

Consultation SI/5/2022/KR: Transparency and participation in EU decision making related to the environment

- 15 December 2022 –

Introductory remarks

Pro Wildlife very much welcomes the opportunity to contribute to the public consultation by the EU Ombudsman on transparency and participation in EU decision making related to the environment. We believe that participation of and transparency towards civil society are crucial in ensuring ambitious policies to safeguard the environment.

Pro Wildlife is a non-profit organization committed to the conservation of wildlife. A focus of our work is protection of wildlife from over-exploitation (e.g., from legal and illegal trade, hunting and fishing). Accordingly, our contribution to this consultation is limited to our experience of the EU's work on relevant topics (such as CITES, ICCAT and other MEAs).

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.

Intensity, frequency and transparency of consultation process is limited and inconsistent

We note that the provision of information and consultation of stakeholders on development of EU policies on wildlife trade, including changes to relevant EU regulations, is inconsistent, often limited and sometimes non-existent. Recent examples include development of EU guidelines, e.g., on

- The Revised Guidance Document on the EU Regime Governing Trade in Ivory 2021/C 528/03: While the consultation process started well on this issue with early consultation of stakeholders and the provision of early draft guidance, drafts and information were not made available at later stages.
- Captive breeding guidance: There has been no information provided on the development of this guidance and its envisaged content, no consultation of civil society took place and no draft was provided, not even on request.
- EU Action Plan against Wildlife Trafficking: a public consultation was carried out by the Commission prior to drafting. However, at a later stage transparency was lacking, with no opportunity to comment on the Commission's draft before finalization.

Lack of transparency in the decision-making process on wildlife trade

We are noting a lack of transparency in terms of publication of meeting agendas, summaries as well as the basis of decision making with regard to the various bodies established in relation to the EU Wildlife Trade Regulation 338/97 (EU WTR), i.e. the Scientific Review Group (SRG), the Committee on Trade in Wild Fauna and Flora (COM), the Group of Experts of the competent CITES Management Authorities and the Enforcement Group:

- **Agendas for the SRG or COM meetings** are only published a few days before meetings take place (and sometimes have not been published in advance), preventing any meaningful contribution of information by stakeholders and scientists;
- **Summaries of meetings** are only published with a long delay (often of several months). This thwarts timely use of the results, e.g., in the context of other relevant bodies and decision-making processes. CITES / SRG information is generally published late. For example, the case of a negative opinion by the EU's SRG on mako sharks of the South Atlantic, agreed on 13th September 2022 at the 95th SRG meeting was only published on 6th October (3 weeks later). Given the deadline of 14 October 2022 for submitting documents for the meeting of the Regional Fisheries Management Organisation ICCAT (International Commission for the Conservation of Atlantic Tunas) in November 2022, the delayed publication of the SRG decision hampered its timely use in the preparation of a proposal on management measures for the mako shark under ICCAT. Also, the latest latest summary report by the Committee on Trade in Wild Fauna and Flora is of June 2021 and was published with a 6 months delay only in January 2022: <https://circabc.europa.eu/ui/group/4e7fd22f-d9b1-44a8-a0f0-68225ac209d6/library/cc027f5b-f56f-4280-a3f2-c1ffa372c40>).
- The SRG summary reports (see https://ec.europa.eu/environment/cites/srg_en.htm) **do not provide any justification, data or documentation** used as a basis for the establishment of so called "positive or negative opinions", which impose or lift import and export restrictions for certain species from certain countries; as the EU itself and the Member States are members of the Convention on International Trade in Endangered Species of wild Fauna and Flora (CITES) and according to the Convention and the EU Wildlife Trade Regulations trade in species covered by these regulations can only take place if a number of requirements are fulfilled, including that trade is legal and non-detrimental, the relevant evidence should be made publicly available.
- **EU positions for CITES meetings are being withheld:** While the EU agrees common positions prior to CITES conferences of the Parties (CoP) as well as Committee meetings, these positions are only made available long after meetings have taken place (for CoPs), respectively not at all (for Committee meetings). For example, the **EU Council Decision for a common position for the CITES CoP19** (14th-25th Nov 2022) was adopted on 11 November 2022, but not published before or during the CoP. This left all stakeholders, including civil society, the general public and other CITES Parties in the dark about the EU's position. This is even more relevant as the EU opposed many of the proposals submitted by other countries to better protect species from international trade under CITES.
- **Secrecy about Member State positions within EU negotiations:** We are concerned about the absolute lack of transparency of the positions taken and the contributions made by EU Member States in meetings of Expert Groups and other bodies (see above) as well as the Council of the Working Parties on the Environment and the Working Party on International Environment Issues. It is of concern that such positions are deemed confidential and the EU and its Member States evade transparency and public accountability in this way. This is even more worrisome as many of the positions taken by the EU for CITES COP19 were neither in line with the precautionary principle (to which the EU is bound by Article 1919 of its treaty of the Functioning of the EU) nor with the CITES listing criteria (including Annex 4 on precautionary measures).

- **Lack of stakeholder consultation during international conferences:** During CITES conferences (and Committees) the EU does not hold regular or timely stakeholder meetings: While two formal stakeholder meetings were held by the EU Commission prior to CITES CoP19, there was only one meeting held in the 2nd week of the meeting, at a stage when EU decisions had long been finalized, but not published, and most relevant negotiations had already been concluded. The EU should urgently install a timely, regular and formal stakeholder consultation process on environmental decision-making; for comparison: the US govt. invites comments on policies and regulations it is considering; it publishes its positions before CITES CoPs and holds daily stakeholder meetings during conferences.
- **Lack of feedback:** EU meetings with stakeholders do often not consist of open dialogue but are characterized by a one-way communication: Stakeholders can provide input, but hardly receive feedback on EU positions. Also, representatives of other Parties complained that the EU failed to provide its formal positions and any responses to information that these countries had provided on the EU's request. For example, one country, acting on behalf of a coalition of several African countries, despite engagement with the EU over several months, only received a formal written response by the EU informing it about the EU's opposition to its proposal to strengthen CITES protections for the hippopotamus, after the EU had already twice voted against the proposal at the meeting.

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

Information is provided too late:

- E.g. agreed Council Positions for CITES meetings are only provided in retrospect (see reply to Question No.1)
- agendas, results of SRG, Expert group etc. are only published with delay (see reply to Question No.1) and the justification and basis of decisions are being withheld

Lack of information

Although the EU is one of the biggest importers and consumers of wild animals and plants, it does not register and publish the relevant data on imports and exports (with the exemption of species included in the EU Wildlife Trade Regulation EC No. 338/97, Annex A-C); this thwarts an evaluation of the magnitude of wildlife trade, the range of species involved and trends. EUROSTAT only provides import data of certain commodity groups (e.g. "frogs' legs frozen", "live reptiles" or "freshwater ornamental fish, alive") but not at the species level.

In contrast, the US LEMIS Database is recording all im- and exports of wildlife. Specific datasets can be requested under the Freedom of Information Act. In addition, it is possible to download complete datasets for individual semesters (<https://www.fws.gov/library/collections/office-law-enforcement-importexport-data>).

For species covered by the EU Wildlife Trade Regulations, data on imports and exports are only available (via the CITES database) with a large delay; moreover, many animals and plants are only recorded in the form of parts and products and the data provided do not account for the total

number of individuals taken from the wild (e.g. for hunting trophies, reptile skins etc.). This is hampering assessment of the true impact of the trade on wild populations and raising questions with regard to the data used for the making of non-detriment findings required under EU legislation and CITES.

Incomplete information

Trade in species listed in Annex D of the EU Wildlife Trade Regulation 338/97 is only recorded and reported by some Member States; accordingly, data are incomplete, misleading and of limited value. We strongly recommend that the EU records and publishes all trade in wildlife at the species level and that reporting is made mandatory for all EU Member States.

3. The EU Aarhus Regulation obliges the EU institutions to set up public databases for the proactive and systemic dissemination of certain environmental information. 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?

EU decisions, e.g. by the SRG and other relevant bodies should be published timely and provide details on the basis for decisions made – either under the subpages of https://ec.europa.eu/environment/cites/ctwff_en.htm or in an online database with search options for the different species; moreover, the basis for the decisions made and relevant documents, involvement of relevant EU-internal working groups, consultations with other countries and experts etc. should be provided.

Import data for non-CITES listed wildlife species, including products made from them, should be recorded and made publicly available via a dedicated database (in accordance with Art 4 Para 2 (e) of the Aarhus Reg).

Industrial fisheries: While TACs and quotas are published (e.g., https://oceans-and-fisheries.ec.europa.eu/fisheries/rules/fishing-quotas/tacs-and-quotas-2022_en), there is a lack of detailed and transparent information on EU decisions in the fisheries sector; information should be published including tables comparing approved quotas per species and country with scientific recommendations and justifications for any deviations in quotas).

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. Have you come across this issue? If so, please provide relevant examples.

No information

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. 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. Meanwhile, the Commission said it is reflecting on how to ensure further transparency in comitology procedures. How do you think the Commission can improve the transparency of comitology procedures, specifically concerning environmental decision-making?

There is a clear need for more transparency towards stakeholders with regard to comitology procedures. A formal process should be established to make available agendas, draft proposals and other relevant documents and to consult stakeholders throughout the entire process from its inception. For further information see questions 1 and 2.

We also support that EU Member States' votes in the Appeal Committee (as well as in other processes, see above) are made publicly available.

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.

Except in cases where official stakeholder consultation meetings are organized, which NGOs and industry representatives attend, no details are available on who the EC consults, how often, how, on which files and to what effect.

Moreover, personal and/or professional interests as well as qualifications should be made transparent for the members of EU internal expert groups and bodies (including internal working groups and their membership) should be made public.

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

Marine policy

Decision making process for Regional Fisheries Management Organisations (RFMOs), such as ICCAT or WCPFC (Western and Central Pacific Fisheries Commission), is not transparent: Timing and frequency of internal meetings often remain unclear. Moreover individual EU Member States' roles and positions in the decision making progress are not available and enable economic interests to outweigh scientific advice. Also unclear is which NGOs are selected for stakeholder meetings – and on what basis.

Triologue process

Civil society has no access to the drafts produced during the process; only very limited communications are provided by the European Commission and the European Parliament on the status of the negotiations. Thus there is no possibility for civil society to provide meaningful input.

While the Commission is responsible for ensuring the implementation of EU environmental legislation, strong monitoring and reporting that would enable the Commission to appropriately fulfill this task are generally lacking. As a result, neither the Commission nor other stakeholders have a good overview on the implementation and impact of EU environmental legislation.

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?

Access to online databases EU TWIX and TRACES should be given to all stakeholders. TRACES is the only database available at present that provides information on EU imports and exports as well as EU internal trade in non-CITES live wildlife and products thereof. EU TWIX would be a helpful tool for stakeholders to receive information on illegal wildlife trade in Europe. We fully understand the need for confidentiality of personal data, however, anonymized data should be publicly accessible.

Mandatory processes requiring stakeholder consultation and dialogue throughout the entire process of developing policies and regulations should be established, including the opportunity to comment before development of policies, on draft legislation and guidance and regular stakeholder meetings before and during relevant conferences

Moreover, EU positions, e.g. on MEAs, should be made publicly available before relevant meetings take place

The establishment of Civil Dialogue Groups to discuss environmental policy's drafting and implementation, would help to ensure access to information and regular exchange of information.

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. 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.

See above, specifically questions 1 and 2. Involvement of stakeholders is inconsistent and does not cover all issues / files.

Invitations for consultations are occasionally even sent to NGOs after the consultation deadline has passed (e.g. invitation for "EU fisheries and aquaculture – energy transition", with a deadline of 5th Dec, was not sent until 9th Dec 2022).

Apart from public consultations the EU needs to take into account other forms of opinions expressed by the public, e.g. petitions and citizen initiatives, e.g. recently on fur farms, shark finning etc.

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 and the Nature Protection Package?

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.

The format of public consultation processes could be improved and simplified in order to facilitate and increase engagement.

Improved accessibility and user-friendliness of websites of EU institutions, especially of the EU Commission and the Council, as tracking of agreed documents is often time-consuming.