

Public consultation on the transparency and participation in EU decision making related to the environment - SI/5/2022/KR

15 December 2022

Born Free is a UK-based international wildlife protection charity. We promote compassionate conservation to enhance the survival of threatened species in the wild and protect natural habitats while respecting the needs and safeguarding the welfare of individual animals. As a leading wildlife charity, we oppose the exploitation of wild animals in captivity and campaign to keep them where they belong – in the wild.

We strongly support this consultation by the Ombudsman and welcome the opportunity to participate. We have provided responses for all questions except for questions 4 and 11.

Transparency

Question 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.

1. Access to information and documents related to environmental EU policies, laws and guidelines tends to be inconsistent. Born Free's EU activities mostly focus on wildlife trade and trafficking-related matters. Only recently, there were several related files where access to information/documentation was difficult or where it was not granted, at different stages of the decision-making process:
 - Captive breeding guidelines: the Commission invited NGOs to share their recommendations on captive breeding without providing a draft document for us to comment on, or much detail on the intended status and use of our input, with very short notice. After communicating our general recommendations to the Commission, our requests to receive details of the draft content were rejected. We were only able to access the guidance document following its adoption and publication.
 - Ivory guidance and regulations: stakeholders were consulted, and drafts published at the beginning of the decision-making process. However, later in the process it became impossible to access draft texts until publication of the final adopted content.
 - Tiger guidelines: we understand that guidelines are at an advanced stage of development. However, none of the experts in our organisation have been consulted at any stage, and our requests to access drafts or information on the draft content have been rejected.
 - The EU Action Plan Against Wildlife Trafficking: whilst there has been an extensive stakeholder consultation on the evaluation of the current Action Plan and its revision, requests to access drafts and final texts were all rejected. Similarly, our questions on the details of the draft content were not answered.
 - EU CITES processes: access to information/documentation in the framework of EU CITES activities is generally difficult and problematic:
 - Stakeholders don't have access to the basis on which the EU SRG and Member States CITES authorities decide which species/country combinations are selected for

consideration of whether import permits should be issued, or the evidence on which such opinions and decisions are based. This effectively excludes stakeholders from the process, and does not enable the Commission or Member States to be held to account for their opinions or decisions. Furthermore, recent SRG opinions and EU positions at CITES CoPs often appear to run contrary to the latest available scientific evidence at the time they were established.

- Agendas for SRG, ManCom and Expert Group meetings are only published a few days in advance, preventing in-depth contributions by stakeholders and experts. The frequency of SRG meetings seems to be random and dates are only communicated very late.
 - Other CITES and wildlife trade-related documents, such as meeting summaries, are only published following long delays, which make timely input from or use by stakeholders difficult or impossible. For example, a Negative Opinion on mako sharks by the SRG was published too late for it to be used in preparation for an ICCAT meeting, and the latest COM summary report available on the [CIRCABC library](#) is from June 2021, and was only published in January 2022. Also, the EU Council Decision for a common position for CITES CoP19 was reportedly adopted on 11 November 2022 but hasn't yet been published.
2. We have identified two key issues related to accessing information/documents in the framework of stakeholder consultation processes around the development of environmental policies and legislation (including binding laws, action plans, strategies, guidelines etc) we have participated in:
- Stakeholder consultations are often one-sided: stakeholders are able to share their recommendations but there is no dialogue, and the Commission usually doesn't communicate its positions or ideas. These are only divulged once decisions have been finalised and documents are made public. This makes it difficult for stakeholders to formulate responses or provide additional information which would be useful to the Commission and Member States in their deliberations. Rather than simply inviting stakeholders to provide their views, it would be helpful if the Commission and/or Member States could articulate where they are having difficulty reaching decisions so that stakeholder input can be more targeted.
 - Stakeholders are often only consulted in the early stages. Once the Commission has started to draft policy/legislation/position, stakeholders are typically not invited to provide their opinions, and access to drafts is often not provided.

By comparison, the US government invites comments on policies and regulations to be developed and on draft legislation/policies. For example, before CITES CoPs the US government publishes its positions and during COP it holds daily stakeholder meetings. In the lead-up to and at CITES CoP19, the UK government's CITES team ran multiple formal and informal stakeholder events at which ideas were shared and discussed between stakeholders, enabling civil society groups to provide the evidence to justify their positions.

The lack of transparency around certain draft files such as those mentioned above is problematic, since scrutiny by expert stakeholders can help ensure that legislators are provided with all relevant information, evidence and arguments before decisions are finalised. It also differs from the approach taken with other legislative instruments and processes. For example, during the ongoing review and revision of the EU Environmental Crime Directive, the Commission published its draft proposal, and the draft positions adopted by every Parliament Committee and Council have been made available on an ongoing basis. This transparency permits expert stakeholders to identify and flag the risks and advantages of solutions advanced by the decision-makers, enabling them to consider the evidence and amend their positions as and where appropriate, to avoid gaps and loopholes in the end product.

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

- Information published too late: as mentioned in the above section, certain environmental information/documentation is provided too late in the process – see response to question 1.
- Lack of information: EU institutions fail to collect information/data that is essential to identify risks and trends and ensure that EU policies/legislation/positions are well informed, are being implemented and are efficient. In the case of wildlife trade, data on imports and exports are only collected for species listed in Annex A to C of the EU WTR. EUROSTAT only provides import data of certain commodity groups (e.g. “frogs’ legs frozen”, “live reptiles” or “freshwater ornamental fish, alive”) but records are not provided at genus or species level. We urge for the implementation of effective systems to collect and publish data on all wildlife imports and exports to, from and within the EU to permit an accurate evaluation of the scale of wildlife trade and the species concerned, to enable the identification of trends in order to better inform related EU policy and legislation. The US LEMIS Database, which records all import and exports of wildlife, provide a good model – researchers and civil society groups can request specific datasets under the Freedom of Information Act. In addition, it has recently become possible to download complete datasets for individual semesters ([see here](#)).
- Incomplete and inaccurate information: in certain cases, only certain Member States meet data recording and reporting requirements established by EU legislation, for example data related to the trade in EU Annex D species. Consequently, data are incomplete and of limited value in terms of fulfilling EU monitoring requirements and decision-making.

Question 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?

- EU opinions, positions and decisions should be published in a timely manner, alongside details of the basis on which they are established. This should include among others COM, SRG and EU and Member States CITES authorities’ opinions, positions and decisions.
- In accordance with Art 4 Para 2 € of the Aarhus Reg, import and export data for non-CITES listed wildlife species and products derived from them should be collected and made publicly available via a dedicated database. Ideally, this database should be combined with the database of CITES-listed species to establish a unique platform for EU wildlife trade data (containing all wildlife imports and exports in, from and within the EU). It should provide the option to filter data by species, country and origin, among others.
- 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), clear tables containing quotas approved per species and country, any scientific recommendations for comparison, and justifications for any deviations in quotas, should be provided to ensure transparency and enable accountability.

Question 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?

The transparency of comitology procedures concerning environmental decision-making should be enhanced, including by:

- Finalising the legislative process relating to the Commission’s proposal to ensure that all EU Member State votes in the Appeal Committee are made public.
- Publishing the dates, agendas and all relevant documents (including drafts) and details of Committee meetings sufficiently in advance to enable civil society groups and experts to challenge any aspects as appropriate.
- Publishing Committee meeting summaries in the days following each meeting.

Question 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 for the stakeholders who respond publicly to online public consultations and those who participate alongside us in stakeholder consultation meetings organised by the Commission, we have no information on which stakeholders are being consulted on the files we follow, or what form such consultation takes. We are not aware that information on such consultations is made public, and call for the Commission to exercise transparency in who it consults on environmental proposals.
- Personal and/or professional interests of internal experts within or hired by the Commission should also be declared. For example, the membership of the SRG should be made available, alongside any potential conflicts of interests.

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

- Wildlife trade and wildlife crimes: in addition to issues raised under previous sections (in particular CITES-related), EU policies and legislation tend to lack strong monitoring, reporting and evaluation frameworks. As a consequence, the EU’s ability to effectively monitor the implementation (Commission’s role) and effectiveness of EU policies and legislation and understand where changes are needed, is undermined. This also reduces the ability of external stakeholders to hold EU institutions to account. As well as deficiencies in data on wildlife trade, particularly for species not listed in the WTR annexes, the absence of data on environmental crimes (including case numbers and outcomes) is a serious omission that should be corrected.
- Marine policy: decision making processes for RFMOs, such as ICCAT or WCPFCI are not transparent: the timing and frequency of internal meetings is unclear. It is also unclear which Member States are actively involved in decision making processes, and which NGOs are selected for stakeholder meetings and on what basis.
- Triologue processes around environmental files: civil society has no access to the drafts produced during the triologue process, only very concise communications are provided by the European Commission and Parliament on the status of the negotiations. There are very limited opportunities for NGOs to provide expert advice or evidence to assist legislators in making appropriate decisions/amendments.

Participation

Question 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?

- The Commission should provide for meaningful, balanced and timely stakeholder consultation in the development of all new and revised policies, legislation and positions. The establishment of Civil Dialogue Groups to discuss the drafting and implementation of environmental policy would help to ensure access to information and regular exchange of information.
- The stakeholder consultation framework should be improved to:
 - o Ensure that stakeholders are consulted at every stage, including prior to developing first drafts, as well as throughout the evolution of draft texts/positions, and until final adoption. For example, regular stakeholder meetings should be held before and during international conferences such as CITES, CBD and CMS meetings.
 - o Ensure the consultation planning/programme (consultation type, number, timeframes) is communicated well in advance to ensure stakeholders can participate, and meeting documentation/information circulated in advance to allow them to prepare effectively.
 - o Provide stakeholders with the opportunity to share their priorities and recommendations but also to know where the Commission stands, and why, or when it hasn't come to a decision yet, what evidence is missing to help them come to a conclusion. The sharing of information/positions should occur throughout the policy/legislation/position making process, to enable expert stakeholders to provide relevant evidence and assist negotiators in avoiding gaps and loopholes in final documents (see comments under Question 1).
- EU positions (e.g. on MEAs), reports and other important information should be made publicly available before relevant meetings and conferences take place, with sufficient notice.
- The EU should establish official processes to enable stakeholders to question a decision/position, highlight risks or submit fresh evidence, including in the context of wildlife trade.

Question 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.

- Comments provided in previous sections regarding the timely provision of meeting documents and other relevant information are also relevant here.
- Invitations to NGOs to participate in public consultations are inconsistent. There are a few instances where Born Free hadn't received an invitation on topics we had been active on for a while. In addition, we have received invitations to participate in consultations where colleagues from partner NGOs working on the same subjects had not been invited. The selection criteria for stakeholders to be invited to take part in public consultations is unclear.

- Consultation processes are sometimes unclear, and consultation meeting dates and invitations are often communicated very late in the process. For example, in the build-up to CITES CoP19 during autumn 2022 it was uncertain whether a second consultation meeting would be held until very late, and invitations were sent through less than 2 weeks before the meeting date, preventing several NGO representatives from attending and failing to provide much time for attendees to prepare. It would be much more efficient to establish a clear consultation plan from the beginning, with set dates, and ensure that agendas and other relevant information (including draft texts/positions) are circulated well in advance.
- Invitations to consultations are sometimes 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).

Question 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]?

- The Commission should establish, publish and implement a comprehensive stakeholder consultation plan/programme that provides opportunities for civil society representatives and members of the public to provide input at every stage of the development/decision-making process.
- Consultation dates, invitations, and documentation and information should be communicated in advance to ensure stakeholders are able to participate and prepare effectively.
- For more targeted stakeholder input, the Commission communicate its positions/decisions, including justifications, and when it hasn't come to a decision yet, share what evidence is missing to help them come to a conclusion. It would also be useful to know which stakeholders are being consulted and the format of these consultations.
- Additionally, the Commission should take into account public opinion expressed through other mechanisms, including polls, petitions, citizens initiatives, etc.



Contacts

We thank you for this opportunity to share our feedback and are available to provide further information.

For further information please contact:

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