



Submission to EU Ombudsman public consultation - Transparency and participation in EU decision making related to the environment

Humane Society International/Europe warmly welcomes this opportunity to participate in the EU Ombudsman's public consultation on transparency and participation in EU decision-making related to the environment (SI/5/2022/KR).

We believe that it is vital that there is a high degree of transparency and opportunities for civil society actors to contribute their views to the EU decision-making process on environmental issues. Below please find our responses to the questions.

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.

In general, tracking down documentation and information from the EU institutions can be time-consuming and onerous task. Both the European Commission and Council websites are not particularly user-friendly to be able to get to detailed documents quickly. The European Parliament is a bit more accessible and less cumbersome. Like many interest representatives operating at an EU level, HSI has contracted a third-party monitoring service to mine these information sources to save time and ensure that we do not miss the publication of documents and information that is relevant to us.

We note that we have experienced a degree of inconsistency in both the degree of stakeholder consultation and the amount of the information that is made available by the Commission with respect to wildlife trade related issues. One example, for example, concerns the development of the *Revised Guidance Document on the EU regime governing trade in ivory 2021/C 528/03*.

Initially, there was a very satisfactory degree of stakeholder consultation. This included a public consultation (albeit poorly designed) and in-person stakeholder meeting where a draft text was shared by the Commission and discussed within a large group with diverse interests in the issue. However, at a later stage, this kind of transparency evaporated and the Commission shared no further drafts of the document for stakeholder comment.

This inconsistency leads to uncertainty among stakeholders about the degree of transparency that one may expect, or be entitled to, from this EU institution. Consequently, there was consternation among animal protection organisations when the Commission developed its *Guidance document on live animals bred in captivity under the EU Wildlife Trade Regulations 2022/C 306/02*. There had been no clear stakeholder consultation process, nor was any draft of the Guidance Document made available to us as stakeholders to comment on.

Further to this, there are transparency and access issues with regard to documents, such as agendas, summaries, etc., of decision-making bodies that have been established in connection with the implementation of the EU Wildlife Trade Regulation 338/97. This specifically concerns the Scientific Review Group, the Committee on Trade in Wild Fauna and Flora, the Group of Experts of the competent CITES Management Authorities and Enforcement Group.

We note that agendas are generally only published a few days before these decision-making bodies are due to meet. While this is undoubtedly a practical issue - and we also experience it with other EU institutions, such as the European Parliament, but which is usually mitigated by greater insight into the timetabling of decision-making via MEPs and Committee secretariats - the belatedness of publication prevents us, as stakeholders, as well as scientists working on wildlife issues, from being able to make detailed contributions to the participants in these decision-making bodies. This is further complicated by a lack of transparency with regard to the actual membership thereof.

In addition, summaries of the outcomes of the meetings of these decision-making bodies are not published in a timely manner. This has consequences for being able to communicate the results of EU decision-making within other international environmental fora. One example of this was a Negative Opinion regarding Mako sharks that had been adopted by the Scientific Review Group, which was published too tardily to be used in preparation for a meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

It is not just the timing of the publication of meeting summaries that is at issue here. We also find it highly problematic that the published summaries do not include no or insufficient data with regard to why specific decisions have been taken with regard to allowing or disallowing imports/exports of live animals and wildlife products from/to particular countries. The lack of access to this information makes it difficult for civil society organisations to understand the reasoning and scientific basis behind EU decision-making with regard to the trade in wildlife, or to challenge it.

As an animal protection NGO, it is difficult to gain access to some of the databases that are operated by, or in partnership with, the European Commission.

For example, we cannot gain direct access to TRACES, which is the online platform for the SPS certification required for the importation of, intra-EU trade in and exports of live animals and animal products to the EU. While we appreciate that this platform is designed to facilitate the interactions between traders and control authorities, it would be a helpful tool to be able to gain greater insight and statistical information into the trade flows of live domestic and wild animals and their products.

Likewise, we are unable to access the EU TWIX database, which although not run directly by the EU, is funded by the European Commission and Member States. This makes it difficult to get up-to-date raw data on the legal and illegal trade in wildlife and wildlife products.

In addition to this, we believe that It is vital that scientific progress and findings from research and analyses conducted by EU institutions on environmental issues should be given greater visibility and be more widely communicated. Generally this happens only in specific fora or is led by specialised agencies, such as EFSA, ECVAM, JRC, only.

Excellence in science should be a priority for all EU policies but it is hard to achieve. In the case of animal testing, non-animal methodologies are progressively replacing outdated animal methods. Nevertheless, a lack of adequate communication and investments in targeted scientific progresses constantly undermines their use and acceptance also by EU agencies, such as the European Chemicals Agency (ECHA).

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

The problem of the availability of environmental information goes beyond it being up-to-date or available. In some instances, there is a complete dearth of data necessary to properly underpin environmental decision-making. For example, unless species are CITES-listed, it is almost impossible to track the import, export and intra-EU trade of wild animal species. The only trade data available via Eurostat is generally at a broad level of the commodity where combined nomenclature codes exist. One can, therefore, find statistical data on, for instance, the number of live reptiles in EU trade, but it is not possible to discern the number and varieties of reptile species that this concerns.

For the benefit of conservation and the effective monitoring of wildlife trade, it is essential that the Commission takes steps to ensure that the import and export of non-domesticated species is standardly recorded at a species or genus level. This is also fundamental to ensure that the EU trade in wildlife does not have a negative impact on biodiversity elsewhere in the world. It is crucial that the trade in species and populations of species, which are not (yet) protected under the auspices of the

CITES convention, is properly recorded and this statistical data be made publicly available via a dedicated database.

Further to the above, we would also like to flag the problem that documents related to EU decision-making in the framework of multilateral environmental agreements is not always published in a timely manner. For example, the EU Council Decision for a common position for the 19th meeting of the CITES Conference of Parties in Panama (14th-25th November 2022) was adopted on 11th November 2022. However, this important document was published neither before or during the COP19 meeting.

Moreover, we note that although limited opportunities for stakeholder consultation were provided by the Commission in the run up to and during the recent COP19 meeting, the communication was primarily a one-way street. Stakeholders could therefore provide input on the various proposals tabled by CITES Parties, but there was very little feedback communicated to stakeholders on the positions to be taken by the EU in this decision-making forum.

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?

From the perspective of an animal protection organisation, this database should include the timely publication of information on EU decisions taken in fora, such as the Scientific Review Group and the Committee on Trade in Wild Fauna and Flora. As already noted above, this should include a summary of the rationale behind the decisions for the purposes of clarification and transparency.

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.

We have thus far not experienced this issue.

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?

When the Commission has been granted implementing powers by the European Parliament and Council in the framework of environmental legislation, and must be assisted by a committee to define the necessary measures in related implementing act, greater transparency is needed. While the Parliament and Council indeed have a right to information and the right of scrutiny with respect to these implementing acts, there should also be a greater degree of transparency with respect to comitology procedures for external stakeholders.

Transparency could be greatly improved by, for example, ensuring that the dates, agendas and all other relevant documents, such as draft proposals, be made public in advance of meetings. This would better facilitate the possibility for stakeholders and other experts to provide their input to participants, at least if these are known, and Member State governments prior to the meetings. Likewise, the

publication of meeting summaries shortly after the meetings would increase the transparency of the comitology process.

Further to this, HSI most certainly supports the proposal to make the Member States' voting behaviour in the Appeal Committee public.

More specifically, HSI holds observer status for the European Chemicals Agency (ECHA). However, access to the internal negotiations conducted by internal Committees before final decision are taken is limited. There is also no disclosure of the names of the national representatives and experts participating in this internal decision-making. This makes very difficult for a real exchange with stakeholders to take place. Open dialogue with stakeholders could be improved by asking them for regular feedback on topics of key relevance and securing improved communication and engagement.

Since ECHA's objective is to secure the implementation of regulatory through science, open and regular debates should be organised about the state-of-art of testing methodologies, such as NAMs, which are best suited to deliver the regulatory objectives. We note a lack of transparency about where ECHA and its Committees stand with regard to the latest scientific advancements.

With respect to the ECHA Management Board, the Commission is responsible for the nomination of a representative of civil society. However, no formal process of regular consultation with the appointed person is currently in place and therefore HSI, as representative of animal welfare interests, has no way to making its voice heard in that Committee.

Key chemical legislations, such as REACH, Classification, Labelling and Packaging (CLP) and Cosmetics, incorporate technical Annexes the revision of which is mainly done thorough comitology. Since the Annexes may also contain information about the methods of testing (animal-based versus non-animal methods), transparency about how decisions are taken, by whom and how in comitology committees is very important. We note that there is poor access to information with regard to those processes.

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.

In our experience on decision-making regarding wildlife trade-related issues, there is a significant lack of transparency with regard to with whom the Commission consults in relation to its proposals and positions. One is able to gain a flavour of the nature and breadth of stakeholder involvement in environmental decision-making on the rare occasions that stakeholder consultations are organised by DG Environment, but not necessarily which external experts are actually being consulted and on what issues.

Furthermore, as noted above, there is no transparency with regard to the membership of decision-making bodies relating to wildlife trade, such as the Scientific Review Group. This should be publicly available with information on their scientific qualifications and area of expertise, plus a declaration with regard to conflicts of interest.

The evidence is anecdotal, but from discussions with Member State competent authorities, it is evident that decision-making with regard to EU positions in proposals to amend the Appendices of CITES can be based on the advice of a single expert. This advice can also fly in the face of scientific consensus, which suggests a personal/professional bias that may also be favoured by the decision-makers.

Lastly, we note that there is a lack of transparency about the disclosure of the names of the consultancies or individual experts who are supporting the Commission during the preparation of legislative proposals. For example, in the case of the ongoing REACH Review, the Commission has been supported by external consultants. However, we do not appear to have any access to their names or information pertaining to the selection criteria.

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

No additional comments regarding transparency.

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?

One of the key issues with respect to the involvement of civil society in Commission expert groups is that it tends to favour organisations that act as umbrella groups at an EU level. There is an erroneous assumption that these umbrella groups represent the interests of all groups working in the same or similar field. Moreover, some NGOs deliberately choose not to become members of umbrella groups due to the high membership costs and lack of added value, particularly when they are also directly engaged with policymakers in Brussels and do not need anyone to do this on their behalf.

In our experience, when it comes to Commission expert and civil dialogue groups, it is often the case that all NGOs are equal, but some are more equal than others. Over the years, despite having the necessary expertise, our applications to join such groups have often been rejected in favour of umbrella groups. In comparison to industry representation, particularly in regard to CDGs on agriculture, there are a limited number of seats available to NGOs. This is likely the rationale for giving preference to umbrella groups.

It does, however, have consequences for civil society participation. For example, various NGOs were recently refused in person participation in a DG AGRI organised event on the EU School Milk Scheme, which given the environmental impact of dairy production and need to transition to more plant-based diets, is also relevant to this consultation. The reason given was that it was only open to members of the Civil Society Dialogue groups. Once again, a decision that puts selected stakeholders in a privileged position with regard to access to decision-makers and information.

These complaints notwithstanding, HSI is indeed a member of various expert groups, namely the Platform on Animal Welfare; Competent Authorities for Registration, Evaluation, Authorisation and restriction of CHemicals (REACH) and Classification, Labelling and Packaging (CLP) and Working Group on Cosmetic Products. We also previously had a seat on the Domestic Advisory Group (DAG) for CETA, and are presently a member and vice-chair of the EU-Vietnam Free Trade Agreement DAG.

We are broadly satisfied with our participation and the degree of engagement with the Commission on these platforms. The biggest issue perhaps for NGOs is the lack of bandwidth to participate in the DAGs. It has posed a problem to recruit representatives of environmental organisations to fill the seats, partly due to a lack of dedicated trade experts within them and other competing priorities for staff with limited time.

In addition, we regularly participate in the Civil Society Dialogue meetings that are organised by DG Trade, which focus on specific bilateral trade agreements or broader issues, such as Trade and Sustainable Development. Sometimes these feel like a box-ticking exercise, but they do provide an opportunity for engagement with the relevant civil servants and negotiating teams and serve as a means by which progress can be communicated to stakeholders.

What is lacking from the Commission, at least with regard to wildlife trade and also biodiversity issues, is the kind of Civil Dialogue Group or Platforms that have been established by other Directorate-Generals, such as DG AGRI, DG SANTE and DG TRADE. There does not appear to be any group that has been established to routinely engage with and consult stakeholders on policy development and implementation with regard to such environmental issues.

The stakeholder consultation with regard to wildlife trade and biodiversity issues seems to be more ad hoc in nature. Establishing such a forum would help to ensure access to information and regular exchange of information, but would require a good balance between stakeholders to ensure representation in the discussion of policy development and the EU's positions in international fora, such as CITES.

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.

On several occasions, HSI has inexplicably not received invitations to participate in stakeholder consultations that are highly relevant to our organisation. The last time we recall this happening was in regard to a stakeholder meeting on ivory trade. The problem is usually quickly rectified by contacting the organisers.

However, it is concerning that there does not seem to be much consistency with regard to who is or who is not included in the list of NGO participants. Evidently, we are not the only NGO that experiences this. It raises the issue of how civil society organisations are selected for invitation to participate in consultations and on what basis?

Invitations to stakeholder meetings are also sometimes sent out at relatively short notice, which can make it more difficult for participants to attend due to existing work or personal commitments. This also runs the risk of reducing opportunities for civil society actors to participate in policy discussions.

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]?

To achieve the targets proposed in the Nature Restoration Law to restore damaged ecosystems and bring back nature, the Commission needs a high-level of support from all sections of civil society, and should not allow decision-making to be dominated by those who have an economic interest in maintaining the status quo.

The Commission should also take into consideration broadening the scope of its consultation beyond the instruments that it has developed itself. This includes taking into account other forms of citizen engagement and public expression, such as citizen and organisational petitions and opinion polls carried out by reputable companies, in its decision-making.

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.

It is vital that there is a high degree of transparency and opportunities for civil society actors to contribute their views to the EU decision-making process. This is, however, at times lacking, or the public consultations sometimes seem more like a box-ticking exercise.

We note that questionnaire design for public consultations is often poor and questions may require a level of expertise that most laypeople - and sometimes even specialists - do not possess. One notable example was a Commission public survey on ivory trade, which, for example, posed questions on the scale of illegal trade as compared to the legal trade in this wildlife product.

The question was almost impossible to answer appropriately by NGOs, let alone for the general public. The extent of illegal trade is by definition impossible to measure due to its illegality. One can only

extrapolate on the basis of recorded ivory seizures by law enforcement, which are in themselves probably only the tip of the iceberg. Such poor questionnaire begs the question of the reliability and validity of the data being collected to underpin Commission decision-making.

Another example from many years ago was a consultation on 'humane trapping standards', which was impossible to complete from an animal protection perspective because none of the answer choices reflected our position on this issue. Basing policy decisions on data collected from such poorly constructed surveys is tantamount to it being fruit from a poisonous tree.

In addition to this, we observe that to increase citizen participation in public consultations, civil society organisations will often produce guidance documents or 'templates' to assist their supporters in responding to complex questionnaires. The risk here is that responses are then discounted as being identical. The point, however, is that citizens choose to follow such guidance because they want to have their say, but rely on trusted organisations, which they support and reflect their personal views, to help them do so because they do not have the degree of knowledge and expertise to participate in such public consultations.

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