure for the allocation of resources.

- (d) The register will be established on the basis of the results of a computer feasibility study involving the DGs.²⁸ Synergy must be sought with other existing systems in this field, particularly the section of the CONECCS database relating to advisory bodies, in order to avoid duplication and provide the outside world with a complete and coherent image of the Commission's policy on consultation.

OPERATIVE PART

In conclusion, the Commission is called upon to:

- take note of this communication;
- repeal the annual authorisation system and, in particular, the Decisions taken by the Commission on 30 November 1983, 1 February 1984, 12 September 1985 and 16 September 1988;²⁹
- approve:
 - the horizontal rules for the DGs and departments to comply with regarding the creation and operation of expert groups;
 - the launch in 2005 of a public register of expert groups in the light of the results of the feasibility study;

²⁶ The other DGs concerned with the operation of expert groups (particularly DG Budget and the Office for Administration and Payment of Individual Entitlements) may, if possible, support their operations on the register.

²⁷ See note at foot of page 9.

²⁸ In accordance with the Communication to the Commission on the improvement of information technology governance in the Commission [SEC(2004) 1267].

²⁹ PV 716 COM(83) of 30 November 1983, PV 724 COM(84) of 1 February 1984, COM(85) 497 of 12 September 1985 and SEC(88) 1277 of 16 September 1988.

- take note of the working document SEC(2005)1004 and in particular of the standard documents attached to it (standard decision instituting an expert group, standard call for applications and standard rules of procedure);
- task the SG with promoting the application of the horizontal rules relating to the creation and operation of expert groups;
- task the SG, in collaboration with the DGs, with preparing a public register of expert groups in the light of the results of the feasibility study.