



Letter from the European Ombudsman to the European Commission on how it carried out a public consultation concerning the Sustainable Corporate Governance initiative

Correspondence - 08/12/2021

Case 1956/2021/VB - **Opened on** 08/12/2021 - **Decision on** 12/12/2022 - **Institution concerned** European Commission (No further inquiries justified) |

Ms Ursula von der Leyen

President

European Commission

Dear President,

I have received a complaint against the European Commission on how it carried out a public consultation concerning the Sustainable Corporate Governance initiative [1] .

I have decided to open an inquiry into this complaint. I have concluded that it would be useful to receive a written reply from the Commission addressing the complainants' concerns and taking into account my observations set out in the annex.

Please note that I am likely to send your reply and related enclosures to the complainants for comments [2] . We may also decide to publish your reply. The responsible case-handler is Ms Angela Marcos Figueruelo.

I would be grateful to receive the Commission's reply by **15 March 2022** .

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 08/12/2021



ANNEX I - complaint 1956/2021/AMF

The complainants, a group of NGOs and associations, organised two campaigns [3] that facilitated individuals' participation in the consultation. The campaigns included on-line consultation tools through which individuals could directly reply to the questions and provide their own contributions. These campaigns collectively mobilised **595 390 individual contributions to the public consultation, part of which were submitted via the Commission's on-line consultation portal. The responses of 122 785 individuals were submitted, in agreement with the lead DG, by means of a PDF document .**

The complainants are concerned that:

- 1. The 122 785 contributions to the public consultation, that were provided to the Commission in PDF format, are not taken into account in the total number of responses received and are mentioned on the public consultation website as a single response.**
- 2. The Commission did not report on the substance of the 595 390 contributions submitted through the two campaigns in the summary report of the public consultation.**

Regarding the complainants' first concern, the Better Regulation Guidelines (BRG) [4] foresee that "*Contributions to a consultation must be published. [...] Written contributions should be made public on the dedicated consultation webpage*".

On 22 January 2021, the Commission informed one of the complainants that contributions could be provided in PDF format, adding that "*we would then reference the reply by indicating the number of respondents that, based on the information you provided, it represents*". The complainant then provided the 122 785 contributions in PDF format on 8 February 2021.

The summary report of the public consultation states that "*[i]n total, 473.461 public responses were obtained during the consultation period. **One of the responses had 122.785 supporting citizen signatures.***" The pie chart that features on the public consultation website [5] currently refers to a "*Total of valid feedback instances received: **473.461***". It appears, thus, that the 122 785 contributions submitted in PDF format were treated as one single response with multiple signatures rather than as multiple responses made by means of a single submission . The rest of the contributions submitted through campaigns are reflected as individual responses in the statistics and the pie chart in question. The complainants claim that this is contrary to what they had been told would happen, that is that these responses, provided by means of a single submission, would be given the same consideration as the rest of the responses to the consultation.

Regarding the complainants' second concern, the Commission has informed them that "*all stakeholder input ([...] including the 122.785 citizen signatures) will be explicitly referred to, analysed and included in the synopsis report which will accompany the ongoing Impact*



Assessment “. This is in line with the provisions of the BRG, which foresee that *“Beyond the factual summary, stakeholders should receive **adequate and thorough feedback** through a **synopsis report**, prepared at the end of the consultation activities”*. However, the BRG also state that *“ within 8 weeks of the closure of the public consultation, **it is mandatory** to publish on the consultation website a **short factual summary of the key issues raised in the public consultation**. [...] *The results of the consultation should be presented in an objective, unbiased way, **briefly describing respondents’ profiles and recording all views, including dissenting ones** . (emphasis added)”*.*

In addition, the Better Regulation Toolbox (BRT) [6] states that the summary report should *“ Give a **concise and balanced overview** of contributions received during a specific consultation activity”* and report on *“ who contributed”* and *“ what are the[ir] views and concerns (emphasis added)”*.

In the summary report, the Commission has provided details of the number of contributions received (473 461), and has noted that one of them contained 122 785 signatures. However, the Commission has not provided any details in the summary report as to what were the key issues raised during the public consultation by any of the citizens who submitted responses through campaigns. The summary report therefore only partially represents the results of the public consultation at this stage (10 months after the public consultation was closed). Indeed, the summary report itself acknowledges that it provides a breakdown only of the 855 responses that were not submitted through campaigns. This appears to be in contradiction with the provision under the BRG to *“ briefly describ[e] respondents’ profiles and record all views”* on the summary report of the public consultation . While it is clear that the number of responses submitted through the campaigns is high, it is also true that the hundreds of thousands of campaign contributions contain very similar or almost identical replies. It is therefore difficult to understand how the Commission was not able to provide a breakdown of the key issues raised by the 595 390 individuals concerned in the summary report.

[1]

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-g>

[2] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them ‘Confidential’. Encrypted emails can be sent to our dedicated mailbox. Information and documents of this kind will be deleted from the European Ombudsman’s files shortly after the inquiry has ended.

[3] See https://secure.avaaz.org/campaign/en/eu_feb_2021_consultation/ and <https://www.enforcinghumanrights-duediligence.eu/>

[4]

<https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-ar>



[5]

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-g>

[6] <https://ec.europa.eu/info/sites/default/files/better-regulation-toolbox.pdf>