

Overview of responses to the European Ombudsman's public consultation on transparency and participation in EU decision making related to the environment

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Background

Between September and December 2022, the European Ombudsman carried out a public consultation on transparency and participation in EU decision making related to the environment. The consultation set out questions that aimed to assess whether EU institutions and bodies provide access to information in a timely manner, allowing citizens to exercise their right to democratic scrutiny in an area of high importance and public interest. [1]

The consultation took place against the backdrop of the EU's response to environmental and climate crises, which has been defined by the European Green Deal [2] and includes overarching frameworks such as the EU Biodiversity Strategy for 2030 [3], the Farm to Fork Strategy [4], the Blue Economy Strategy [5] and the Circular Economy Action Plan [6].

The Ombudsman received 18 contributions (listed in annex), including from non-governmental organisations active in a variety of areas. The responses will contribute to the Ombudsman's reflections on her strategic work in this area.

Overview of responses

Transparency

Difficulties obtaining information or access to documents

Respondents identified various difficulties that undermine the ability to follow or contribute to decision-making processes. These include:

- Late publication of information, such as Council meeting agendas, impact assessments and EU positions in the context of multilateral fora.
- Lack of transparency around lobbying and the engagement of interest groups in



decision-making.

- Difficulties accessing information and positions discussed in trilogue negotiations on draft legislation between the European Parliament, Council and Commission.
- The failure to make public in a timely manner opinions of the Regulatory Scrutiny Board (RSB), an independent body within the Commission that advises the College of Commissioners.
- Incomplete or delayed publication of information on infringement procedures in the EU infringement database.

Respondents also raised concerns with how the EU institutions, in particular the Commission, deal with requests for public access to documents. [7] These include the failure to respect deadlines for dealing with requests, the systemic refusal to grant access to certain types of documents, such as impact assessments or RSB opinions, and the failure to properly take into account the overriding public interest in disclosing documents.

In addition to information regarding issues like wildlife trade and industrial emissions, respondents also expressed difficulties obtaining information related to certain EU funds, such as: the Modernisation Fund [8] ; funds managed by the European Investment Bank (EIB); the Western Balkans Investment Framework [9] ; the list of Projects of Common Interest (PCIs) [10] , energy infrastructure projects that are eligible for EU funding; and funding with an environmental impact under the Common Agricultural Policy and the Recovery and Resilience Facility.

Accuracy and user-friendliness of published information on the environment

The EU Aarhus Regulation obliges the EU institutions to set up public databases for the proactive and systemic dissemination of certain environmental information. Respondents argued that there should be an EU database for environmental legislation and draft legislation. They also argued that document registers, notably of the Commission and Council, should include more background documents (for example, working documents on draft legislation in Council or documents prepared by the Commission's directorates-general). They also called for more information to be published by the European Chemicals Agency, notably regarding the risk assessment of chemicals in the context of the REACH Regulation [11] , and on the environmental impact of projects funded by the EIB.

Respondents emphasised that there are issues concerning the accuracy and completeness of information published in specific areas. In the area of wildlife trade, the Commission only registers and makes public data on imports and exports of species explicitly referred to in the applicable EU law [12] but not other species, while some Member States provide incomplete data. This prevents evaluation and lags behind international best practice. For example, respondents said a comparative US database contains more detailed data, as well



as specific datasets that are available upon request. Background documents behind decisions are also lacking.

Respondents also raised concerns that information on industrial emissions, in the dedicated portal [13], is not made available in easy-to-use, open data format and lacks context to facilitate evaluation. They also emphasised the lack of data on some key issues under the 2030 EU Biodiversity Strategy [14], for example organic farming, as well as a lack of sufficiently detailed information on EU decisions on fisheries, for example comparing scientific recommendations on catches of species and quotas adopted.

What qualifies as ‘environmental information’?

Respondents noted that EU institutions sometimes do not consider that documents or information having an environmental impact should be recognised as ‘environmental information’ [15], meaning they did not apply the higher transparency standards required by the EU Aarhus Regulation. This means that institutions make unjustified use of the exceptions under the EU legislation on public access to documents to deny access. Respondents identified this as being a problem in the areas of legislative decision-making, access to documents relating to the enforcement of EU environmental law in the context of infringement proceedings, standard setting and the environmental impact of EU-funded actions.

Transparency of the ‘comitology procedure’ for deciding EU implementing laws

Respondents argued for much more transparency in the comitology procedure, especially regarding the Standing Committee on Plant, Animal, Food and Feed (SCOPAFF) [16], which provides opinions on Commission proposals on ‘implementing acts’ on issues like pesticides and genetically-modified organisms. Respondents also argued for greater transparency concerning decisions as well as the control of hazardous chemicals. To better enable scrutiny of decision-making, respondents stressed the need for timely access to key information like agendas, minutes and summaries of meetings, and Member State positions on legislative proposals. This should be complemented by a more user-friendly and searchable register [17].

Transparency concerning external experts consulted by the Commission

Respondents argued that there is insufficient information available around external experts and argued for greater transparency, particularly where they are consulted about



potential legislation. In particular, respondents point to expert groups that advise the Commission and the European Chemicals Agency. Improving the usability of the expert groups register would also help as would having more comprehensive information on declarations of interest.

Public participation

Involvement of civil society

Respondents said that the Commission should provide more balanced participation opportunities to civil society organisations in policy-making. This implies consulting civil society at all relevant stages of a policy-making process and ensuring balanced interaction with civil society and industry representatives. The Commission should consider adopting guidelines on this, as well as organising more regular calls for applications for participants on consultative platforms related to environmental policy making.

In order to allow for a more meaningful involvement of civil society, respondents said that the Commission should share (preliminary) positions on policies or legislation, so that stakeholders can provide missing information and highlight risks.

Respondents raised specific issues about the involvement of stakeholders in developing EU policies on wildlife trade, as well as on new genomic techniques.

Public consultations

Respondents stated that there should also be fewer linguistic and technical barriers to participating in consultations. There should be greater transparency about who participates in consultations. Some respondents pointed out the lack of clarity on criteria for inviting stakeholders to public consultations and about the format of questionnaires used.

Measures to be adopted in the context of REPowerEU and the Nature Protection Package

Respondents considered that the Commission should facilitate and increase stakeholder participation regarding the REPowerEU [18] and the Nature Protection Package [19]. This includes making public information and documents in a timely manner, including invitations to and information about the consultations, with a clear plan for consultations. This also implies that the Commission proactively provides information on its positions. The Commission should make it possible to provide input at each stage of the



decision-making. Respondents also raised concerns about the lack of impact assessments and/or consultations about some specific proposals, such as the revisions of the Renewable Energy Directive [20] , the Birds Directive [21] and the Habitats Directive [22] .

Annex :

- Access Info Europe and the UNCAC Coalition's Environmental Crime and Corruption Working Group
- Born Free Foundation
- CEE Bankwatch Network
- ClientEarth
- Compassion in World Farming (CIWF)
- Ecologistas en Acción
- European Environmental Bureau (EEB)
- European Vegetarian Union (EVU)
- Friends of the Earth Europe
- Humane Society International/Europe (HSI)
- IFAW
- MiningWatch Portugal
- Montescola Foundation
- POLLINIS
- Pro Wildlife and
- WWF European Policy Office.

[1] <https://www.ombudsman.europa.eu/en/public-consultation/en/160313>

[2] https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en .

[3] https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en



[4] https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en

[5]

https://oceans-and-fisheries.ec.europa.eu/ocean/blue-economy/sustainable-blue-economy_en

[6] https://environment.ec.europa.eu/strategy/circular-economy-action-plan_en

[7] Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001R1049>

[8] <https://modernisationfund.eu/>

[9] <https://www.wbif.eu/>

[10] https://energy.ec.europa.eu/topics/infrastructure/projects-common-interest_en .

[11] Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH):

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1907> .

[12] Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01997R0338-20220119> .

[13] See: <https://industry.eea.europa.eu/> .

[14] https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en .

[15] The definition of environmental information is set out in Article 2(1)(d) of the Aarhus Regulation: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32006R1367>

[16] See: https://food.ec.europa.eu/horizontal-topics/committees/paff-committees_en .

[17] For more information, see:

<https://ec.europa.eu/transparency/comitology-register/screen/home>

[18] REPowerEU: Joint European Action for more affordable, secure and sustainable energy:

<https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affo>

[19] For more information, see:

https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3746 .

[20] Directive 2018/2001 on the promotion of the use of energy from renewable sources:



<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02018L2001-20220607> .

[21] Directive 2009/147/EC on the conservation of wild birds:

<https://eur-lex.europa.eu/eli/dir/2009/147/2019-06-26> .

[22] Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01992L0043-20130701> .