

15 December 2022

**SI/5/2022/KR - Submission of Access Info Europe and UNCAC  
Coalition's Environmental Crime and Corruption Working Group  
to the Public Consultation on Transparency and Participation in EU  
Decision Making related to the Environment**

This is a submission to the European Ombudsman's consultation on Transparency and Participation in European Union Decision Making on Environmental matters, as required by Regulation 1367/2006 on *the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies*.

Both Access Info Europe and the UNCAC Coalition's Working Group on Environmental Crime and Corruption welcome the opportunity to participate in this consultation.

For Access Info Europe, the transparency of all information relating to environmental issues is important as a basis for both accountability and participation. We have a particular focus on data that relates to decision making on funds and the use of those funds, in order to ensure accountability for how funds are spent. Information is needed to permit participation and to help achieve evidence-based decision making in the public interest. Transparency of spending and of beneficiaries of funds permits civil society organisations, anti-corruption groups, and investigative journalists to contribute to preventing and/or exposing corruption.

For the UNCAC Coalition's Working Group on Environmental Crime and Corruption, the priority is to ensure that corruption pertaining to environmental crime is effectively addressed, and that it further does not undermine efforts to address the various interrelated environmental crises faced by the world, such as the loss of biodiversity and climate change. When countries fail to put in place the corruption-prevention measures recommended by the UN Convention against Corruption, there are increased risks that funds will be diverted and undermine the green goals and a just climate transition.

Furthermore, in addition to domestic corruption in the spending of funds, an important part of the illicit proceeds generated by environmental crime flow through the EU. Corruption is an enabling factor that facilitates environmental crimes, making it easier to evade regulations to obtain and grant permits and concessions in the extractive industries and the renewable natural resource sectors (fisheries, forests and wildlife). These crimes are often undertaken by organised criminal networks and are typically transnational in nature. The networks involved rely on corruption at every step of the supply chain, to the extent that the cost of corrupt acts facilitating illegality are included in the price of the illicit commodities. Such corruption adversely affects efforts to reduce poverty, achieve good governance and tackle the climate crisis.

Below we set out our responses to the European Ombudsman's questions, though these questions are not exhaustive enough. The effects of corruption and related ills in the environment go across national and continental boundaries and any work to curb corruption in this domain (environmental) should think beyond the European Union.

**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.**

We believe that the EU holds information, in full or in part, which has an environmental dimension and which we are having difficulties accessing at the Member State level.

This includes data on the beneficiaries of EU funds. For instance, there is a clear interest in knowing how the CAP (Common Agricultural Policy) Funds are being spent over time to be able to evaluate the environmental dimensions of these funds. Half of the countries in the EU (12 Member States) have provided historical data on the spending of these funds and the beneficiaries, with the spending objective also listed. For the other half of EU countries, obtaining the historical data has been blocked, either for reasons of personal data protection and in some cases commercial confidentiality, or because the databases do not allow that data to be extracted. In some cases, Member States have informed us that the Commission holds the historical data. Yet, when we have previously asked the Commission for this data, it has said that it does not, and referred us to the Member States.

The same challenges are now emerging with respect to Recovery and Resilience Facility (RRF) Funds, where the use of the funds should be tied to environmental and climate transition goals. It is difficult to get full data regarding the use of these funds at the national level.

The Commission is actively looking at how to increase centralised collection of data on the spending of funds, as it has done with Cohesion funds.

In order to ensure that everyone in Europe has access to data on the spending of EU funds, the most effective and efficient solution is to gather this data in centralised databases, including data on the beneficiaries which is essential for both participation and accountability. It is important that all data on the spending of funds be tagged by the type of spending. Spending destined to advance environmental objectives should be tagged in a way that makes it possible to verify the link between the spending and the reported impacts and outcomes.

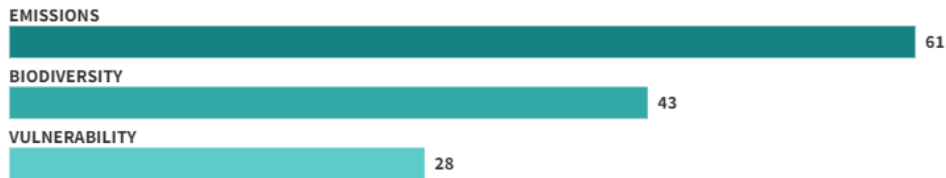
**2. In your view, is the environmental information that the EU makes public up-to-date and accurate? If not, please give examples.**

No, the environmental information that the EU makes public is not always up-to-date, may not be accurate, and is not always sufficiently detailed.

To take an example based on our research: Access Info has recently collected data as part of the Global Data Barometer (GDB) research which demonstrates that there is a shortage of data on Biodiversity across Europe. In a survey of 20 EU countries plus the UK, the findings for Climate Action data were as follows:

## Climate Action Data in Europe

Table 10



We can provide full details on the GDB results by country to the European Ombudsman if this is of interest. The GDB data is based on research carried out country by country. The problem we have encountered is that this data is not available at the EU level.

Looking specifically at the EU Action Plan on Biodiversity, to try to find further data, one can pick an indicator and endeavour to find the related data. For instance, Target 8's objective is that 25% of agricultural land is under organic farming management and that there is a significant increase in uptake of agro-ecological practices. The justification for this target is the direct link between organic farming and biodiversity.

The Target on the EU website ([here](#)) looks at first sight to have been completed in 2021, when in fact it is merely the action plan that has been completed. Furthermore, it is difficult for the public to see what progress has been made as the underlying data which is linked to that page ([here, scroll down](#)) is from 2019 and shows that land under agricultural management in most countries is only 7.75%.

Checking for more recent data on Eurostat, there is data from 2020, which states that 9.1% of EU agricultural land is dedicated to organic farming ([here](#)). There is another page [here](#) which is clearer about progress towards this target. It shows that the overall number is around 9% and makes clear that the target is to be achieved by 2030. This page also has a more useful interactive map by country.

It is not, however, possible, as far as we can see, to get any more detailed mapping data by geographical unit (neither NUTS 3 nor the localities of specific farms or fields), so it is not possible to cross reference the limited CAP funding data that we have obtained with the agricultural conversion data (if it were available) so as to identify how EU funding is impacting on this situation.

This is an example of where there is a significant amount of information, text and data on EU websites, but this information is possibly more detailed than is useful for a general audience while being insufficiently detailed to be of real value to professionals working in the field. The value of the data is further undermined by it not being updated.

- 3. The EU Aarhus Regulation obliges the EU institutions to set up public databases for the proactive and systemic dissemination of certain environmental information.<sup>[1]</sup> 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?**

There is no doubt that the Commission website has a lot of information on it, but it does not always meet the criteria of “findable”, particularly if one does not know the names of the document(s) one is searching for.

For instance, in preparing to answer this questionnaire, we did not find a specific page with the texts of international treaties, conventions or agreements, Union legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment set out in a way that an EU citizen would easily find it and be guided through it.

The same goes for progress reports and other documents listed in the Regulation 1367/2006 – see here also the answer to Question 2, where it is clear that significant effort has gone into preparing the web page and laying out the data, but it suffers from a lack of detail, and not being fully updated.

When it comes to infringement proceedings, we were not able to find something specific related to the environment. There is an infringements database, but when trying to search it for examples of documents related to infringement of environmental rules, we ended up in a rather circular chase between the database and on a more general page on infringements by month. We took the sample of a specific case of environmental infringement in Portugal, but were not able to find more details nor open the relevant documents. There may be another way to access this information, or it may need to be requested, but for someone who is not expert in this area, for example for citizens trying to find out about action taken against their government, this is not a user friendly structure.

Given the role of corruption and environmental crime’s impact on the environment, there should be greater transparency around the European Union’s Institutions efforts to ensure good governance in the natural resource sector, both at home and abroad. Secrecy in the natural resource sector continues to facilitate corruption and environmental crime, causing environmental degradation and the climate crisis. For example, shell companies are used to disguise payments and launder the proceeds of illicit activities linked to wildlife trafficking and other environmental crimes. Furthermore, corruption often prevents government enforcement agencies from effectively implementing and enforcing environmental protection laws or from meaningfully investigating those who break the laws, leading to impunity.

To address this problem, open public procurement processes and standardised procurement data consistent with the Open Contracting Data Standard should be adopted and effectively implemented, and these measures should be promoted globally. Wherever possible, there should be timely publication online of all contracts and supporting documentation: public procurement and other government contracts, permits and concessions, most importantly those related to major infrastructure projects, extraction of natural resources, management and movement of waste, award and trading of carbon emission credits, and climate project funds along with information on all legal entities involved, as well as their direct and ultimate owners, and payments to or from the public sector (for more details see the UNCAC Coalition ECC Working Group’s [submission](#) to the UN Special Rapporteur).

EU Member States should publish central company and beneficial ownership registries as required through the Open Data Directive and the Anti-Money Laundering Package including the upcoming 6th Anti Money Laundering Directive (AMLD6), and ensure they are in open data format, freely searchable and accessible online. This will enable national and international stakeholders such as law

enforcement, NGOs as well as the general public, to have access to information on both direct and ultimate owners of domestic companies and foreign companies participating in these agreements.

The European Union should also strengthen transparency around the implementation and enforcement of the relevant UNCAC provisions, particularly UNCAC Articles 23 and 60, to investigate and prosecute environmental crimes and the financial flows of the proceeds of these crimes. Member States should identify weaknesses and gaps in anti-corruption frameworks that link to climate and environmental crimes and develop recommendations for improvement to include in their UNCAC country review reports, which should be made publicly available as well as the Universal Periodic Review reports, under the auspices of the Human Rights Council, which should also be made publicly available.

We encourage the EU Ombudsman to recommend that the European Commission include on its website page: [Energy, Climate change, Environment](#), a section that focuses on the important and relevant issue of the implementation of the 2008 Environmental Crime Directive, particularly in relation to corruption, on the implementation of the UNCAC and its [resolution 8/12](#), along with other directives focusing on the nexus of environmental crime and corruption. This section should provide information on what is being done on implementation as well as links to the European Union and Member States for additional information and relevant data, including on the issues we have outlined above.

- 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.<sup>[2]</sup> Have you come across this issue? If so, please provide relevant examples.**

Access Info does not have much experience of this at the EU level, although we are aware that it can be a problem, and we know that it is very much a problem at the national level in many Member States where either implicitly or explicitly requesters are expected to mention the legal instrument under which they are seeking information.

Furthermore, in some countries, for example in Spain, the access to information and environmental rules are different legal instruments, with different appeal processes, and the requester is expected to know which law to use and how to use it, which is an unreasonable burden.

Our recommendation to journalists and civil society organisations planning to request documents on environmental matters at the EU level is that they make reference to both Regulation 1049/2001 and Regulation 1367/2006. That said, it should not be necessary for members of the public requesting information from EU bodies to state specifically under which regulation they are making the request.

The solutions to the current situation should include the training of public officials and, eventually, reform of Regulation 1049/2001 and better integration with Regulation 1367/2006.

- 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.<sup>[3]</sup> 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?**

It is recommended to make the comitology register easier to search, and in particular that it be possible to search the content of documents as well as their titles.

Indeed, none of the multiple search pages in tabs to be found on the [Comitology Register page](#) allow searches by the content of documents or by a thematic topic. Various attempts that we made to search for documents relating to specific environmental issues were frustrated by the lack of a broader search function.

The register is designed for those professionals with a good knowledge of Comitology procedures and the subject matter being handled by each Committee and not for anyone else. This cannot count as transparency nor as something which will contribute to participation in and scrutiny of decision making.

**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.**

No. In attempting to search the register of expert groups it was not possible to search by topic nor by the name of an organisation or expert. Indeed there are no free search fields.

If one gets to an expert group and identifies an organisation that is a member of it, one is then referred to the Transparency Register. This is positive and somewhat useful if one is trying to find out more about a particular organisation, but does not equate to a declaration of personal/professional interests of the experts, particularly not if someone were there in their capacity as an individual expert.

It is recommended to improve this as well as significantly improving the search function of the database.

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

As already noted, there is a wealth of information related to the EU's work on environmental issues available.

We reviewed many pages, including the following:

- The [European Union Environment page](#) which then links to other pages (Council infographics, Commission page on [Energy, Climate change, Environment](#), and rather more general pages of meetings, not specifically about the environment.)

The EU page also links to a social media page and while this again is general, it was possible to search relatively easily for the social media accounts and so find, for instance, an EU Climate Action Twitter account, which has 128K followers, although doesn't get much interaction on its tweets from what we could see.

Rather disappointingly the entire EU page is in English, as are some of the pages to which it links. These pages can be translated, using an automated online translation which takes a few seconds to work. For example, the webpage with the online game “Shaun the Sustainable Sheep” is available in various languages. Unfortunately the game itself did not switch languages, in spite of an explanatory text saying it is available in all EU languages.

Specific comments on the other Commission pages are given elsewhere in this submission.

- The [Council’s Environment landing page](#) which has some more top level information and some nice graphics, although not linked to the underlying data, making it more accessible to a wider audience although less so for professionals.

The Council also has good pages on [Climate Change](#) as well as Energy and Climate Neutrality, all very clear, nicely linked and with a good organisation of materials. The Council pages are available in all EU languages, and very positively so are some of the linked pages and quite a few of the infographics themselves.

- The European Parliament page leads one via multiple different searches to the [ENVI Committee](#) which doesn’t give an easy overview of its work. Rather it has highlights, which are news stories, and then there are tabs for finding out about the members, meetings, etc. The language options work for some of the pages (such as the members of ENVI) but not for all the news items.

There are always significant challenges when presenting on institutional websites large quantities of information on a matter such as what the EU is doing about climate change. There is a balance to be struck between user-friendly formats for the wider public and providing details that are sufficient for professionals working on these issues, and clearly there are difficult trade offs to be made. It is clear that an effort has been made but it does not always work.

One solution to this classic challenge that all public bodies face is to ensure that there are discussions and consultations with various stakeholders. For the websites consulted while preparing the response to this European Ombudsman Consultation, we did not see stated anywhere information about levels of stakeholder consultation that might have taken place, so it is hard to comment on that. A couple of times there was the question “was this webpage helpful” but that is not sufficient.

We recommend that the European Ombudsman includes these considerations in her feedback to the respective EU institutions and bodies, both asking specifically what they have done, and perhaps making a series of recommendations about how they might integrate feedback better, encouraging further study of best practices on consultations with the public so as to improve even more the presentation of the data.

We also strongly recommend that all relevant information about environmental issues and climate change be made available in all languages of the European Union. To do otherwise undermines the efforts that have been made to organise and present the information that is available, and simply risks alienating the European public.

## 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 Info and the UNCAC Coalition's Working Group on Environmental Crime and Corruption do not have direct experience of engagement with the Civil Dialogue Groups, which were established by Commission decision 2013/767 on *setting up a framework for civil dialogue in matters covered by the common agricultural policy*. Nor do we have direct experience of the Domestic Advisory Groups.

We found the relevant information on the [Civil Dialogue Groups here](#).

The members of these groups, selected by the Commission following an application process, are appointed for seven years (being 2014 to 2021, which was extended to 2022 and a new round of applications has just closed, on 29 November 2022). The length of time of engagement is positive, although this does mean that all organisations that missed the initial call for applications or were constituted after the initial cut-off point (2012 for the original round), are excluded for the following seven or eight years.

Another concern is that the organisations which apply – be they representative organisations, socio-economic interest groups, civil society organisations or trades unions – had to be “at least European-level” according to the original criteria, which specifically required that they have members in seven Member States. Although some exceptions can be made to this rule in “specific cases duly justified by the selection panel” it is clear that only larger organisations are likely to be included. The groups must also be already registered in the Transparency Register.

The new call for applications modified this requirement to demonstrate that “activities relating to the group's thematic areas in several Member States” with the degree of “representativeness” being a selection criterion. Applicants also have to demonstrate their capacity to engage.

It is understood that the goal is to ensure that the participants in the Civil Dialogue Groups are both broadly representative and also have the resources to engage in a meaningful manner over a sustained time-period, but the reality is that this excludes many civic actors.

There is no good data on the nature of civil society organisations across the European Union, and to the best of our knowledge the European Commission does not hold a database of such organisations (certainly not a mailing lists) nor is there any data collected from national registries by Eurostat or others, as far as we have been able to see. At best the Commission has the Transparency Register of a limited number of organisations that have registered because they conduct lobbying at the European Union level (Access Info Europe is one of these).

What is likely, based on our knowledge of civil society organisations in multiple countries, is that most CSOs are small, and registered in just one country. Where they are “members” of coalitions or platforms, these are not formal memberships, but rather looser arrangements. Just in the same way as most businesses in Europe are SMEs, with a full 95.5% having fewer than 10 employees ([Eurostat data](#)), so most CSOs are also small.



This situation has had practical consequences in the creation of the initial Civil Dialogue Groups. Only 103 civil society organisations applied for the 14 planned groups (see the [Decision document on this page](#)). For the group on women in rural areas, only 13 applications were received of which 8 were ruled out on the grounds of size, and so the planned group was abandoned see [document](#). There is no information on the relevant Commission website as to any measures to address this over time, only a suggestion in the decision note that “*relevant interests and concerns should be addressed by the other civil dialogue groups and in particular by the groups on CAP and on rural development.*” It is clear here that there are structural problems with the current participation model if it results in rural women having their interests represented by others, because they come from small organisations.

It is also not clear whether funding is made available to those participating in the Civil Dialogue Groups, but given that there were only 103 applications in total, this suggests that it is an option only available to larger and better-resourced organisations. It may also and/or alternatively indicate that the distribution of the call for proposals was not as extensive as it might have been. It will be interesting to see the data on the new call for applications and to assess whether this situation has improved. What is clear is that one has to look really carefully to find the general link for receiving notifications of participating in Commission expert groups (a broader set of groups than just on environment).

**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.**

See other responses and the answer to Question 11.

**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[\[8\]](#)?**

For the REPower directive, starting on the [Commission page](#) there is no obvious link to participation options, and the link at the bottom to the “You are EU” page does not lead to participation mechanisms.

If one starts on the Commission’s Press Page on [REPowerEU](#) and then goes to [Questions and Answers](#), there is, towards the bottom of that page, a link to one closed public consultation on “permit-granting processes & power-purchase agreements” ([more here if logged in](#)). From there, one can also find a link for managing notifications either for the specific initiative or on the more general page, which means “Environment” or “Climate Action” or “Energy”.

It would be interesting to know how many people are subscribed to notifications for specific initiatives and/or for the broader areas. As to the Nature Protection Package, this is hard to search for on the Commission’s website, so we used the link provided by the European Ombudsman [here](#) but did not find any links to participation opportunities. We also visited the overall [Green Deal website](#) which does have a “Get Involved” section, which appears on the side bar as well as a section of the main page.

Here there are two ways to get involved, the European Climate Pact or the New European Bauhaus.

- **For the Climate Pact**, one can become either an Ambassador, which is open to a wide range of civil society representatives, “influencers and opinion leaders” and public officials, all of whom have to be committed to climate action. They must be ready to lead and inspire their communities, raising awareness and organising events (planting trees, discussions with elected officials, etc.). Applications are currently closed but one can sign up for a newsletter. There does not appear to be remuneration.

As an alternative to being an Ambassador, one can become a “Friend of the Pact” and contribute to disseminating information. To gain this status one has to contact the relevant country coordinator. Another option for individuals and organisations is to make a “Pledge” on green action, such as reducing one carbon footprint. Again, you do this by contacting your country coordinator.

There is no data on the number of Ambassadors or Friends, nor on the nature or number of pledges. Generic emails but no other details are given for the country coordinators.

- **For the New European Bauhaus**, the mechanisms of which are not entirely clear, not-for-profit organisations can become Partners. There are currently 572 partners, which are a range of institutions including fine art and architecture schools, entrepreneurship associations, and climate related movements from across the EU. These organisations commit to activities such as convening diverse sets of professionals, identifying inspirational projects, engaging with citizens to discuss needs and expectations.

For none of these ways of “getting involved” does there seem to be any reference to nor information about actually participating actively in ongoing EU 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.**

An issue raised above, is the way in which the European Union communicates with civil society organisations around Europe. It is hard for most national civil society organisations to follow relevant issues in Brussels, and it generally has to be done on a proactive basis.

As noted above, the EU does not have a systematic way of communicating with civil society, such as a simple register for alerts.

- **Have Your Say:** To participate in the “Have your say” webpage, the main consultation page, it is necessary to log in to the EU portal, which is not a particularly elegant process and so is likely to be a disincentive for some users. Given how many businesses and banks which deal with financial information have much cleaner and smoother log on processes, it is not clear why the EU cannot do better. Furthermore, it does not seem to be possible to subscribe to alerts from this webpage. At least, trying to do so on Climate Action we did not find how to do so.
- **EU Login Have Your Say Page:** If you have an account on the EU Login, it is possible to subscribe via the Have Your Say page to alerts, which include about 40 topics including Environment, Climate Action, and Fraud Prevention, although not on “corruption” more

broadly, nor on transparency nor participation. If you don't know that the Have Your Say page exists, this subscription cannot be done from the generic account management page. It would be interesting to know how many people are signed up for the alerts.

- **Transparency Register:** For organisations registered in the Transparency Register of lobbyists, it is possible to subscribe to alerts, linked to both Parliament and Commission activities. These tend to be more generic announcements which then take one to another landing page. The problem here is this is only for registered interest groups and not for the majority of EU region civil society organisations.

We recommend that the EU take an objective look at all the multiple mechanisms which it offers (or does not) participation information and opportunities to subscribe to consultations. Below are other recommendations to strengthen its engagement and participation with civil society:

- A rationalisation of the explanatory material and the structures, along with a simple sign up procedure for all organisations across Europe, including those not in the Transparency Register or having an EU Login, is strongly advised.
- A verification of the languages in which information is available, and greater transparency around national representatives and coordinators.
- The EU should provide full data and reporting on levels of participation, specifically on environment issues and more broadly, as part of the diagnostic and data that will contribute to improving the system in line with its legal obligations (such as under Aarhus) as well as to ensure that European citizens feel genuinely able to engage with EU processes.