

COMMENTS OF THE EEB TO THE REPLY OF THE COMMISSION ON COMPLAINT 2000/2022/PVV

17 November 2023

This document contains the comments of the European Environmental Bureau (EEB) with regards to reply of the European Commission to the solution proposal by the European Ombudsman on complaint 2000/2022/PVV.

Firstly, we welcome the solution proposal by Ombudsman, proposing that the Commission grant wider public access to the documents we requested concerning the energy consumption and greenhouse gas emissions of the ceramics industry reported under the EU's emissions trading system. However, we are deeply disappointed by the reply of the Commission, and we ask once again that it reconsiders its position and complies with its obligation to secure a transparent and participatory decision-making process for all actors.

On the *first proposal regarding the reassessment of the information contained in the documents as relating to "emissions into the environment"* under Article 6(1) of the Aarhus Regulation. The Commission puts forward two arguments that we disagree with.

The first, that the documents concerned by this access to documents request entail commercially sensitive business information (CBI). We believe the Commission fails to sufficiently prove how the disclosure of the information would undermine the competitiveness on the installations concerned. This argument does not sustain itself because, as mentioned before by the EEB, this kind of data on production figures has been published in the past by National and EU bodies, thus we fail to understand why the Commission deems the contrary in this case. For instance, data related to the production activity of individual installations appears in certain reports by the Eco-Management and Audit Scheme (EMAS). The same holds true for environmental reports on energy consumption and carbon intensity (mentioned in the original complaint). Further examples can be found in the textile BREF, containing entries with explicit plant names and information on averaged energy consumption per tonne of textile fabric. There is also quite detailed information available on waste incineration (regarding electricity and heat) and on LCPs (energy efficiency data with detailed fuel inputs and outputs).

The second, regarding the fact that the data requested does not amount to information relating to "emissions into the environment" and does not fall under Article 6(1) of the Aarhus Regulation. As it has been mentioned by both the Ombudsman and the Commission, the data that is the object of this complaint relates in part to the total amount of CO₂-emissions of each installation concerned. While some information related to those values is public, as it has been pointed out by the Ombudsman, the present request demands wider access to more precise information. We agree with the Ombudsman that publicly available data does not fully correspond to the more precise information that the Commission holds such as production output or other energy efficiency or fuel consumption information, which is not available on the EUTL as the Commission maintains.

Moreover, the Commission seems to make a generalized argument that information on emissions at sub-installation level do not reflect emissions "actual emissions released into the environment" as they are only a theoretical split. However, for BREF processes installations need to provide precise

information at the process level, so it can be comparable to the actual performance situation. Thus, we do not understand how this information can be described just a “theoretical split” or how the Commission draws the conclusion that this very precise information would not amount to data enabling the public to know what is actually or will be released into the environment. In sum, it is hard to see how this data does not constitute information ‘related to emissions into the environment’ under the Aarhus Regulation and therefore, we maintain that an overriding public interest should be presumed to exist and that the Commission should reconsider its position. To end this point we would like to insist on being awarded access to the 10% most efficient reference plant list. We would welcome a compromise of redacting data related to production volume if information on energy consumption, GHG intensity averaged per tonne products.

On the *second proposal related to the existence of an overriding public interest*, we welcome the assessment of the Ombudsman, and we reiterate our request for the Commission to reconsider its stance in this matter. While it recognizes our role as CSO and party to the CER BREF, the Commission argues that we have not sufficiently demonstrated “why in the specific situation at hand, the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over the reasons justifying non-disclosure”. It adds that it considers our interest in obtaining access to the documents “of private nature”. In our access to documents requests and subsequent complaints, we have abundantly explained our motivation to seek access to the information requested, that is, to participate fully and in equality of arms in the review of the CER BREF as the only NGO present in this decision-making process that sets Reference documents that inform legally binding targets. By denying access to the requested information, the Commission is limiting the effective participation of Civil society in the Sevilla process, a public consultation and participation space that is set up by the Commission itself for the sake of transparency and participatory decision making in environmental matters.

Last but not least, we would also like to stress our concern about the generalized delays of the Commission to respond diligently and in due time to access to documents requests and related complaints. Almost two years have passed since the EEB made the original request for documents on the 23 November of 2021. This might have rendered the requested data virtually useless for the purposes it was requested for in the first place, if it is ever released to the public. Making the resource of the access to documents requests (and the very valuable mediation of the Ombudsman) void of its purpose. An effective right to access to information should provide data in a timely manner. All in all, we welcome the mediation of the Ombudsman and the exchanges with the Commission and we are willing to find a compromise.

Sincerely,

██████████, on behalf of the EEB.