



Decision in case 1082/2018/PL on how the European Chemicals Agency conducted a consultation on a proposal to restrict lead in gunshot

Decision

Case 1082/2018/PL - **Opened on** 09/07/2018 - **Decision on** 16/07/2019 - **Institution concerned** European Chemicals Agency (No maladministration found) |

The case concerns how the European Chemicals Agency (ECHA) conducted a consultation of stakeholders on a proposal to restrict lead in gunshot used in wetlands. The complainant took issue with the wording of the questions and the fact that the consultation was available in English only.

The Ombudsman considers that the questions, and the opportunity to send general comments, allowed participants to express their views freely. Regarding languages, however, the Ombudsman found ECHA's justification for using English only to be inadequate.

The Ombudsman therefore welcomes ECHA's commitment for the future to consider translating into other languages at least parts of its consultations. Where ECHA restricts the use of languages, it should put in place relevant safeguards such as making available a summary in all EU official languages, making relevant supporting material available in as many languages as possible and, above all, making clear that responses can be submitted in any EU official language. This latter element is a fundamental right.

The Ombudsman closed the case with a suggestion to ECHA to avoid similar problems arising in the future.

Background to the complaint

1. The complainant, the National Association of Regional Game Councils (NARGC), is an Irish organisation representing game hunters. It took issue with how the European Chemicals Agency (ECHA) conducted a consultation of stakeholders on a proposal to restrict the use of lead and its compounds in gunshot used in wetland areas in the EU [1].

2. In November 2017, the complainant wrote to ECHA to raise its concerns, notably regarding the online platform for taking part in the consultation, the wording of the questions which it considered to be leading questions, and the fact that the consultation was available in English only.

3. Dissatisfied with ECHA's reply, the complainant turned to the Ombudsman on 17 May 2018.



The inquiry

4. The Ombudsman opened an inquiry into i) the wording of the questions asked by ECHA, and ii) the fact that the consultation was available in English only.

Arguments presented to the Ombudsman

5. ECHA said that the questions were formulated with a view to getting information on different aspects of the overall issue that were considered important. However, nothing prevented participants from making additional and more general comments.

6. Concerning the language, ECHA said that the consultation was not aimed at the general public, but at a targeted audience with relevant scientific and technical expertise. English, it claimed, has become the common language of communication amongst the scientists and stakeholders working on the regulation of chemicals and environmental protection. This is why ECHA uses English as the language for its consultations. That said, participants are free to submit their contributions in any of the official languages of the EU.

7. Notwithstanding this, ECHA acknowledged that making certain parts of a consultation available in languages other than English might, in certain cases, be useful. It will therefore consider drafting parts of its consultations in other EU languages in the future.

8. The complainant disagreed that the consultation was addressed to a targeted audience, since it aimed at gathering, not only specific scientific information, but also socio-economic information.

9. The complainant pointed out that the replies to the consultation came disproportionately from non-English speaking countries.

The Ombudsman's assessment

Wording of the questions

10. The first part of the consultation [2] provided the background to the proposal to restrict the use of lead and its compounds in gunshot: the scope, the reasoning and the expected results. In these sections, ECHA set out clearly its position and concluded that *“the proposed restriction is implementable (technical feasible alternatives exist), enforceable, manageable for the various actors involved and proportionate”*. In the second part, ECHA invited stakeholders to respond to five questions and various sub-questions, share their experience on several issues and *“submit specific information, in addition to comments on the overall dossier”*.

11. The fact that ECHA set out a position and invited feedback on it is not, in itself, necessarily problematic. By doing this, ECHA gave respondents an opportunity to assess its proposal critically. Moreover, ECHA gave stakeholders the opportunity to submit comments and information on the overall proposed restriction, and not only on the specific questions



asked. The complainant made use of this opportunity.

12. Therefore, the Ombudsman finds no maladministration as regards this aspect of the complaint.

Language of the consultation

13. The Ombudsman's view is that where an EU institution or agency carries out a public consultation, it should, as a matter of principle, aim to make the documentation available in all EU official languages at the beginning of the consultation process. [3]

14. Language restrictions may prove necessary in certain circumstances. There may be cases where it is appropriate for a specialised EU agency, such as ECHA, to carry out a consultation in fewer or indeed only one language. Those restrictions should, however, be objectively justified, reasonable and proportionate to the aim pursued [4] .

15. The question for the Ombudsman in this case is whether ECHA's exclusive use of English in its consultation was justified, reasonable and proportionate to the aim pursued.

16. Regarding the aim, ECHA was preparing a so-called 'restriction dossier' [5] for the European Commission, which was of the view that measures might be called for at EU level to control the use of lead in gunshot in wetland areas.

17. ECHA's website says that consultations in restriction procedures are public [6] and addressed not only to industry-related stakeholders, but also to civil society and to individual citizens [7] . Likewise, the Commission, when explaining the restriction procedure on its website, refers to these consultations as public and invites anyone to participate [8] . While ECHA sets out that it uses the term 'public consultation' to emphasise that it is done in a transparent "public" manner, the Ombudsman contends that this is not the generally understood meaning of the term.

18. ECHA contended that it was justified in carrying out this consultation in English only, because the target audience was a specialised group of stakeholders, and not the general public. ECHA stated that *"English has become the common language of communication amongst the scientists and stakeholders working on the regulation of chemicals and environmental protection"* .

19. Given that ECHA's website states that consultations in restriction procedures are public and addressed not only to industry-related stakeholders, but also to civil society and to individual citizens, the Ombudsman finds this justification to be inadequate. The restriction proposal had a direct impact on the complainant and its 28,000 members, many of whom seem to be individual farmers. While these individuals largely speak English [9] , the same is unlikely to be true of similar individuals and organisations in other EU countries.

20. The Ombudsman further draws ECHA's attention to the negative consequences for other EU languages where one language, in this case English, is given a privileged position in a



particular domain. [10] All EU institutions, agencies and bodies need to be alert to the 'self-fulfilling prophecy' of English increasingly being used because of arguments that it has become the dominant language in a particular field, thus weakening the case even further for using other EU languages.

21. The Ombudsman welcomes ECHA's commitment to explore the possibility of translating part of its consultations in future in as many languages as necessary. Where ECHA restricts the use of languages, it should put in place relevant safeguards such as making available a summary in all EU official languages, making relevant supporting material available in as many languages as possible and, above all, making clear that responses can be submitted in any EU official language. This latter element is a fundamental right. [11]

22. While ECHA's failure to justify adequately its exclusive use of English in this case is a shortcoming, there is no indication that groups or individuals who wanted to provide input did not have an opportunity to do so. As set out in detail in ECHA's reply to the Ombudsman, ECHA engaged extensively with stakeholders during the process. It has a sophisticated and well-developed system for reaching out to stakeholders across Europe.

23. The Ombudsman therefore closes this case on the grounds that no further inquiries are justified. To avoid similar problems occurring in the future, she will set out a suggestion for improvement to ECHA.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

While the Ombudsman finds that ECHA failed to give an adequate justification for its exclusive use of English in this consultation, no further inquiries are justified at this stage.

Suggestion for improvement

The Ombudsman will be writing shortly to all EU institutions, bodies, offices and agencies to seek feedback on her draft guidelines on the use of EU official languages when communicating with the public. The Ombudsman encourages the European Chemicals Agency to engage in this process, as it has already done in response to her public consultation on the matter. Once the guidelines are adopted, the Ombudsman expects ECHA to review its practices.

The complainant and the European Chemicals Agency will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 16/07/2019



[1] The European Chemicals Agency (ECHA) submitted a report proposing “a restriction on gunshot for shooting with a shot gun within a wetland or where spent gunshot would land within a wetland”. This followed a consultation that took place between 21 June and 21 December 2017. More information available at:

<https://echa.europa.eu/documents/10162/d7fb96cf-7956-7406-3568-399ca20151e0> .

[2] Available at:

<https://echa.europa.eu/documents/10162/d7fb96cf-7956-7406-3568-399ca20151e0> .

[3] See, for instance, the Ombudsman’s decision in case 640/2011/AN, para. 69, available at:

<http://www.ombudsman.europa.eu/en/cases/decision.faces/en/12009/html.bookmark>

[4] See the opinion of Advocate-General Poiares Maduro in Case C-160/03, paragraphs 38-44:

<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=49769&pageIndex=0&doclang=EN&mode=lst&dir=>

[5] Restriction procedures are regulatory measures to protect human health and the environment from unacceptable risks posed by chemicals. Restrictions may limit or ban the manufacture, placing on the market or use of a substance. The procedures are set out in Articles 69 – 73 of Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency. Available at:

<https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1532936325230&uri=CELEX:02006R1907-20180509>

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[6] The consultation in this case was entitled ‘Public consultation’.

[7] ECHA’s website on public consultations in restriction procedures defines the target audience as “companies, organisations representing industry or civil society, individual citizens, as well as public authorities”. Available at:

<https://echa.europa.eu/public-consultations-restrictions-related> ;

[8] The European Commission’s website explaining REACH restriction procedures, available at: https://ec.europa.eu/growth/sectors/chemicals/reach/restrictions_en

[9] The complainant mentions “a small number of our members who are native Irish speakers”.

[10] See paragraph 14 of the Ombudsman’s recent decision in case 1128/2018/TM available at: <https://www.ombudsman.europa.eu/en/decision/en/115820>

[11] Article 41(4) of the Charter of the EU.