

# Opinion by the European Commission on inquiries 983/2025/MAS - the “Omnibus” case, 2031/2024/VB - the “migration” case, and 1379/2024/MIK - the “CAP” case from the European Ombudsman

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## I. BACKGROUND

The Commission’s better regulation guidelines and toolbox serve as the Commission internal framework for preparing, evaluating, and managing EU legislation. This framework is not legally binding but provides for processes and tools that are conducive to political decisions being evidence-based, transparent, and open to stakeholders’ input. The Commission’s better regulation is a global benchmark for regulatory excellence according to the OECD<sup>1</sup>.

Better regulation procedures must be applied proportionally. Impact assessments and public consultations require a significant amount of time and resources. When there is urgency to act, the Commission would not be in the position to conduct a full impact assessment or public consultation, but the Commission is still committed to basing urgent proposals on good evidence and analysis. In such cases, therefore, the Commission’s better regulation guidelines provide for the publication of an analytical document – Staff Working Document – presenting the evidence behind the proposal within three months of the adoption of the initiative.

The Commission adopted the Omnibus I package on 26 February 2025. Its goals are to improve the clarity and simplicity of sustainability reporting, sustainability due diligence and the taxonomy for sustainable activities, while preserving the policy objectives of each piece of legislation and improving their effectiveness. The Commission considered it necessary to intervene urgently with the above proposals, as the legal framework being amended was to be implemented imminently for a large group of companies or transposed into national legislation.

The Commission developed the Common Agriculture Policy Simplification package, including its legislative proposal of 15 March 2024, based on the evidence at hand. The decision to act urgently was 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 to address the concerns of the farming community. Recognising the urgency to act, the European Parliament and the Council adopted the legislative act on 24 April 2024 and 13 May 2024, respectively.

On 28 November 2023, the Commission proposed a legislative package to modernise the legal framework to counter migrant smuggling and to put in place the necessary legal and operational tools to respond to the new *modi operandi* of migrant smugglers, as set out in the Commission Work Programme 2024 of 17 October 2023. As part of the Commission’s commitment and active engagement for immediate and decisive action to combat migrant smuggling, the President of the Commission presented the legislative proposals during the International Conference on a Global Alliance to Counter Migrant Smuggling which took place on the same date, 28 November 2023. They were key measures to reduce irregular migration into the EU. The continuous flow of information about the rapidly developing smuggling activities, as recorded by the EU Agencies, supported the urgency of preparing and tabling the proposals. The evidence supporting the proposals for all the cases are set out in analytical documents presented in the form of a Staff Working Document published at the

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<sup>1</sup> Regulatory policy outlook 2025

same time as the proposal, for Omnibus I or later, for the CAP simplification and the counter migrant smuggling cases.

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

The European Ombudsman received three complaints regarding the Commission's preparation of urgent legislative proposals without conducting impact assessments: Omnibus I, CAP simplification package and the rules to counter migrant smuggling.

In each instance, the Commission explained that it followed the better regulation guidelines for urgency. Impact assessments could not have been prepared due to factual issues justifying the urgency of the proposals related to implementation of the sustainability and due diligence rules, border security, or explicit request from the European Council to address concerns of the farming community as well as important implementation challenges. The complainants argued that these justifications were insufficient, especially given the proposals' arguably significant potential impacts on sustainability, human rights, and climate goals.

In the Omnibus I and CAP cases, the complainants also alleged that the Commission breached the European Climate Law by not conducting or publishing climate consistency assessments.

The Ombudsman launched inquiries to determine if the Commission complied with the better regulation and other procedural guidelines. Key questions included how the Commission assessed the urgency of each proposal, followed proper derogation procedures, and ensured transparency and evidence-based decision-making. For the Omnibus I and CAP cases, the Ombudsman also examined whether climate consistency assessments were conducted and recorded and scrutinized the inter-service consultation process in the Omnibus I case.

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

The Ombudsman considered that the Commission is bound by its own better regulation guidelines, which are designed to ensure transparency, evidence-based decision-making, and inclusivity in EU law-making. These guidelines, though not legally binding, create legitimate expectations from the public about the procedures that the Commission will follow. Stakeholders – citizens, businesses and organised civil society – benefit from these guidelines and procedures, because they allow them to participate in the preparation of legislative proposals.

According to the Ombudsman, the Commission has increasingly invoked urgency when derogating from standard procedures, such as carrying out impact assessments and public consultations for legislative proposals. She also considers that the Commission's interpretation of 'urgency' is broad and lacks definition, leading to inconsistent and unpredictable application of better regulation rules. In the cases reviewed, she found that the Commission justified urgency based on different grounds such as political priorities, geopolitical challenges, or social protests, but often failed to provide sufficient reasoning or documentation. She considered that the lack of records and justifications for these derogations undermines transparency and accountability, making it difficult for the public to understand or challenge the Commission's decisions.

The Ombudsman also highlighted its concerns regarding the clarity of internal records as to whether a climate consistency assessment had effectively been carried out before the adoption of the Omnibus I and CAP proposals. While the Commission conducted these assessments,

the Ombudsman assessed that it provided no clear internal records or public documentation at the time of adoption. Additionally, stakeholder consultations were either limited or poorly documented.

The Ombudsman concluded that the Commission's actions in these cases comprised several procedural shortcomings, which taken together would amount to maladministration. To address these issues, the Ombudsman recommended that the Commission defines the notion of 'urgency' in the context of better regulation, records any internal decisions to exempt legislative proposals from the requirements of the better regulation guidelines, and clearly explains in the explanatory memorandum accompanying its legislative proposals why a derogation was needed. Where derogations are granted, the Ombudsman recommended that the Commission should establish a procedure to ensure that the urgent preparation of legislative proposals still complies with the principles of a transparent, evidence-based and inclusive law-making process, as required by the Treaties and the case law of the EU courts.

The Ombudsman also suggested that the Commission ensures that the analytical document, which replaces the impact assessment in case of urgency, informs the co-legislators and the public of the evidence on which legislative proposals are based in a timely manner and as soon as the legislative proposal is adopted. Moreover, the Commission should further clarify that stakeholder consultations, conducted when a derogation from the impact assessment requirement has been granted, still need to comply with the general principles and minimum standards applicable to all public consultations. In addition, the Commission should issue guidance, for example in its better regulation rules, on how Article 6(4) of the European Climate Law should be implemented for legislative proposals that are not accompanied by an impact assessment. Finally, the Commission should ensure that, when it decides that the duration of an inter-service consultation needs to be shortened, the justifications for that decision are duly recorded. Only in exceptional situations of urgency should the duration of fast-track procedure be less than the 48 hours and adequate reasons should be given.

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

The Commission agrees with the Ombudsman's observation that the Commission's procedures must allow decisions to be taken quickly, including on the adoption of legislative proposals. It also agrees that it must retain a margin of discretion in defining the circumstances in which it considers that action should be taken urgently. The better regulation guidelines provide that in case of urgency, a Staff Working Document presenting the analytical evidence for the proposal substitutes for a fully-fledged impact assessment as the latter requires significant time to prepare, namely on average over one year. The Staff Working Document can accompany the Commission proposal on the day of its adoption by the College, or it can be published within three months from the adoption of the Commission proposal<sup>2</sup>. In case an impact assessment is not prepared, the guidelines also provide the possibility not to carry out a public consultation as there would be materially no time to reconcile the urgency with the time required to carry out a public consultation, which is normally opened on the Have your Say portal<sup>3</sup> during 12 weeks.

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<sup>2</sup> [Better regulation: guidelines and toolbox](#), Chapter IV – Impact assessment, pg. 30.

<sup>3</sup> [Have your say - Public Consultations and Feedback](#)

The Commission reiterates that in the cases at issue there were objective reasons to act urgently. It therefore made use of the built-in flexibility of the better regulation principles and guidelines for those circumstances.

Regarding the Omnibus I proposal, the urgency was linked to the date of entry into force of the new sustainability and reporting obligations, including the Corporate Sustainability Reporting Directive (CSRD), and the Taxonomy and Corporate Sustainability Due Diligence Directive (CSDDD). This need for urgent action was exacerbated by a challenging global geo-economic context and implementation difficulties. While the largest companies and Public Interest Entities already had to apply the new reporting obligations of the CSRD, all other large companies would have had to apply them from the 2025 financial year, and listed SMEs as from the 2026 financial year. The urgency of the revision of the CSDDD stemmed from the need to ensure that changes are enacted well in advance before Member States would transpose the directive (by July 2026) and the rules would start applying to the first group of companies (from July 2027).

As regards the proposal on combatting migrant smuggling, there was a need for urgent action due to the rapidly evolving tactics of smugglers and the necessity to address them at EU level. The urgency was underscored by significant increases in irregular migration and migrant fatalities, as regularly reported by Europol and Frontex.

Concerning the CAP simplification package, the decision to act urgently was a reply to the explicit request from the European Council of 1 February 2024 to address the legitimate concerns of the farming community<sup>4</sup> and important implementation challenges.

The Commission notes that the Ombudsman's recommendations for improvement relate to procedural aspects related to better regulation, not the quality of the evidence underpinning the legislative proposals. The Commission considers that it is primarily the role of the co-legislators to decide whether they have received sufficient evidence to make an informed decision about the legislative proposals before them. The Commission notes that all the proposals referred to above have since either been adopted by the co-legislators or have reached the final, or an advanced, stage of negotiations between the co-legislators, which demonstrates that the evidence provided in support of these proposals has been considered sufficient by them.

This being said, the Commission recognises the importance of ensuring that **any urgency is properly recorded and explained to ensure maximum transparency.**

Hence, to address the Ombudsman's concerns, the Commission will reflect on more transparent parameters for its assessment of the need to act urgently in its upcoming Communication on better regulation planned for adoption in the second quarter of 2026. It will do so while ensuring that the Commission's discretion to respond to urgent situations is not impeded, and also underpinning high standards of transparency and accountability.

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<sup>4</sup> [20240201-special-euco-conclusions-en.pdf](#), stating that "The European Council discussed the challenges in the agricultural sector and concerns raised by farmers. Recalling the essential role of the Common Agricultural Policy, it calls on the Council and the Commission to take work forward as necessary. The European Council will keep the situation under review"

In response to the suggestion of the Ombudsman that the Commission ensures that the analytical document, which replaces the impact assessment in case of urgency, informs the co-legislators and the public of the evidence on which legislative proposals are based in a timely manner, the Commission will set appropriate modalities to this effect, striving to make the evidence available as soon as possible from the adoption of the proposal and no later than the expiry of three months period.

The **Staff Working Document would include a minimum number of substantive aspects, such as:**

- the definition of the problem,
- the approach and measures identified for the initiative,
- the assessment of the key impacts of the initiative,
- a summary of stakeholders' input,
- the climate consistency assessment and its results.

Even in cases of urgency, to ensure maximum inclusivity despite the circumstances, the Commission will, wherever possible, strive to either prepare a **call for evidence** or conduct a **reality check** or other **targeted consultations**. All consultation activities should be referenced in the Staff Working Document, showing that despite the urgency the Commission has reached out to a variety of stakeholders to the maximum extent possible.

Regarding the **requirements under the European Climate Law**, the Commission reiterates that it has performed the climate consistency check in the two cases where the Ombudsman questioned this<sup>5</sup>. In accordance with the current rules, there was no need to reproduce the analysis in the Staff Working Document, or in a specific format. The Commission carried out a climate consistency assessment and summarised its conclusions in the Staff Working Document and the explanatory memorandum. For example, in the case of Omnibus I on sustainability, for the Corporate Sustainability Reporting Directive, the Commission provided to the Ombudsman analytical material consisting of simulations performed by the Commission showing that it had performed such analysis. As regards the Corporate Sustainability Due Diligence Directive, the changes proposed to Article 22 (concerning climate transition plans) would not have materially affected the practical impact of the provision. In the CAP case, climate as well as environmental impacts were addressed in the Staff Working Document.

In light of the Ombudsman's suggestion to better show the analysis performed to ensure the **climate consistency check**, the Commission will seek to ensure that this analysis is reported not only in impact assessments (as it is currently the case and required under the Climate Law) but also in the Staff Working Documents replacing an impact assessment, with a clear indication of its outcome. The Commission will explicitly indicate the result of the climate consistency check in the explanatory memoranda of its proposals.

Concerning the **internal procedures for validating derogations**, the Commission underlines that, in urgent situations, the actual recording of such derogations can take different forms. To ensure a better recording of such requests, relevant Commission departments will be required to transmit their requests for derogations to the Secretariat-General as early as possible in the

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<sup>5</sup> Omnibus I and the CAP case.

process of preparing the initiative, stating clearly the step(s) of the better regulation process from which the derogation is (are) requested. Requests for derogation should be accompanied by a detailed justification, including a clear explanation of the context of urgency.

The Secretariat-General will process the derogation request and liaise with the Cabinet of the Commissioner for Implementation and Simplification to receive the agreement. Based on the better regulation guidelines, it is the Commissioner for Implementation and Simplification who validates derogations from carrying out impact assessments, stakeholder consultations, and from the ‘evaluate first’ principle. The justification and recording, earlier in the policy planning process, of the situations considered urgent will be important in this respect.

Derogation requests and the outcome of such requests should be recorded in the Commission’s IT tool *Decide* indicating on which ground the derogation was granted. In case there is exceptionally no *Decide* record, the Secretariat-General will keep internal records of such derogations. The Commission will also ensure that the explanatory memorandum of the proposal will clearly describe the derogation(s) and provide a justification for it/them.

Concerning **interservice consultations**, the Commission’s rules provide for a shortened procedure on duly justified grounds of urgency. When using the fast-track procedure, documents must in principle be made available at least 48 hours before the consultation ends.

The Commission will ensure that the service requesting an urgent procedure substantiates the grounds of urgency and records this information in the *Decide* system when requesting such authorization. The Secretariat-General will decide on the authorization of the fast-track procedure based on the justification provided by the service and record it.

If the Secretariat-General exceptionally agrees to a consultation of less than 48 hours, it will also provide a justification, in line with the Ombudsman’s recommendation.

## V. CONCLUSION

The Commission considers that this opinion demonstrates its commitment to ensuring that better regulation principles are applied in a transparent and accountable manner, even in cases of urgency.

The Commission has already substantially addressed many issues raised by the European Ombudsman, with specific instructions issued by the Secretary-General. In the upcoming Communication on better regulation the Commission will reflect the actions and measures described above, to ensure that high-level and proportionate analysis supports its proposals both in regular and urgent situations.

The Commission is confident that these measures will address the Ombudsman's concerns and further strengthen the Commission's decision-making process.

*For the Commission*  
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*Member of the Commission*

