



**BETTER FINANCE
FOR ALL**

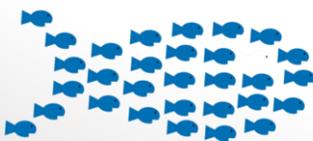
The European Federation of Financial Services Users
Fédération Européenne des Usagers des Services Financiers



Better Finance Response to the public consultation by the European Ombudsman on the composition of the European Commission expert groups

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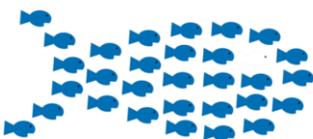


Executive Summary

Better Finance welcomes the Ombudsman's consultation and her recognition of the importance of the composition of expert groups for ensuring a balanced policy making process. The past years have shown that input into the policymaking process by users of financial services is essential for restoring and maintaining a stable, reliable and inclusive financial system, as acknowledged by the European Commission after the eruption of the financial crisis¹. We recognize that notable progress has been made in this field by ensuring a more balanced composition of expert groups which has enhanced the quality of user input. The most significant measures taken are the establishment of horizontal rules and a public register for expert groups, the creation of Finance Watch in 2011 as well as increased financial support for organizations and individual experts representing the interests of users in providing input to the Commission, other EU policymakers and stakeholders in general.

Better Finance experts have participated to the European Commission's FSUG (Financial Services User Group) response as well: this explains the similarities between the two responses.

¹ In March 2009, the European Commission recognized the need to put « the interests of European investors, consumers and SMEs at the centre of the financial markets reform”. **Communication for the spring European Council - Driving European recovery COM(2009)0114**



1. Which specific Commission expert groups do you consider to lack a balanced representation of relevant areas of expertise and interest in their membership? What, according to you, is the root cause of the unbalanced composition of the Commission expert groups identified by you?

We would like to stress that underrepresentation of consumer and user interests in financial services expert groups often stems simply from the fact that these representatives only constitute a minority in the composition of an expert group. However, even when a numeric balance of representatives is achieved, representatives of retail users are still at a disadvantage since they also have considerably less resources at their disposal in order to dedicate sufficient time and resources to work in an expert group. Furthermore, unlike representatives from the financial industry, consumers and some other users cannot count to the same degree on support from staff, colleagues and related networks. Assuming a numerical balance is achieved, it is essential for the expert groups to at least minimize the disparity of resources between the experts from the consumer and user side and those from the industry. The problem of capacity is dealt with more broadly under Question 6.

We have noticed issues that lead to an unbalanced output of expertise in the following EU expert groups:

European Commission Groups

- *Payment systems market expert group* - PSMEG: while progress has been made in this group which helps the Commission prepare legislative acts or policy initiatives on payment issues thanks to the increased number of retail user representatives, the large size of the group means that it is impossible for the consumer and user organizations to appoint enough members to achieve a balanced membership. The principal reason is the limited capacity of NGOs representing retail user interest in terms of personnel. Realistic remuneration for the contribution of NGO experts to this group would make a balanced composition of the group possible by improving the numerical balance while making it easier for NGO experts there to dedicate the necessary amount of time and resources to engaging in the group's work.

- *EU Expert Group on taxation of savings (EUSD)*: this expert group advises the EC DG Taxation and Customs Union (TAXUD) on the taxation of income from savings and investments following the release of the EU Savings Directive on the taxation of interest income in the EU. Only one retail user representative was appointed to this group.

- *The Pension Forum (Committee in the area of supplementary pensions)*: This expert group was set up in 2001 to advise the EC (DG EMPL) about any problems and developments at Community



level affecting supplementary pensions. The pension forum assists the Commission in particular in finding solutions to the problems and obstacles associated with cross-border mobility of workers in the area of supplementary pensions. The pension forum works, where necessary, in cooperation with any other appropriate bodies or committees dealing with social and economic policy. Only one retail user representative is member of this group that counts 45 members.

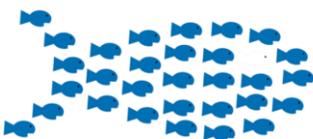
- *The Group of Experts on removing tax problems facing individuals who are active across borders within the EU*: this group has been set up by DG TAXUD in 2014 after the winding down of the EUSD (see above). Better Finance's application was rejected by the EC without any explanations (Better Finance counted with one representative in the group's predecessor, the EUSD); and it is impossible to identify in the Register of Commission expert groups whether any other retail user expert was selected in this 40 member expert group. Indeed, the Register only mentions as "member type": "Individual expert appointed as representative of an interest", but fails to specify which interest it is and which organization(s) the expert member works for.

Other expert groups at key EU institutions

Better Finance would like to stress the importance of high standards for the representation and balanced composition of expert groups at all EU institutions. We encourage the Ombudsman to look into how expert input is provided elsewhere in the EU institutional framework. We would like to call your attention to specific EU institutions where we see a problem of underrepresentation of policy input by retail users:

- *Stakeholder groups at EBA, EIOPA and ESMA*: these present serious problems of geographical imbalance and unfair seizure of "users of financial services" by financial companies such as auditing houses, professional associations or rating agencies, on which BEUC and Better Finance (formerly *EuroInvestors*) submitted complaints which have already been addressed by the Ombudsman's decisions, as well as, to a certain degree, by the three supervisory authorities when constituting new stakeholder groups in 2013 and 2014. Despite the globally improved situation, imbalances still remain. In particular, representation of consumers and other retail users of insurance and of pension services in the two Stakeholder Groups of EIOPA is still heavily unbalanced with 15/16 industry representatives and only 4 retail user representatives, contrary to the requirement of article 37.3 of the EIOPA Regulation and to its Recital 47 that clearly require a "balanced representation".

Also, we regret to see that the three supervising authorities are still not complying with the provision of the regulation requiring that "adequate compensation shall be provided to members of the Stakeholder Groups representing non-profit organizations, excluding industry representatives". Indeed, those members still only receive a compensation of € 150 per meeting



day, i.e. € 18.75 per hour (gross of social contributions and income tax). This is obviously not “adequate” for international financial pension user-side experts, when compared, for example, to the hourly rate of senior commercial consultants hired by European Public Authorities. Also, it represents a maximum compensation of € 1,650 per year whereas the fixed annual compensation of EC FSUG experts is € 10,000 (more than five times more) for a far less technical (level 1) and less challenging (user experts are among themselves at the FSUG, not a minority within industry-dominated stakeholder groups) work. This also obviously contributes to the imbalance in the representation of retail financial user interests versus those of the financial industry, and shows the low value the European Supervisory Authorities assign to user-side expert advice.

Finally, we need to add that the revision of the European System of Financial Supervision (ESFS) –in fact the report released by the European Commission² came 7 month late after the legal deadline³ - failed to address our above mentioned concerns mentioned above. The Commission nevertheless acknowledges that “*Stakeholder groups should be composed in a balanced way, taking into account the opinion of the Ombudsman*” so we really hope the Commission can “*walk the talk*” starting with their own Expert Groups.

Actually, new concerns now emerge since the Commission states that “*consideration should be given to limiting stakeholder groups to one per ESA*” which in practice would mean merging the OPSG (Occupational Pensions Stakeholder Group) and the IRSG (Insurance and Reinsurance Stakeholder Group) of EIOPA, the only ESA with more than one SG. Several stakeholders have alerted on a possible dominance of the insurance industry if those groups were to be merged⁴. Better Finance is also skeptical about the idea that one single SG could deal effectively with the enormous scope so far covered by two Stakeholder Groups, which were already overburdened, taking into account the enormous amount of regulation in these fields passed or to be passed (Solvency II, IORP II, etc.)

- *Consultative bodies at the European Central Bank*: They are very problematic in terms of representation of user interests. On the European Retail Payments Board (ERPB), charged with contributing to and facilitating the development of the Euro payments market, there are only 3 retail users but 6 financial industry representatives. Members of the ERPB have to cover their travel and subsistence costs for participating in the ERBB meetings and must commit to devote the necessary time and financial resources to prepare their input and participate in meetings, putting users’ representatives at a disadvantage. Retail users are not at all represented in the

² Report from the Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Regulation (ESFS)

http://ec.europa.eu/internal_market/finances/docs/committees/140808-esfs-review_en.pdf

³ Article 81 of the EU 2010 Regulations on the ESFS

⁴ Insurance to ‘dominate’ agenda if EIOPA stakeholder groups merged <http://www.ipe.com/10002843.article>



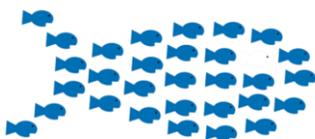
ECB's market contact groups, although their tasks are monitoring the development of financial markets and discussing structural market developments.

- *The European Systemic Risk Board (ESRB)*: It does not have consultative expert groups with retail user representation, although in the past serious risks in the EU financial system have arisen in retail financial services markets.

- Still, several other consultative groups run or funded by the EU do not allow for the representation of users per se. In particular, the European Economic and Social Committee (EESC) and the EFRAG (European Financial reporting Advisory Group) do not include any representative of financial services users although they are one of the most relevant and important stakeholders, in particular in the areas of pensions and of financial reporting. EFRAG has recently even planned to introduce participation fees that would exclude retail users even further, although receiving a substantial funding from the EU, i.e. from the EU taxpayers.

2. The Commission's horizontal rules on expert groups allow for the Commission to appoint individual experts in their personal capacity. In your experience, does this possibility give rise to concern in terms of the balanced composition of expert groups and/or conflicts of interest?

Indeed individual nominations mean that when an expert leaves his/her position in the company, gets ill or changes jobs, his employer does not have the right to nominate someone else to replace their expert. Since calls for tenders to constitute a group are not organized on a frequent basis, this may mean that retail users representatives may lose one of the few seats they hold in these groups for a certain period of time. This is contradictory with the way the Register of Commission Experts presents the composition of the groups (just referring to broad categories of stakeholders). The horizontal rules should ensure that the balanced composition of the groups is not jeopardized by the rigidity of the nomination procedure.



3. Do you consider that the current level of transparency regarding the composition of Commission expert groups, in particular through the Register of Commission Expert Groups and Other Similar Entities, is sufficient? In particular, does the information made available by the Commission allow you to ascertain which interests are represented by the members of Commission expert groups? If not, where do you see room for improvement? Do you consider that the current level of transparency regarding the work of expert groups, in particular through the publication of agendas and minutes, is sufficient?

We note that the Register of Commission Expert Groups and Other Similar Entities have improved the information on composition and activities of Commission expert groups. However, certain limitations still remain. It is often very difficult to assess from the outside by which these different categories of stakeholders are represented in these groups and in which proportions. For example, for the Payment Systems Market Expert Group, the broad category applied for users is “associations”. These associations however include anything from consumer associations to associations of banks. For the Expert Group on taxation of savings, no categories at all are provided for its members. As mentioned above this is also the case for the new Expert group on removing tax problems facing individuals who are active across borders within the EU (E03041) , where it is impossible to learn to which stakeholder category the expert members belong. A fortiori, their main employer organization is never disclosed. We therefore call for a more precise definition and harmonization of categories of expert group participants that will make it possible to see the balance / imbalance between of retail users, other users and industry representatives without in depth inquiries.

We strongly recommend that the proposed level of transparency regarding the composition of Commission’s expert groups is expanded to expert groups set up by formal instruments of other EU institutions. Without this, the Ombudsman’s efforts to promote balanced policy input and better policy making on the EU level will remain insulated and limited.

Also, we propose more transparency on the meetings and agendas of EU institution executives and officials with Third Parties. Only in this way will it be at all possible to assess whether a balanced input is made possible through this channel of communication.



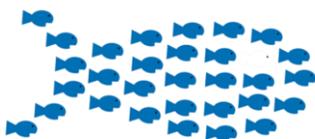
4. Where the Commission publishes calls for application for membership in expert groups, do you consider that these calls provide for selection criteria which sufficiently take into account the need for a balanced composition of expert groups? If not, where do you see room for improvement? In your view, could the Commission do more to raise awareness about these calls, with a view to encouraging applications? If so, what concrete steps could it take in this regard?

We propose to the Ombudsman to recommend to the Commission to support the capacities of retail user representatives to participate in expert groups. In particular, the EU should systematically implement the “adequate compensation” rule of the ESFS Regulations for not for profit non-industry experts.

5. Do you have any experience in applying for membership in a Commission expert group? If so, did you face any problems in the application process? If not, are you aware of any such problems faced by civil society organizations? Based on your experience, do the costs inherent in participation/the lack of comprehensive reimbursement schemes discourage civil society organizations from applying for membership?

We see the lack of adequate reimbursement and compensation schemes as an important driver of the lack of application of civil society organizations. Retail users associations do not have the necessary resources to reimburse and compensate their experts (especially in very complex areas such as financial regulation) for their expenses and work in Commission expert groups by themselves.

A further problem is the necessary workload required for active participation in the expert group. In order to decrease the unbalance, more could be done to support members of expert groups, including secretariat backup and summaries of key documents, as well as targeted support for consumer representatives. This could include presentations, orientation sessions or targeted briefing sessions.



6. Please give us your views on which measures could contribute to a more balanced composition of Commission expert groups

Adequate reimbursement and compensation of not for profit non industry experts is a key measure for improving the balance in Commission expert groups. Without this the expert groups, although envisioned as a tool for improved inclusiveness during the policy making process, will actually further cement the subordinate role of civil society's policy input when compared to the policy input channels available to the industry representatives.

However, we would like to use this opportunity to state that the problem of missing balance goes a lot deeper. The organizations representing retail user interest in general face serious strains on their resources. Very often, they cannot afford to assign the limited number of experts they dispose of to an EC expert group because such diversion of resources would seriously limit the capacities in their core activities. Even adequate reimbursement of expenses incurred and adequate compensation reimbursement for work in expert groups thus does not sufficiently address the issue of balanced input.

Moreover, the situation is even more serious in some member states (particularly in new member states and southern member states) where civil society is less developed. There, retail user associations often cannot afford at all to employ experts in the field of financial services. This lack of user representation results in seriously unbalanced policies at the national level. As a consequence, retail financial markets, to a worrying degree; do not function to the benefit of the retail users. On the other hand, it translates into underrepresentation of retail user input from these member states on the EU level, in the Commission expert groups. The resulting unbalances are in our opinion serious enough to limit the legitimacy of EU level policy decision making.

Establishing a mechanism to support national civil society groups representing financial services users is therefore essential. From our perspective, this means ensuring that general conditions are met for the establishment and development of strong consumer, retail investor and SME organizations in all member states. Concretely, basic capacities for the functioning of retail user groups should be ensured. This can be done by better defined standards for national governments' policies towards such organizations, while the capacities of EU- level NGOs (mostly Better Finance, the European Consumer Association BEUC and Finance Watch) to ensure exchange of best practices and transfer of knowledge and expertise between member states should be strengthened.

To supplement the national and EU-level funding of these policies, an option would be to analyze the legal possibility of establishing a system of compulsory contributions/ levies paid by companies that offer services/products to retail users.



7. Do you have any other comments?

We would like to state that focusing on balanced expert groups at EU institutions will not always ensure the optimal policy input. Our members have on many occasions witnessed that mixed expert groups were ineffective in providing input from the retail user side, because input on risks and harmful market practices for consumers and users has been “balanced” by contrary reports of the industry representatives. The reason for this is that on retail markets, user’s interests are in the short run very often opposed to the interests of the industry. This is especially the case when new market practices or products appear that can be detrimental for the consumers but very profitable for the industry.

Consultative groups such as the FSUG are thus crucial for providing high-quality response from the user’s perspective on EU policy initiatives, warnings on harmful market practices and expertise input for market reforms. All EU institutions should establish such consultative organs for retail user input with adequate means for expert engagement, while at the same moment strive for balanced representation in mixed expert groups that deal with more specific and ad-hoc policy issues.

Finally, as the systemic changes we are proposing above cannot be implemented in the near future, it can be assumed that the present unbalance in representation between retail user representatives and the industry will prevail at least for some time. It is therefore necessary for the Commission to introduce new rules for decision making (no 50% majority decisions), alternative or dissenting opinions (the possibility to publish opinions expressing disagreement with the “official” position of the group), or even providing certain advantages to civil society representatives that may compensate the disadvantage with experts representing private interests:

- as expressed above, a proper financial compensation,
- priority access to policy makers and key documents,
- a right to “veto” certain key decisions taken in expert groups where there is an unbalance in numbers,
- a preferential access to key positions such as chairs of expert groups,
- an ease of administrative burdens both for applying to expert groups and during their mandate.

