

**Reply by the European Commission on a request for information from the European Ombudsman**  
**Complaint by ClientEarth and BirdLife Europe and Central Asia, ref. 1379/2024/MIK**

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## **I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY**

The Commission developed the Simplification package, including its legislative proposal of 15 March 2024, COM(2024)139 final, *Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2021/2115 and (EU) 2021/2116 as regards good agricultural and environmental condition standards, schemes for climate, environment and animal welfare, amendments to CAP Strategic Plans, review of CAP Strategic Plans and exemptions from controls and penalties*, based on all the evidence at hand. The European Parliament and the Council adopted the legislative act on 24 April 2024 and 13 May 2024, respectively.

The Commission's decisions are based on an adequate evidentiary basis. Where an impact assessment is not possible due to the urgency, the evidence supporting the proposal and cost estimates are set out in an analytical document that should be presented in the form of a Staff Working Document within three months of the initiative's adoption. In the case at hand, such a Staff Working Document was produced (SWD(2024) 360 final<sup>1</sup>, 10.12.2024). It confirms the principles of evidence-based policy analysis and evidence-informed policymaking enshrined in the Better Regulation policy.

## **II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN**

The complainants have raised concerns about how the Commission prepared the legislative proposal. As the proposal was presented without an impact assessment, they consider that the Commission's process was not in line with the Better Regulation Guidelines and Toolbox, as well as with case law. They are also concerned that the Commission did not appropriately consult the public on its proposal.

## **III. EUROPEAN OMBUDSMAN'S INQUIRY**

The European Ombudsman decided to open an inquiry into the Commission's application of its Better Regulation Guidelines and Toolbox, as well as the legal requirements, when the Commission prepares legislative proposals that it deems urgent. As a first step, she requested to receive a written reply from the Commission to the questions listed in the Annex to her letter to the Commission.

## **IV. THE REPLY OF THE EUROPEAN COMMISSION**

1. Does the Commission have in place internal procedures for deciding on whether to **derogate from the impact assessment requirements** of the Better Regulation Guidelines and Toolbox in case of 'urgent' legislative proposals? At what stage in the

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=SWD%3A2024%3A360%3AFIN&qid=1733830371247>

preparation of a legislative proposal is it decided that a derogation is needed? How are such decisions taken and by whom?<sup>2</sup>

The Commission applies its 'Better Regulation' policy to ensure a consistently high quality of proposed legislation. It consists of a set of rules and procedures listed in internal guidelines and a toolbox.<sup>3</sup> These guidelines explain what 'better regulation' is and how it applies to the day-to-day practices of the Commission's services preparing new initiatives and proposals or managing existing policies and legislation. The 'better regulation' toolbox, in turn, provides operational and detailed guidance on specific aspects. These guidelines are internal instructions for the Commission staff in order to deliver the objectives of 'better regulation'; in so far as they formulate 'requirements' and/or 'mandatory' instructions, they cannot be construed as legally binding requirements or as legal commitments towards outside actors and stakeholders. The aim is not to meet procedural requirements per se but to ensure that the Commission has relevant and timely information on which to base its decisions. The 'Better Regulation' policy is applied in a proportionate manner that reflects the circumstances of each individual initiative.

Impact assessments are carried out in the following cases:

- i. An initiative has significant impacts, and
- ii. There are different policy options from which to choose.

In case of urgent legislative proposals there may not be time to carry out a fully-fledged impact assessment without running the risk of being too late. The Better Regulation policy acknowledges that in case of political urgency, certain procedural steps or processes cannot be undertaken or need to be shortened or simplified. For instance, during the COVID-19 crisis, the Commission proposed a number of initiatives as a matter of urgency. Most were decisions or acts that would not have required an impact assessment in any case. Others would normally have been subject to public consultations and impact assessments, but time was too short. Similarly, the Commission proposed a number of urgent initiatives in response to Russia's war of aggression against Ukraine to address the emergency situation and the political imperative to move ahead quickly.

The process of obtaining derogations from the impact assessment and public consultation requirements (see also reply to question 5) is embedded in the working methods of the Commission. Derogations can be requested either at the planning stage (and then this entry planning is encoded in the Commission's decision-making IT tool Decide) or at a later stage if this becomes necessary. At the planning stage, the Vice-President responsible for Better Regulation is responsible for granting the derogation<sup>4</sup>.

The Working Methods of the European Commission<sup>5</sup> do, however, account for exceptional cases where there would be no planning entry because of urgency reasons. In such cases, the

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<sup>2</sup>See, in this context, the EO's further Remark in Decision in case 904/2014/OV on the European Commission's public consultation prior to its legislative proposal for a Regulation concerning the European single market for electronic communications, <https://www.ombudsman.europa.eu/en/decision/en/60965>.

<sup>3</sup> Better Regulation Guidelines and Toolbox: [https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox\\_en](https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en)

<sup>4</sup> Better Regulation Toolbox: [https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox\\_en](https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en)

<sup>5</sup> [https://commissioners.ec.europa.eu/working-methods-von-der-leyen-commission\\_en](https://commissioners.ec.europa.eu/working-methods-von-der-leyen-commission_en)

Secretariat-General and/or the President's Cabinet will be involved in the validation of the first step of the process, whether it is the launch of the interservice consultation<sup>6</sup> or the launch of the oral or written adoption procedure.

In the present case, the decision to act in urgency derogating from the impact assessment requirement was a political decision (see also reply to Question 2), taken to respond to the widespread protests in the sector in many EU countries and to the call of the European Council of 1 February 2024<sup>7</sup> to address the concerns of the farming community, and Commission President Ursula von der Leyen's commitment to help reduce the administrative burden weighing on farmers' shoulders.

The Commission's Secretariat-General was consulted in the preparatory phase of this initiative and granted authorisation to launch a fast-track interservice consultation of the legislative proposal on 5 March 2024. This confirmed the political validation of the initiative.

The explanatory memorandum accompanying the Commission's proposal<sup>8</sup> points out that *'with a view to the political urgency of tabling this proposal, which aims to respond to a crisis situation in EU agriculture, no impact assessment has been carried out, as foreseen in Tool #1 of the Commission's "better regulation" guidelines that stipulates the importance of their flexible and proportionate application'*. The College of Commissioners decided thus to adopt the legislative proposal, without waiting for the preparation of an impact assessment.

2. In case of legislative proposals that the Commission considers to be urgent, how does the Commission ensure that it observes the principle of evidence-based decision-making, as laid down in its Better Regulation Guidelines and Toolbox, as well as in case law?

In this case, the Ombudsman understands that the Commission relied on a previous impact assessment carried out in 2018. What actions, if any, did the Commission take to ensure that the findings made in the impact assessment of 2018 remained relevant and up-to-date at the time of the legislative proposal in question? Please share any documentation pertaining to the Commission's internal assessment in that regard.

The Commission's decisions are based on an adequate evidentiary basis. Thus, where an impact assessment is not possible due to the urgency, the evidence supporting the proposal and cost estimates are set out in an analytical document that should be presented in the form of a Staff Working Document within three months of the initiative's adoption. In the case at hand, such a Staff Working Document was produced (SWD(2024) 360 final, 10.12.2024). It confirms the principles of evidence-based policy analysis and evidence-informed policymaking enshrined in the Better Regulation policy.

The Commission announced its upcoming proposal on 22 February 2024 and later developed the Simplification package, including the legislative proposal of 15 March 2024, based on all the evidence then at hand. This included the feedback received from Member States, the

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<sup>6</sup> Consultation process of the different Directions General, as part of the Commission's decision-making process of formal decisions.

<sup>7</sup> [20240201-special-euco-conclusions-en.pdf \(europa.eu\)](#)

<sup>8</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2021/2115 and (EU) 2021/2116 as regards good agricultural and environmental condition standards, schemes for climate, environment and animal welfare, amendments to CAP Strategic Plans, review of CAP Strategic Plans and exemptions from controls and penalties, COM(2024)139 final

Committee on Agriculture and Rural Development of the European Parliament and the farmers' organisations and their detailed assessment by the Commission (see also reply to question 5). Furthermore, the Commission relied on the information provided through regular exchanges with stakeholders (e.g. Civil Dialogue Groups, policy papers received) and its continuous analytical activities, including data, studies, evaluations, and internal analysis.

When preparing the measures of the Simplification package, the Commission analysed the suggestions received from several perspectives: (i) the expectations of farmers and Member States for a simpler and less burdensome CAP; (ii) the necessity to maintain the CAP's role in supporting the transition of the EU agriculture to sustainable farming; (iii) the nature of the problems identified; and (iv) for legislative matters, the objective to quickly reach an agreement between the European Parliament and the Council, so that farmers could already benefit from some of the changes in 2024.

The resulting simplification proposal aimed for well-targeted adjustments of the CAP Strategic Plans Regulations to address certain difficulties in their implementation, while maintaining and defending the overall orientation of the current CAP and its role in supporting the transition of European agriculture to sustainable farming. The ringfencing of the budget for the green elements in the CAP was not changed and the package respects the no-backsliding principle. The above-mentioned Staff Working Document with evidence supporting the proposal and the assessment of the impacts of the actions contained in the Simplification package, including the said legislative proposal, was produced (SWD(2024) 360 final, 10.12.2024).

The impact assessment accompanying the 2018 reform proposal thoroughly analysed the different options for addressing economic, environment and social problems of agriculture and rural areas, including the balance of voluntary ("eco-scheme") or obligatory ("conditionality") environmental requirements for farmers, including the advantages and drawbacks of both. These considerations drew on extensive evidence, experience and analyses conducted and collected during the previous CAP periods and in the run-up to the then forthcoming reform. The compromise reached by co-legislators in 2021 on the new CAP settled on a specific balance concerning the two conceptual approaches.

The Commission monitors the situation of national and European agriculture and the common agricultural policy, including its performance on sustainability. It carries out analyses, evaluations or progress reports (available on its Europa website, e.g. on the [Agri-food data portal](#)) and exchanges with stakeholders such as via the Civil Dialogue Groups, that build understanding and feed policy reflection. This includes, among others, the Commission's 2021 report on CAP 2014-2020 performance (COM/2021/815)<sup>9</sup> and the 2023 report on CAP Strategic Plans (COM/2023/707)<sup>10</sup>, that for example pointed out the need to reduce the administrative burden.

Overall, this input shows that many challenges continue and that the analysis and findings of the 2018 impact assessment remains generally valid. Yet, they need to be seen in the changed context of the current economic situation of farmers, the practical implementation problems and acceptance issues that emerged in the first year of implementation. This showed that the cost of the sustainability transition expected to fall on farmers is significant. This realisation prompted the adjustment as proposed by the Commission by way of the 2024 Simplification

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<sup>9</sup> [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0815](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0815)

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023DC0707>

Package, so as to rebalance in a limited and targeted way the mix of mandatory and voluntary approaches. The adjustment was agreed by the co-legislators without implying a fundamental change concerning the ambition of the CAP.

3. Could the Commission please confirm whether it completed the ‘**analytical document**’, which replaces the impact assessment in the case at hand? If so, please share a copy of the ‘analytical document’. If not, please explain why it has not yet been completed.

The College has taken note of the document on 10 December 2024 (SWD(2024) 360 final). The delay with respect to the date of adoption of the Staff Working Document was due to a thorough review and assessment of all simplification suggestions<sup>11</sup> put forward by Member States, the European Parliament’s Committee on Agriculture and Rural Development and stakeholders.

4. How does the Commission give effect to Article 6(4) of the European Climate Law<sup>12</sup>? Does the Commission monitor for how many of the legislative proposals it adopts a climate consistency assessment is carried out? If so, please provide us with these statistics.  
Are there circumstances in which the Commission considers that it can derogate from the duty to ensure the consistency of legislative proposals with the climate neutrality objectives set out in the European Climate Law and, if so, on what grounds?  
Does the Commission have in place an internal procedure to ensure that such consistency is systematically assessed?  
In cases in which the Commission does not carry out an impact assessment, how is the consistency assessment made publicly available?  
In the case at hand, did the Commission carry out such a consistency assessment? If so, please share it with us.

The Commission attaches great importance to the European Climate Law requirements. The European Climate Law requirements have been embedded in the Commission’s Better Regulation framework - the Better Regulation guidelines and toolbox<sup>13</sup> require an assessment of the consistency with the objectives set out in the European Climate Law. Since the beginning of 2022, all impact assessments should include such an assessment, which should also be reported in the explanatory memorandum.

Following the introduction of the requirement for a climate consistency check, the relevant Commission services consistently request that the necessary analysis is performed at all relevant stages, including during the scrutiny of the impact assessments by the Regulatory Scrutiny Board.

The Board considers whether impact assessments sufficiently assess consistency with the European Climate Law (‘climate consistency check’). The information is collected for the

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<sup>11</sup> 335 separate suggestions, not counting repeated ones

<sup>12</sup> Regulation 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’), OJ L 243/1, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021R1119>

<sup>13</sup>[https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox\\_en](https://commission.europa.eu/law/law-making-process/planning-and-proposing-law/better-regulation/better-regulation-guidelines-and-toolbox_en)

different stages of scrutiny, i.e. at the time of the submission of an impact assessment and at the inter-service stage. The relevant statistics are presented in the annual report of the Regulatory Scrutiny Board<sup>14</sup>. The assessment of climate consistency, including statistics on the climate consistency check, is also reflected in the EU Climate Action Progress Report 2023<sup>15</sup>.

In the case at hand, climate as well as environmental impacts are addressed in the abovementioned Staff Working Document. This document provides a qualitative and, where possible, quantitative assessment of impacts, including the impact on GHG emissions of the affected farms.

Climate consistency is an important element of the decision, yet there is always a trade off with other objectives, such as those reflected in the proposal.

5. In case of legislative proposals that it considers to be urgent, how does the Commission ensure that it observes the principle of **public consultation** or the requirements of a targeted consultation, as laid down in its Better Regulation Guidelines and Toolbox, and more generally the principle of openness enshrined in the EU Treaties?

In this case, the Commission sought the views of certain farming organisations. Could the Commission please explain why it decided not to consult, within the same timeframe, other stakeholders, such as environmental organisations? Please share any documentation pertaining to the Commission's internal assessment in that regard.

The request for a derogation for a formal public consultation follows the same process as for a derogation from an impact assessment and is also normally granted by the Vice-President responsible for Better Regulation.

As explained in the reply to the first question, in the present case there was no planning of the initiative due to urgency and there was no formal request for a derogation. However, the urgent initiative was a response to the concerns expressed in the widespread farmer protests and confirmed by Member States and stakeholders. To clarify these concerns and to determine how practical improvements could be made to address them, the Commission opted for a targeted consultation process. This is explained in the explanatory memorandum accompanying the Commission's proposal (point 3 on stakeholder consultations).

It is for these reasons that the Commission consulted farmers' organisations as they have the most hands-on and up-to-date knowledge of farmers' concerns and their practical problems when implementing the CAP, including in terms of administrative burden.

The Commission asked the main EU-level farming organisations (COPA-COGECA, CEJA, ECVC and IFOAM) to provide their views on how measures at EU level (CAP and other EU legislation) could reduce the administrative burden for farmers.

Given the need for urgent action, there was no time to carry out a broader consultation of a wider stakeholder group. Nevertheless, the feedback collected from farmers' organisations was considered together with the input received from the Member States and the Committee

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<sup>14</sup> [https://commission.europa.eu/publications/regulatory-scrutiny-board-annual-report-2023\\_en](https://commission.europa.eu/publications/regulatory-scrutiny-board-annual-report-2023_en) (page 26)

<sup>15</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023DC0653> (page 8)

on Agriculture and Rural Development of the European Parliament, as well as the information already provided by stakeholders, including environmental organisations, as received by Commission departments over the first year of the implementation of the CAP, which also fed into the Commission's reflection on the most appropriate course of action.

By way of this targeted approach, the Simplification package managed to provide a meaningful and rapid response to the problems identified and the pressing concerns raised by farmers.

*For the Commission*  
*Christophe HANSEN*  
*Member of the Commission*

