

The composition of the European Commission's Regulatory Scrutiny Board and how it interacts with interest representatives

Case opened

Case 439/2023/KR - **Opened on** 04/04/2023 - **Institution concerned** European Commission
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President

European Commission

Dear President,

I have received a complaint from Corporate Europe Observatory against the European Commission about the above subject.

The complainant raised concerns about the role of the Regulatory Scrutiny Board (the Board), notably in the context of the draft EU directive on corporate sustainability due diligence (CSDD). In particular, the complainant is concerned about meetings between members of the Board, including the chair, and interest representatives. The complainant argues that these interactions may have influenced the Board's work on the draft CSDD directive. The complainant is also concerned about the composition of the Board, which it contends does not have sufficient members with environmental and social policy expertise.

I have decided to open an inquiry to look into the complainant's concerns that the Commission should:

- i. Evaluate the access that corporate interest representatives (lobbyists) have to the Board and its members to ensure that there is no privileged access and to put in place more robust mechanisms to ensure that corporate lobbying does not have undue influence on the Board's work.



ii. Ensure that the membership of the Board includes sufficient environmental and social policy expertise.

For the purpose of this inquiry, I have decided that it is necessary to inspect the following documents:

- All declarations of interest of Board members since the Board was established; [1]
- All documents concerning disclosures of potential conflicts of interest by Board members with respect to particular reports on which the Board was working;
- Documents (including emails, invitations, agendas, minutes etc.) related to all meetings of the Board with think-tanks, institutions in non-EU countries and other stakeholders from 2021 onwards;
- Written contributions on individual files provided by interest representatives and the response of the Board, if it made any, from 2021 onwards;
- Documents concerning the assessment of the extension of Board members' mandates;
- The CVs of all Board members since the Board was established.

I have also concluded that it would be useful to receive a written reply from the Commission to the questions in the annex to this letter.

I would be grateful to receive the Commission's reply by 30 June 2023.

Please note that I am likely to send your reply and related enclosures to the complainant for comments. [2] We may also decide to publish your reply. The inquiry officer responsible is Mr Koen Roovers.

Finally, please note that I have informed the complainant that the aspect of its complaint, which concerns the substance of the CSDD proposal, falls outside the scope of my mandate. I have also informed the complainant that there are insufficient grounds to inquire into the alleged absence of an independent evaluation of the Board and the Better Regulation policy, given the stocktaking exercise that the Commission carried out in 2019 and which included consultations with academia and stakeholders.

Yours sincerely,

Emily O'Reilly European Ombudsman

Strasbourg, 04/04/2023

Annex - Questions for the Commission in 439/2023/KR

As regards the Regulatory Scrutiny Board's interactions



with stakeholders:

1. How does the Board handle written contributions from stakeholders in respect of individual files?
2. When organising or participating in outreach activities, how does the Board ensure that its members meet only with interest representatives who are registered on the Transparency Register? Where such meetings take place, how does the Board ensure that matters concerning individual files are not discussed?
3. The complainant is concerned that there is a significant loophole in the rules and ways of working of the Board if lobbyists are able to express their concerns to Board members about specific files in face-to-face meetings or written submissions, whether or not Board members themselves engage in a discussion on the file. Could the Commission please comment on this concern?
4. Aside from the Board's Rules of Procedure, does the Board have additional safeguards regarding meetings with interest representatives, or guidance for the chair of the Board in relation to this issue?
5. Are meetings with the Board demand driven, or does the Board proactively seek meetings with interest representatives?
6. How does the Board ensure a balanced representation of interest groups when organising or participating in outreach activities?

As regards the composition of the Regulatory Scrutiny Board:

7. How does the Commission ensure that all areas of expertise, including social policy and environment policy, are covered in the composition of the Board?
8. How many times have the three-year terms of Board members been extended by an additional year, as foreseen in the applicable rules? Where this occurred, what were the 'exceptional circumstances' justifying the extension?
9. How many times have the terms of Board members been extended beyond four years? What was the legal basis for the further extension or renewal?
10. Who assesses the extensions of the terms of Board members and how does the Commission ensure that, where terms are extended, this is consistent with the need to balance expertise within the Board?



[1] In accordance with Article 11 and Article 11a of the Staff Regulations, and Article 11 and possibly Article 81 of the Conditions of Employment of Other Servants (CEOS).

[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.