

**Public consultation on transparency and participation in EU decision making
related to the environment**

SI/5/2022/KR

Response on behalf of WWF European Policy Office, 15 December, 2022

Transparency

1. Please describe any difficulties you have faced in searching for and obtaining information or documents related to (decision making on) the environment held by EU institutions.

For this question, we wish to highlight that this is particularly an issue with regards to the Council of the EU. Agendas for meetings of the working parties, Coreper, or Council meetings at ministerial level are released only a few days beforehand, making it very difficult to be informed of the issues being discussed. Furthermore, the Council does not make public its drafts, or amendments, before adopting its position, or make public who sits in which working parties and report on the discussions held at working party level publicly, making it very difficult for the public to be aware and engage in the discussions being held, and express views. This contrasts with the European Parliament, for example, where draft reports and amendments are publicly available ahead of votes.

Greater efforts therefore need to be made by the Council of the EU to improve the transparency of its proceedings for decision-making related to the environment, including but not limited to increasing the time meeting agendas are published, making public the draft versions of Council positions, publishing minutes of working party meetings, and publishing Member State votes.

Some of these issues were already flagged by the Ombudsman in its recommendations in case OI/2/2017/TE on the Transparency of the Council legislative process. Since then, we have not noticed any improvement.

2. In your view, is the environmental information that the EU makes public up-to-date and accurate? If not, please give examples.

For this question, we would like to highlight an issue in relation to transparency during the policy proposal development process in the European Commission. Impact assessments should make clear how the different policy options examined contribute to achieving the Union's environmental objectives, and if relevant, which trade-offs and synergies have been considered. The Commission should be more transparent on which options it chooses to model and how these choices are made.

Impact assessments are still not published upon completion but only when the proposal is published - a recent example of this is the EU Action Plan against Wildlife Trafficking of November 2022. As ordered by the European Court of Justice, impact assessments should also be published immediately upon their completion, and not only when the policy proposal is

presented. This will ensure greater transparency of how EU decisions are taken and can thus ensure greater stakeholder and citizen acceptance.

EU positions for international environmental conferences and negotiations are not always made public ahead of time. For example, the EU's position for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 19th Conference of the Parties, which took place in November 2022, has still not been made public (as of 14 December 2022).

3. The EU Aarhus Regulation obliges the EU institutions to set up public databases for the proactive and systemic dissemination of certain environmental information.[1] What, in your view, should the EU institutions do to make these databases as comprehensive and user-friendly as possible? The kind of information that the EU institutions should include within their scope is set out in Article 4 of the Aarhus Regulation. What specific information needs to be provided to meet this requirement? Should the EU institutions choose to go beyond this legal requirement? In what way?

The way the EU at present provides an overview of all environmental policies applicable in the EU is not optimal. Citizens have to look up legislation individually, which presupposes a certain amount of prior knowledge. A searchable, user-friendly public database of EU environmental policies (not limited to legislation but also covering action plans) would help citizens be better informed but also better comply with EU measures.

Furthermore, a single website or database of environmental legislation that has been proposed and that is currently going through ordinary legislative procedure, covering all three institutions (Commission, Council and Parliament) would greatly help with transparency of current procedures. At present, citizens who wish to be informed need to piece together information and documents from the different institutions' websites to understand where the process stands, and this information is not always up to date or transparently shared (see response to question 1 on the Council of the EU).

4. In some inquiries concerning public access to documents, the Ombudsman found that the EU institution concerned did not recognise that 'environmental information' was at stake and, thus, did not apply the higher transparency standards required by the EU Aarhus Regulation.[2] Have you come across this issue? If so, please provide relevant examples.

No specific examples with regards to the requirement for higher transparency standards, however we have found that access to documents requests often take too long, and the delays set out by the Commission are rarely respected. We have also received refusals or documents that are not fully disclosed, with large parts of the documents screened out.

5. The European Commission has implementing powers (under the so-called 'comitology' procedure) that it also uses to adopt decisions that relate to the environment, such as approving active substances in pesticides.[3] The Commission

submitted a proposal to amend the ‘comitology’ regulation in 2017, including by making public EU Member States representatives’ votes in the Appeal Committee. However, the legislative process on this proposal has since stalled.[4] Meanwhile, the Commission said it is reflecting on how to ensure further transparency in comitology procedures.[5] How do you think the Commission can improve the transparency of comitology procedures, specifically concerning environmental decision-making?

Our experience on this issue relates to the development and adoption of the delegated acts for the EU Taxonomy for sustainable activities. We found there was a lack of transparency in the process:

1. After the public consultation, we received no news or feedback for several months.
2. We found that the expert group’s recommendations were not taken into account, with no explanation for the reasoning;
3. It was also not clear which Commission DGs were involved in drafting the delegated acts, or what the positioning of the Member States on the issues was.
4. Documents were not publicly available throughout the process.

Therefore, we recommend that transparency is improved on the points above, in relation to which responses to the public consultation were followed in the elaboration of the draft Act; justifying the expertise that is followed; providing information on the internal Commission process for developing the Act, and publishing records of MS positioning.

6. In your view, are the personal and/or professional interests of external experts that the Commission consults in relation to environmental proposals, legislative or otherwise, sufficiently transparent? Please provide reasons for your view.

We believe there is a lack of transparency with regards to who the Commission consults for targeted consultations when developing or evaluating policies, or how the databases for contacts are managed to determine which stakeholders are relevant for a particular policy. For example, we are sometimes contacted for consultations on issues we do not have expertise on, which isn’t in itself a problem, but also not contacted on issues where we are active, or contacted very soon before the deadline for response. It should therefore be made clearer which experts are consulted, and which personal and professional interests these experts are affiliated with.

Furthermore, Transparency International’s Integrity Watch shows the highest proportion of meetings held by the Commission on policies related to the Green Deal are with companies and groups, and trade and business associations, compared to NGOs not representing a commercial interest, highlighting the imbalance in the interests considered.

7. Please raise any further issues you have observed in the transparency of decision making relating to the environment.

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Participation

8. What could the Commission improve regarding the involvement of civil society in the preparation and implementation of the policies with an impact on the environment, for example in 'Civil Dialogue Groups' in the context of the EU's Common Agricultural Policy, or 'Domestic Advisory Groups' in the context of the implementation of Free Trade Agreements?

For expert groups, civil dialogue groups or advisory groups, it is not always clear what impact the work has on the Commission's decision-making and to what extent the advice is followed. For example, with the case of the Platform on Sustainable Finance and the Taxonomy Delegated Act, NGOs including WWF felt that the expert group's recommendations were ignored, particularly on forestry, bioenergy, gas-fired power and nuclear power, without providing any sound scientific justification for these decisions, and leading to WWF and several other groups stepping out of this platform not once,¹ but twice².

If the Commission is to use such groups for consultation, it needs to (1) be transparent on how the advice will be used and integrated in policy and (2) ensure an adequate balance between different interests and justify how this is being done. It should also recognise the important time investment these groups represent for civil society - smaller organisations representing the public interest often don't have the capacity to engage at the same level as bigger, private interests, which creates an imbalance within these groups and ultimately affects the type of expertise the Commission ends up taking on board. There is sometimes the feeling that public interest organisations are being used to 'greenwash' these expert groups' advice.

9. Under the EU Aarhus Regulation, EU institutions are required to provide early and effective opportunities for the public to participate during the preparation, modification or review of plans or programmes relating to the environment and to take the outcome of the public participation into account. [6] Are you aware of issues in this regard, such as instances where EU institutions did not adequately adhere to this obligation? If so, please provide relevant examples.

Over the years, there have been several examples where input from NGOs was ignored, for example the public consultation on the future of the Common Agricultural Policy. Trust could be further built by improving transparency on which stakeholder views expressed through these consultations have been followed and taken into account when developing policy proposals. This concern was expressed in the European Court of Auditors' Special Report on the Commission's public consultations, where it was highlighted that the feedback for respondents to public consultations was insufficient, particularly with regard to how and whether the Commission takes responses into account.

¹ [WWF suspends activities in Commission's Sustainable Finance Platform, April 2021](#)

² [NGOs walk out of expert Taxonomy group over lack of independence, September 2022](#)

WWF is also concerned about the design of the 12-week public consultation questionnaires. The way questions are formulated and the options given in multiple choice responses offers respondents only limited scope to input and gives the impression the Commission has already decided a course of action and is simply using the consultation to validate it. The most flagrant example of this is the 2020 consultation on the 2030 climate target, where the options provided were limited to three options not backed by science (between 40% and 55% emissions compared to 1990 levels). This is despite climate modelling indicating that EU emissions need to be reduced by 67.6 % by 2030 in order for the Paris Agreement to be respected.

10. What should the Commission do to ensure an adequate level of public participation as regards the measures to be adopted in the context of REPowerEU[7] and the Nature Protection Package[8]?

Public and stakeholder support is crucial to avoid barriers and opposition in implementation, and eventually for making the green transition a success. Climate and energy are a sensitive policy area for EU citizens because envisaged measures have fundamental and far-reaching consequences on citizens' lives. At the same time, it requires planning 10-year or 30-year ahead, and the proposed measures must survive changes in governments over time. The current traditional passive 'one-way' consultation process - such as topical public consultations under the Better Regulation framework - is insufficient to build strong public understanding and consensus. The Commission should ensure that there is adequate time for experts and concerned citizens to be consulted, even when acting on urgent matters.

Furthermore, public participation in Member States should be respected more stringently - for example, for the National recovery and resilience plans citizens were not consulted or given the opportunity to provide input.

11. Please raise any further issues you have observed in the way the EU institutions facilitate public participation in decision making relating to the environment.

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