

Reply to the call for evidence on Better Regulation

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Top Lines

- The Commission's current practice of bypassing impact assessments at the pretense of "political urgency" undermines evidence-based policymaking and exposes EU legislation to significant legal and outcome-related risks.
- Abandoning impact assessments increases the likelihood of unintended consequences, weakens environmental and fundamental-rights safeguards, and hands disproportionate influence to powerful corporate and geopolitical actors.
- Failure to conduct proper assessments and consultations heightens the risk of court challenges as Treaty obligations on transparency and participation are not respected, and erodes public trust in the EU's democratic legitimacy.
- Recent Ombudsman findings found maladministration and confirm systemic shortcomings in the Commission's justifications for urgency exemptions, as well as regarding stakeholder selection, transparency, and compliance with the EU Climate Law, among others.
- The Commission must now use the present initiative as an opportunity to reverse these trends, rather than locking-in current practice.
- Public consultations must remain the default: targeted formats cannot replace the legal requirements of participatory democracy, balanced representation, and early, meaningful input.
- True simplification requires stable, predictable laws and robust evidence—not rapid-fire Omnibus revisions that dilute protections of nature and human health, create legal uncertainty and disadvantage European SMEs while benefiting large lobby actors.

1 How could the Commission better reconcile the need for evidence-based policies and urgent action in the conduct of its better regulation activities?

In her mission letter, Commission President von der Leyen called on Commissioner Dombrovskis to “ensure the principles of proportionality, subsidiarity and Better Regulation are respected, including through wide consultations, impact assessments, a review by the independent Regulatory Scrutiny Board and a new SME and competitiveness check. Proposals must be evidence-based and the Joint Research Centre, our internal scientific service, can support you in that work.”

Despite this clear request, according to the European Parliamentary Research Service “since the beginning of the current Commission mandate on 1 December 2024, 80 ordinary legislative procedure proposals have been submitted – of which 18 were accompanied by an IA [impact assessment] (covered by 12 IAs in total). 62 lacked an IA, though 25 of these had or will have staff working documents (SWD) as analytical substitutes.”¹ In response, Commissioner Dombrovskis stated, essentially, that impact assessments are in some cases not prepared for urgency reasons or because “either the impacts are not expected to be significant or there is no policy choice”.²

However, even if one only considers those proposals for which the Commission itself considered that they may have “significant economic, environmental or social impacts” but an impact assessment should not be prepared for reasons of “political urgency”, it becomes readily apparent that the Commission has started a general practice of abandoning impact assessments without providing specific reasons that would justify such urgency. The arguments given have been generic references to the competitiveness of the EU and would arguably apply to (almost) all Union legislation.

This has recently been confirmed by the European Ombudsman in relation to three legislative proposals, namely for Omnibus I in relation to the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), two legislative proposals to strengthen EU legislation on preventing and fighting migrant smuggling and a proposal to amend legislation related to the Common Agricultural Policy (CAP). For all these proposals, the Ombudsman found that the reasons justifying urgency were insufficient.³

Carrying out assessments to make sure that all interests are properly balanced always requires some time and consideration. Therefore attempts to simplify the process of preparation of legislative

¹ See priority question for written answer to the Commission, posed under Rule 144 by Tiemo Wölken (S&D), P-004346/2025.

² Answer given by Mr Dombrovskis on behalf of the European Commission (6.1.2016), P-004346/2025.

³ European Ombudsman, Recommendation on the European Commission’s compliance with ‘Better Regulation’ rules and other procedural requirements in preparing legislative proposals that it considered to be urgent (983/2025/MAS - the “Omnibus” case, 2031/2024/VB - the “migration” case, and 1379/2024/MIK - the “CAP” case) (the ‘**Ombudsman recommendation**’), para. 54. See para. 25 for a summary of the reasons given.

procedures should not focus on speed at the expense of quality. In short, getting rid of evidence is not good simplification.

ClientEarth recognizes that legislative action often comes with political pressure. However, political pressure should not be equated with political urgency. To simply stop preparing impact assessments in most cases is not the right way to “reconcile the need for evidence-based policies and urgent action in the conduct of [the Commission’s] better regulation activities.” This is because abandoning impact assessments carries many risks for the European project.

1.1 Risks flowing from a reduced impact assessment practice

1.1.1 Risk of unintended consequences

First, if the impact of legislative changes is not properly considered, the risk of unintended consequences multiplies. Rather than making Europe more competitive, EU legislation risks making the processes less efficient, less targeted, less effective and implementable on the ground. Shortening the process by decreasing the significance of the scientific background and reducing the transparency of the procedure. It also gives the most powerful lobbies, namely global corporations and foreign governments, an outsized influence on the shape of EU laws. This prioritises profit for foreign companies and geopolitical pressures over the interests of European citizens and their enterprises, in particular SMEs. This in turn risks further fueling anti-EU sentiments and therefore undermining the European project.

In the absence of an impact assessment, it becomes difficult if not impossible to assess and balance the basic impacts of proposed measures. To give just one example, for the Environmental Omnibus published in December 2025, the Commission has not prepared an impact assessment. Against this background, the Commission organised a workshop, in which an external assessment was presented on the costs that would allegedly be saved due to the removal of certain environmental requirements on authorities.⁴ When asked whether the external consultant had also assessed what kind of costs might arise from the proposal, be it in terms of implementation on the public authorities or wider costs due to health impacts or environmental effects, the external consultant indicated that this had not been part of the research and, ironically, suggested to check the impact assessment, not knowing that none had been prepared.

In the absence of such basic data, it becomes impossible to assess the actual impact that legislation will have on the ground. Moreover, it makes it impossible to adequately assess the likely impacts of new legislative or non-legislative acts on human rights, on the environment and on human health.

As to impacts on fundamental rights, a recent report of the EU Fundamental Rights Agency notes that: “Impact assessments are far more than a purely technical exercise. For FRA, they are a critical point in better lawmaking. It is about reinforcing trusted legal systems in the EU with people’s rights at the centre. At a time when trust in democratic institutions is under pressure, it is crucial that lawmakers and policymakers prove their laws are fair and inclusive. Better lawmaking is not just about better process – it

⁴ Environmental reporting and simplification workshop organised by the European Commission, 26 January 2026, information available here: < https://environment.ec.europa.eu/events/environmental-reporting-and-simplification-workshop-2026-01-26_en>.

is about better lives. This is a principle that national legislators and the EU legislator alike must always remember.”⁵

As regards the environment and human health, according to the European Environmental Agency's 2025 “State of the Environment” report, “Looking ahead, Europe’s sustainability challenges remain complex and systemic. Despite successes, especially in mitigating climate change and reducing pollution, the outlook for most environmental trends is concerning and inextricably intertwined with Europe’s economic prospects, security and quality of life.”

As to the economic impacts, UNEP’s 2025 Global Environment Outlook confirmed that the “whole-of-society and whole-of-government approaches to transform the systems of economy and finance, materials and waste, energy, food and the environment would deliver global macroeconomic benefits that could reach US\$20 trillion per year by 2070 and [...] and boom thereafter to US\$100 trillion per year.”

As to security, a 2026 report from the UK government highlights how global ecosystem degradation bears significant risks for national security and prosperity.⁶ The analyses and findings therein are easily transposable to the European Union.

In short, with impact assessments, we abandon what makes the European Union strong and what sets us apart: Policies and legislation are informed by scientific rationale, rather than political whim, which aim to protect the Europeans, rather than global profit-maximisation.

1.1.2 Legal risks

Second, increasingly dispensing with impact assessments opens EU laws up to legal challenge before the Court of Justice of the EU (CJEU), thus creating legal uncertainty and, in turn, undermining investment security in the EU.

When preparing legislation, the Commission must always comply with all applicable EU laws, including for instance, the principle of proportionality, the Charter of Fundamental Rights and other Treaty requirements, such as the precautionary principle and the principle of high environmental protection. When acting under delegated powers, there will be additional requirements under secondary EU legislation.

According to established case law, Court review is limited where a matter is technical. It is even more limited for EU legislation, given that the legislator enjoys broad discretion in making policy choices and court review is accordingly limited. However, no matter how limited the review, the EU legislative institutions must be able to show in each and every case that they “actually exercised their discretion, which presupposes the taking into consideration of all the relevant factors and circumstances of the situation the act was intended to regulate.”⁷

⁵ Report from the Fundamental Rights Agency, ‘Better legislation – Human rights impact assessments in lawmaking’, 8 December 2025, available at: <https://fra.europa.eu/en/publication/2025/better-legislation-human-rights-impact-assessments-lawmaking>, p. 4.

⁶ UK Department for Environment, Food & Rural Affairs, “Nature security assessment on global biodiversity loss, ecosystem collapse and national security”, 20 January 2026, available online at: <https://www.gov.uk/government/publications/nature-security-assessment-on-global-biodiversity-loss-ecosystem-collapse-and-national-security>.

⁷ As per the Court’s consistent case law as cited for instance recently in Joined Cases C-71/23 P and C-82/23 P, *France v CWS Powder Coatings and Others*, ECLI:EU:C:2025:601, para. 107 and case law cited.

If the EU legislator is unable to do so, the Court will annul the resulting legislation. This is for instance illustrated by Case C-310/04 Spain v Council, in which the Court partially annulled a Council Regulation because the Commission's preparatory studies did not assess labour costs while regulating the production of cotton.⁸

More recently, the Court has stated with reference to the Inter-Institutional Agreement on Better Law-Making that impact assessment "is a step in the legislative process that, as a rule, must take place if a legislative initiative" is expected to have significant economic, environmental or social implications, which may only be dispensed with if the EU legislature has "sufficient information enabling it to assess the proportionality of an adopted measure."⁹ This is an objective standard that the Court will assess.

As regards subsidiarity and proportionality, Protocol 2 to the TEU also gives some examples of information that as a minimum needs to be contained in the draft legislative act (i.e. not in a later explanatory document), including an "assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation."¹⁰ This is just one example of information that the CJEU may find is lacking or inadequately substantiated in the absence of an impact assessment.

The preparation of a well-prepared impact assessment therefore reduces the risk that EU legislation and other EU acts will face legal challenges. This is not theoretical; the CJEU frequently makes reference to the impact assessment in determining whether a measure is proportional or otherwise compliant with the law.¹¹ A flawed or altogether lacking impact assessment instead exposes the EU decisions to continuous legal uncertainty.

Crucially, due to the design of the EU judicial review system, there is no fixed end date to when these legal risks subside. A legislative measure can be directly challenged in Court within two months of its publication, this being open to any Member State or EU institution.¹² At this stage, companies, civil society actors and individuals will usually not be able to bring a challenge. However, any court of any EU Member State can at any time raise a question as to the validity of EU law, no matter when it was adopted, as long as the national judge considers this question of validity relevant to a case before it.¹³

This legal risk is compounded by obligations arising from other legal sources. In a number of cases, the European Court of Human Rights has clarified that science-based investigations are a necessary element of governmental decision-making.¹⁴ This has been described as a right to rational and evidence-

⁸ Case C-310/04 Spain v Council, EU:C:2006:521, especially paras 124-126.

⁹ Case C-482/17 Czech Republic v Parliament and Council, ECLI:EU:C:2019:1035, paras 82-5: "[...] the obligation to carry out an impact assessment in every circumstance does not follow from the wording of points 12 to 15 of the interinstitutional agreement. [...] Those points [...] note that the Commission will carry out impact assessments of its legislative initiatives which are expected to have significant economic, environmental or social implications. [...] It follows that the preparation of impact assessments is a step in the legislative process that, as a rule, must take place if a legislative initiative is liable to have such implications. [...] Not carrying out an impact assessment **cannot** be regarded as a breach of the principle of proportionality where the EU legislature is in a particular situation requiring it to be dispensed with and has sufficient information enabling it to assess the proportionality of an adopted measure."

¹⁰ TEU Protocol No 2 on the application of the principles of subsidiarity and proportionality, Art. 5.

¹¹ See for example, Case C-58/08, Vodafone and Others EU:C:2010:321 para 55.

¹² Article 263 TFEU. Standing in most cases is effectively limited to privileged applicants.

¹³ Article 267 TFEU.

¹⁴ Case: 36022/97 Hatton v the UK, paras 98 and 128. See also generally on justification for restrictions of human rights needing to be backed by adequate scientific evidence, Cases: 67847/01 Lecarpentier v France, 30078/06 Konstantin Markin v Russia and 2700/10 Kiyutin v. Russia.

based law-making under the ECHR.¹⁵ When faced with cases that arise within EU Member States the ECtHR so far usually assumes equivalent protection of human rights through EU law. However, it is questionable whether the Strasbourg court will follow the same approach once the scientific basis of EU measures can no longer be clearly demonstrated.

Finally, the European Climate Law requires the Commission to “assess the consistency of **any** draft measure or legislative proposal, including budgetary proposals, with the climate-neutrality objective set out in Article 2(1) and the Union 2030 and 2040 climate targets before adoption, and include that assessment in any impact assessment accompanying these measures or proposals, and **make the result of that assessment publicly available at the time of adoption**” (emphasis added).¹⁶ The General Court of the EU recently confirmed that the objective of this provision is that “the Commission takes an informed decision about the consistency of a draft measure with the targets of that law” and characterised it as an “essential objective”¹⁷ – which thus cannot be dispensed with. While this requirement can be met independently of preparing an impact assessment, it is evidently more efficient to include it, as suggested in the provision itself, into an impact assessment. As further explained below, so far the Commission has on many instances not made the result of the assessment publicly available at the time of adoption, thereby breaching what is arguably an essential procedural requirement.

1.2 Resulting recommendations

To avoid these legal and output risks, ClientEarth is making a number of recommendations below, some of which are based also on the already mentioned Ombudsman recommendations.

1.2.1 Limit exceptions from Impact Assessment for reasons of “political urgency” to highly exceptional, clearly defined circumstances

As mentioned above, over the last year the European Commission has started to exempt measures from impact assessments without adequate justification. In the words of the European Ombudsman, “Following the Commission’s broad interpretation, any situation could in principle be considered ‘urgent’ if decided so by the political leadership of the Commission.”¹⁸ It also noted that the Commission appears to equate “political urgency” with “political priority”.¹⁹

The revision of the Better Regulation framework must now be used to reverse this highly concerning trend and instead re-enforce the Commission’s commitment to prepare impact assessments. Exceptions from the impact assessment requirement for reasons of “political urgency” must be limited to highly exceptional

¹⁵ See Popelier, P., ‘A fundamental right to rational law making? An exploration of the European Court of Human Rights’ case law’, in: Rozenfelds, J. et al. (eds), *The Quality of Legal Acts and its Importance in Contemporary Legal Space*, University of Latvia Press, Rīga, 2012, pp. 27–34, available online at:

<https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Jur-konf_2012_Qualit-Legal-Acts.pdf>.

¹⁶ Art. 6(4) Regulation (EU) 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 2021 L 243/1.

¹⁷ Judgment of 10 September 2025, *Austria v. Commission* (EU Taxonomy climate delegated act), T-625/22, paragraph 86.

¹⁸ Ombudsman recommendation, para. 50.

¹⁹ Ibid, paras 52-3.

cases based on clear and transparent criteria and process of assessment, whether for new measures or for re-assessments.²⁰

As also recommended by the Ombudsman, in the exceptional cases where nonetheless no impact assessment is prepared, the Commission must clearly set out the exceptional circumstances justifying this in the explanatory memorandum.²¹ The EU Fundamental Rights Agency recently equally recommended to revise “the better regulation toolbox so that any absence of an impact assessment comes with a reasoned justification.”²²

A precondition for this adequate justification is a clear internal procedure. As the Ombudsman noted, there was no record of following the internal procedure envisaged by the Better Regulation Guidelines in relation to the procedures under scrutiny.²³ In two of the three cases, there was no decision at all, while in one there was an email from the Secretary-General without any explanations.²⁴ It is clear then that under such circumstances, the reasons will necessarily be fabricated *ex post*. The Ombudsman therefore recommended to “properly record any internal decision(s) to exempt a legislative proposal from the requirements of the Better Regulation rules, including who requested the exemption, on which grounds, and who granted it.”²⁵

1.2.2 Transparency in the impact assessment process

As per established practice, the Commission only publishes the impact assessment and the Regulatory Scrutiny Board (RSB) Opinion at the time of the legislative proposal.

This is highly problematic in practice because it prevents public debate on the potential impact of different policy options and the RSB’s evaluation of the assessed impacts, including where shortcomings lie etc. In the words of the CJEU:

[...] The possibility for citizens to scrutinise and be made aware of all the information forming the basis for EU legislative action is a precondition for the effective exercise of their democratic rights as recognised, in particular, in Article 10(3) TEU [...]. As is emphasised, in essence, by ClientEarth, the exercise of those rights presupposes not only that those citizens have access to the information at issue so that they may understand the choices made by the EU institutions within the framework of the legislative process, but also that they may have access to that information in good time, at a point that enables them effectively to make their views known regarding those choices.

[...]

Although the submission of a legislative proposal by the Commission is, at the impact assessment stage, uncertain, the disclosure of those documents is likely to increase the transparency and openness of the legislative process as a whole, in particular the preparatory steps of that process, and, thus, to enhance the democratic nature of the European Union by enabling its citizens to

²⁰ See also Ombudsman recommendation, para. 55.

²¹ Ibid, para. 55.

²² EU Fundamental Rights Agency report, “Better Regulation – Human rights impact assessments in lawmaking”, 8 December 2025, available online at: <<https://fra.europa.eu/en/publication/2025/better-legislation-human-rights-impact-assessments-lawmaking>>, p. 4.

²³ Ombudsman recommendation, para. 59.

²⁴ Ibid, para. 30.

²⁵ Ibid, para. 60.

scrutinise that information and to attempt to influence that process. As is asserted, in essence, by ClientEarth, such a disclosure, at a time when the Commission's decision-making process is still ongoing, enables citizens to understand the options envisaged and the choices made by that institution and, thus, to be aware of the considerations underlying the legislative action of the European Union. In addition, that disclosure puts those citizens in a position effectively to make their views known regarding those choices before those choices have been definitively adopted, so far as both the Commission's decision to submit a legislative proposal and the content of that proposal, on which the legislative action of the European Union depends, are concerned."²⁶

The European Committee of the Regions has also called on the Commission "to make available draft evaluations and impact assessments that are submitted to the board so that the ECoR's contributions to better regulation can be evaluated and targeted more effectively."²⁷

ClientEarth therefore recommends that a new Better Regulation Communication clarifies that impact assessments are to be published online when they are sent to the RSB and that RSB Opinions are published online when they are sent to the Commission.

1.2.3 Improve Impact Assessments methodology

The Impact Assessment methodology has been variously criticised for not adequately assessing wider costs for society, including environmental, social and fundamental rights impacts.²⁸ Due to their focus on easily calculable costs, assessments will often overstate immediate compliance costs on public authorities and businesses, and not adequately reflect more long-term cost savings and societal benefits that are more difficult to quantify in monetary terms.

The Commission has committed itself over the last years to integrate the assessment of certain impacts into its impact assessment methodology and this reform is now the perfect opportunity to formalise these changes in the Better Regulation Framework. This includes:

1. In its Civil Society Strategy, the Commission commits itself to assessing the impacts of its initiatives for civil society in impact assessments and evaluations within the Better Regulation framework;²⁹
2. On 4 December 2025, the Commission published a revised operational guidance on taking account of fundamental rights in impact assessments,³⁰ which is meant to supplement Better Regulations Toolbox No. 29. Implementation of this will be crucial given two separate analyses by the European Parliament Research Service and the Fundamental Rights Agency, which find that fundamental rights impacts are insufficiently assessed within impact assessments.³¹

²⁶ Case C-57/16, *ClientEarth v Commission*, ECLI:EU:C:2018:660, paras 84 and 92.

²⁷ Opinion of the European Committee of the Regions — Better regulation: Joining forces to make better laws (February 2022),

²⁸ See for instance, Patrick den Brink, "'Responsible Regulation' instead of 'Better Regulation' – is the European Commission's better regulation proposal fit for future?", *elni review*, 2022, Vol. 22, pp. 1-9.

²⁹ Communication from the Commission, EU Strategy for Civil Society, COM(2025) 790 final, p. 11.

³⁰ Communication from the Commission, Revised operational guidance on taking account of fundamental rights in European Commission impact assessments, 4.12.2025, C(2025) 8354 final.

³¹ EU Fundamental Rights Agency report, "Better Regulation – Human rights impact assessments in lawmaking", 8 December 2025, available online at: <<https://fra.europa.eu/en/publication/2025/better-legislation-human-rights-impact-assessments-lawmaking>>, pp. 22-3.

Additionally, the Better Regulation Toolbox should be amended to ensure that there is a better cost assessment of inaction as well as of countervailing negative costs. For instance, not taking regulatory action often means existing health and environmental threats are not contained. The Impact Assessment must thoroughly evaluate the cost of inaction to enable a clear comparison between the baseline scenario and policy options, especially regarding human health and the environment. The Commission's 29 January study, *The Cost of PFAS for Our Society*, is a useful example of where such benchmark data has been created, which should then be used for related assessments.³² Creation of such benchmark data and their integration into the impact assessment methodology should be included as requirements in the Better Regulation framework.

In addition to these more short-term steps, ClientEarth recommends, as a part of the Future Generations initiative, the introduction of an "intergenerational fairness impact assessment", to address the global challenges ahead in a holistic manner and to ensure European prosperity through planning within our planetary boundaries. As set out in more detail in the related concept note, such a more fundamentally reformed impact assessment practice would integrate the consideration of a Future Risk Matrix updated annually, which is then used to inform impact assessments on individual Commission proposals.³³

1.2.4 Ensure science-based decision-making and transparency in the absence of impact assessment

In the highly exceptional cases in which the Commission decides to not conduct an impact assessment, it must nonetheless be able to demonstrate that it has otherwise prepared sufficient background information to inform the legislative debate. The Better Regulations Guidelines currently state that in such cases, "an analytical document in the form of a staff working document presenting the evidence behind the proposal and cost estimates should be prepared within three months of the initiative's adoption."³⁴

However, recent experience shows that the Commission does not always respect this deadline.³⁵ More importantly, it is questionable what is the value of publishing an analytical document 3 months into an evidently urgent, therefore by then far-advanced, legislative process. The main objective of evidence-based decision-making is to provide sufficient evidence to decision-makers (and the public) in order to enable them to assess different risks and options and adopt the best possible solution. Publishing the staff working document late in the process or even months after the legislative process has concluded, as was in the case of amendments to two CAP regulations adopted on 13 May 2024, is clearly cosmetic in nature and does not fulfil its intended purpose.³⁶

³² "The cost of PFAS pollution for our society", final report, prepared by WSP, Ricardo and Trinomics, January 2026, available at < <https://op.europa.eu/en/publication-detail/-/publication/2bcea765-fbf8-11f0-8da5-01aa75ed71a1/language-en>>.

³³ See Future Generations initiative, "Intergenerational Fairness Impact Assessment", available at: < fitforfuturegenerations.eu/wp-content/uploads/2025/07/building-block-2.pdf>.

³⁴ Better Regulation Guidelines, p. 30.

³⁵ See Ombudsman recommendation, para. 65.

³⁶ Staff Working Document was dated 10 December 2024 and related to legislative proposals amending two CAP regulations, which was adopted on 13 May 2024 and entered into force on 25 May 2024, available online at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52024SC0360>.

As also suggested by the Ombudsman, it is therefore essential that the staff working document is published “in a timely manner and as soon as the legislative proposal is adopted, reflecting thus the urgency of the matter.”³⁷

Moreover, and also suggested by the Ombudsman, the “Better Regulation rules should also lay down minimum substantive requirements that analytical documents should fulfil.”³⁸ At a minimum, such an explanatory memorandum should give a basic description of the foreseen significant economic, environmental and social impacts that justified its preparation, as well as climate consistency assessment. It should also clearly indicate for which aspects there is a lack of information caused by the lack of the impact assessment, which thus facilitates drawing together further information during the legislative process, as required by the case law of the CJEU.³⁹

1.2.5 Climate consistency assessment

As explained above, the EU Climate Law requires the Commission to carry out a climate consistency assessment for all envisaged measures and to publish it at the time of the proposal. This requirement is clearly independent of whether or not an impact assessment is prepared. This is an essential element of the EU Climate Law to ensure that the EU stays on track to reduce its GHG emissions in line with the Paris Agreement.

In its above-mentioned recommendation, the Ombudsman concluded that there was no record of a climate consistency assessment having been carried out, nor was the assessment published together with the proposal.⁴⁰

The Ombudsman therefore recommended that the Commission clarify:

- that climate consistency assessments should be carried out for all legislative proposals, including those that are not accompanied by an impact assessment, and that any such assessments should be internally recorded;
- in which document climate consistency assessments and the results thereof are to be published when adopting legislative proposals that are not accompanied by an impact assessment.

It is important to note that a climate consistency assessment is required for all legislative proposals, not only those accompanied by an impact assessment. As has recently been confirmed by the General Court, “Article 6(4) of the European Climate Law does not provide for any specific form to be observed for the assessment for which it provides. Thus, the essential objective of that provision is to make sure that the Commission takes an informed decision about the consistency of a draft measure with the targets of that law.”⁴¹ It should be clarified that climate consistency assessments must also be prepared for all non-legislative acts.

³⁷ Ombudsman recommendation, para. 78.

³⁸ Ombudsman recommendation, para. 78.

³⁹ Case C-482/17, *Czech Republic v Parliament and Council*, para. 86: “[...] in order to exercise their discretion properly, co-legislators must take into account, during the legislative procedure, the available scientific data and other findings that became available, including scientific documents used by the Member States during Council meetings that the Council itself does not have.”

⁴⁰ Ombudsman recommendation, para. 87.

⁴¹ Judgment of 10 September 2025, *Austria v. Commission*, T-625/22, ECLI:EU:T:2025:869, para. 86.

Summary of recommendations for question 1:

1. Strictly limit “political urgency” exemptions from impact assessments to clearly defined, highly exceptional circumstances; establish and follow a clear internal procedure in granting these exemptions and clearly explain exceptional circumstances in the proposal;
2. Enhance public scrutiny by publishing impact assessments and RSB Opinions online at the time they are sent to the RSB / the Commission, respectively;
3. Improve impact assessment methodology to capture full societal costs and impacts, including intergenerational fairness;
4. If nonetheless no impact assessment is conducted, publish the replacing staff working document at the time the proposal is adopted; include a basic description of significant economic, environmental, and social impacts and identify information gaps caused by the absence of an impact assessment, to guide further evidence-gathering by the legislator;
5. Clarify the procedure for climate consistency assessments to ensure they are prepared and published for all legislative and non-legislative proposals, regardless of whether an impact assessment accompanies them.

2 How could the Commission ensure a holistic approach to stakeholder consultations with a view to implementing a more efficient and effective manner to gathering essential information, including possibly across policy fields?

Since the second von der Leyen Commission has assumed office, it has increasingly reduced consultation possibilities, and for a large number of legislative proposals dispensed with public consultations or replaced them with new “targeted” consultation formats (“reality checks” and “implementation dialogues”) with unclear and untransparent rules on the selection of participants, its process and feedback opportunities.

One particularly problematic scenario occurred in the context of the CAP revision. During its preparation, the Commission only consulted 4 of the largest farming organisations. In the words of the Ombudsman, “As regards the CAP case, the Ombudsman considers that the Commission failed to explain why it could not consult more categories of stakeholders, beyond the four main farming organisations, within the

same time frame. At the same time, the Ombudsman is not convinced that the Commission was justified to consider that other members of the public, for instance environmental organisations, were not “*directly concerned*” by a legislative proposal which might affect the environment.”⁴²

Similar issues have arisen in the context of the Omnibus proposals. For Omnibus I, these are also reflected in the mentioned Omnibus recommendation, including as regards the “reality check” workshops meant to replace public consultation. Since then, the Commission has proposed Omnibus VI, for which it again conducted no public consultation but organised three such “reality check” workshops. These workshops were not publicly advertised and there was no formal way for NGOs or other stakeholders to apply to be included in them. Accordingly, representatives of major companies widely outnumbered civil society and trade union representatives. The feedback gathering format relied on “slido polls” which accordingly heavily skewed results in favour of the more numerous industry participants. On this basis, the Commission then claimed in the Staff Working Document that a “majority” supported the simplification measures it had presented.

This is certainly not a “more efficient and effective manner to gathering essential information” but a serious derogation from participatory democracy in an EU that is meant to take decisions “as openly as possible and as closely as possible to the citizen” (Art. 1 TEU). This carries many risks for the European project.

2.1 Risks in removing or reducing public consultations

2.1.1 Outcome risks

As recognised by the Parliament, Council and the Commission, “transparency and accountability are essential for maintaining the trust of Union citizens in the legitimacy of the political, legislative and administrative processes of the Union.”⁴³ The requirements of consulting the public were first introduced in the Lisbon Treaty as a reaction to the perceived democratic deficit of the EU.⁴⁴ Removing public consultations now risks exacerbating democratic concerns and the criticism of an EU machinery removed from its citizens. Removing consultations therefore risks undermining the acceptability of and support for EU action.

Moreover, public and stakeholder consultations are an important mechanism to receive feedback on the possible impact and to assess the consequences of different available policy choices. Again in the words of the EU institutions: “Engaging with stakeholders enhances the quality of decision-making by providing channels for external views and expertise to be given.”⁴⁵ Removing consultations therefore risks undermining the quality and effective implementation of EU laws.

⁴² Ombudsman recommendation, para. 73.

⁴³ Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register, 2021 OJ 207/1, recital 3.

⁴⁴ For the history leading up the Lisbon Treaty in that regard, see Gloria Golmohammadi, “Realising the Principle of Participatory Democracy in the EU – The Role of Law-making Consultation”, p. 68 onwards, available at: < <https://su.diva-portal.org/smash/get/diva2:1789991/FULLTEXT01.pdf>>.

⁴⁵ Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register, 2021 OJ 207/1, recital 2.

2.1.2 Legal risks

Dispensing with public and adequate targeted consultations also carries significant legal risks as it opens up resulting decisions to legal challenge before the CJEU.

To the extent that impact assessments are carried out, the Inter-Institutional Agreement on Better Law-Making requires the Commission to “consult as widely as possible.”⁴⁶ However, the requirements to carry out public consultations as well as consultations of relevant stakeholders are legal requirements under the Lisbon Treaty, which are entirely independent of the Commission’s practice in relation to impact assessments.

The Lisbon Treaty, for the first time, added a clear legal requirement of participatory democracy. The CJEU has explicitly confirmed that this is additional to the requirements of representative democracy,⁴⁷ meaning that the involvement of the European Parliament and the Council does not compensate for a lack of participatory processes.

Article 1(2) TEU states that “[d]ecisions shall be taken as openly and as closely as possible to the citizen”. More precise requirements are included in Article 10(3) TEU, which grants every citizen “the right to participate in the democratic life of the Union. In addition Article 11 (1) TEU the European Commission to “out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent. ” In addition, Article 11(1) TEU, requires the Institutions to “give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.” Finally Article 11(3) TEU obliges the European Commission to carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent. Moreover, Art. 2 of Protocol No 2 states that before proposing legislative acts, “the Commission shall consult widely.”

It follows from these provisions, and in particular Article 11(1) TEU, that both the broader public, as well as representative organisations have a right to be involved and publicly exchange their views in all areas of Union action. Therefore public consultations cannot be replaced with closed-door exchanges with a select number of stakeholders. It is also clarified that representative organisations are not only business organisations but must also include civil society. This follows for instance from Article 11(2) TEU, which states that the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society. In addition Article 15(1) TFEU requires the Union’s institutions, bodies, offices and agencies to conduct their work as openly as possible to promote good governance and ensure the participation of civil society.

The essential nature of citizen and civil society participation in EU decision-making has also been repeatedly emphasised by the CJEU. The Court has for instance stressed that “the expression by the public or the interested parties of their views on the choices made and the policy options envisaged by the Commission in the context of its initiatives, in particular its legislative initiatives in respect of

⁴⁶ Inter-Institutional Agreement on Better Law-Making, para. 13. This is for instance also required by the already mentioned Decision (EU) 2022/591 of the European Parliament and of the Council of 6 April 2022 on a General Union Environment Action Programme to 2030.

⁴⁷ C-418/18 P Puppinnck, para. 65. For the history and process leading up the Lisbon Treaty in that regard, in that regard, see Gloria Golmohammadi, “Realising the Principle of Participatory Democracy in the EU – The Role of Law-making Consultation, p. 68 onwards.

environmental matters, before that institution has made a decision regarding the planned initiative, is an integral part of the exercise by EU citizens of their democratic rights.”⁴⁸

Second, the requirement to consult also follows from paragraph 19 of the Inter-Institutional Agreement on Better Law-Making, which stresses that

“public and stakeholder consultation is integral to well-informed decision-making and to improving the quality of law-making. Without prejudice to the specific arrangements applying to the Commission's proposals under Article 155(2) [TFEU], the Commission will, before adopting a proposal, conduct public consultations in an open and transparent way, ensuring that the modalities and time-limits of those public consultations allow for the widest possible participation. The Commission will, in particular, encourage the direct participation of SMEs and other end-users in the consultations. This will include public internet-based consultations.”

Third, in its case law the European Court of Human Rights is also assessing whether open and wide public consultations have taken place as a factor in whether a resulting law or other decision respects the Convention, for instance in relation to the right to family and private life (Art. 8 ECHR).⁴⁹ As noted above, when faced with cases arising in EU Member States, the Court usually considers that the fundamental rights protection of EU law is equivalent to the Convention but this may change in case the EU deviates from principles of participatory democracy that underly the European Convention of Human Rights.

Fourth, Art. 8 Aarhus Convention, to which the EU itself is a Party, requires the EU to “strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.”

2.2 Resulting recommendations

To mitigate the above risks, ClientEarth is making a number of recommendations below.

2.2.1 Improve both public and targeted consultations

First and foremost, it is essential that public consultations remain the main form of consultation for the majority of legislative proposals. The *Have Your Say* portal is currently a channel most active citizens are familiar with and rely on for information about upcoming initiatives. It also enables citizens to contribute in any official language of the EU, which contributes to inclusiveness.

As mentioned above, both public and targeted consultations are two separate legal requirements under the EU Treaties. In other words, where targeted consultations or other interactive methods of evidence-gathering are used (e.g. the so-called “reality checks” or stakeholder workshops), these cannot replace

⁴⁸ Case C-57/16 P, *ClientEarth v European Commission*, para. 108 and Case T-540/15, *De Capitani*, para.98. See also: Case C-280/11 P *Info Access Europe* para 33; Joined cases C-39/05 P and C-52/05 P *Sweden and Turco v Council* para 46; See also Case T-755/14; *Herbert Smith Freehills LLP v. Commission* EU:T:2016:482

⁴⁹ See for example, Case: 6339/05 *Evans v the UK* [GC], esp. paras 86-7, in which the Court considered extensive public consultation a factor in assessing compliance of a UK law with Article 8 ECHR; See also Case: 25579/05 *A., B. and C. v Ireland* [GC], esp. para 225, in which the Court considered public consultations as a factor as to whether a restriction of Art. 8 ECHR pursued a legitimate aim.

public consultations available to everyone. Both types of consultations fulfil different objectives, with public consultation giving the opportunity to everyone to participate in the democratic life of the Union, while the targeted consultations are a vehicle to obtain a balanced view from those impacted or having an interest in the associated decision-making process.

While targeted consultations and other forms of evidence-gathering can be used in parallel to public consultations, these also need to follow basic principles of transparency and broad participation. To that end, and as also suggested by the European Ombudsman, Chapter II of the Better Regulation guidelines should be improved by clarifying stakeholder consultation formats, in particular where no impact assessment is conducted.⁵⁰ For instance, where targeted consultations are carried out, the considerations behind the choice of stakeholders and the method chosen should be clearly and publicly explained. This includes clearly explaining in advance the rules of engagement, process, and the timeline and manner of receiving feedback.

2.2.2 Maintain adequate timeframes and synopsis of results

In order for the public to be able to familiarise themselves with the proposed initiative and background information and find the time to prepare a submission, next to other obligations, it is important that adequate time frames are provided. This is also an important factor for stakeholder contributions. As recognised in the Civil Society Strategy, “adequate timeframes” need to be accorded in dialogues with civil society.⁵¹

It is therefore crucial to maintain the mandatory internet-based public consultation of a minimum of 12 weeks and other timeframes included in the Better Regulation guidelines.⁵² Where a genuine urgency is identified based on highly exceptional and clearly defined circumstances, ClientEarth recommends that the Commission first seeks to adapt public consultations, rather than abandon them.

The Better Regulation guidelines require the Commission to publish a synopsis report on how stakeholder input has been taken into account, to be included in the impact assessment or in, the absence thereof, in a separate Staff Working Document (p. 22). This is also reflected in the Civil Society Strategy, which requires “feedback on how dialogue contributes to policy advancement.”⁵³ This is a crucial aspect of both public and targeted consultations, which needs to be maintained in all cases as it is a central guarantee to prevent public consultations from becoming a mere tick-boxing exercise.

2.2.3 For targeted consultations, guarantee balanced representation

Building upon the above-mentioned distinction, it is crucial that the mapping of potentially interested stakeholders ensures balanced representation. In its Civil Society Strategy, the Commission recognises the importance of recognising civil society as a partner and “to engage participation from civil society throughout different stages of policymaking”.⁵⁴ The Strategy understands civil society organisations as “non-State, not-for-profit, independent, non-partisan and non-violent organisations, through which people pursue and defend shared objectives and ideals,” which operate independently from both government

⁵⁰ Ombudsman recommendation, para. 79.

⁵¹ 3rd guiding principle for dialogue with civil society, see EU Strategy for Civil Society, p. 6.

⁵² Better Regulation Guidelines, p. 20, Box 6.

⁵³ Ibid, 8th guiding principle.

⁵⁴ Ibid, 1st and 2nd guiding principle.

and business interests. As explained above, it is exactly these organisations that the Commission has recently failed to identify as relevant stakeholders.

Moreover, the guiding principle specify how to ensure balanced representation among civil society organisations for participatory formats. They state that “selection of participants should be based on the organisations’ independence, legitimacy, representativeness and expertise, as well as their adherence to EU values.”⁵⁵ Moreover, attention must be paid to include an “adequately broad spectrum of organisations, reflecting a sectoral and geographical balance and with due account to organisations representing groups that are underrepresented, marginalised or in vulnerable situations.”⁵⁶

Additionally, the Better Regulation guidelines should be supplemented with additional information on how to effectively map stakeholders for targeted consultations. The guidelines already mention the importance of targetting “all interested parties” (p. 15) and some information on “mapping stakeholders” (p. 19). This should be supplemented with the the clear requirements on how to identify civil society organisations from the Civil Society Strategy.

Beyond civil society organisations, the same section should also clarify that the stakeholder mapping should include a variety of businesses of various sizes, with a particular focus on SMEs. As illustrated by the examples on pages 11-12 above, consultation formats such as “reality checks” prioritise the input of large corporations and lobby groups, who have offices in Brussels and are well-connected to decision-makers. In the rare instances where smaller businesses attend at all, participation is also hindered by the fact that they are organised in English without translation, thus making participation for smaller businesses from throughout Europe very difficult.

2.2.4 Frame questions in a non-biased manner

Both in the context of open, public consultations and during targeted stakeholder consultation formats, the Commission services have a tendency to frame questions in a manner that predetermines the outcome. The questions for the present call for evidence are no exception. Rather than asking openly what changes, if any, should be made to the Better Regulation framework, the questions essentially suggest that there needs to be a reduction in applicable requirements, whether or not consulted stakeholders consider this the most appropriate course of action.

The organisation of gathering feedback must also be open to different options, including the so-called “zero option”, i.e. to not proceed with the proposed project altogether. As reflected on p. 14 of the Better Regulation guidelines under the heading “effectiveness”, this influences the timing of the consultation, i.e. early enough that these options have not yet become legally or practically unfeasible. However, it also concerns the attitude of the organisation that gathers feedback, which needs to be open to receive and committed to take feedback into account. This commitment should be reflected in the Better Regulation guidelines as well, for instance by adding it under “openness and accountability” on p. 14, which now only refers to “transparency” and including “persons with disabilities.”

For stakeholder participation to be meaningful, participants must be able to submit their views freely, including on issues that are not pre-determined by the Commission, but are relevant in the opinion of the stakeholders. To achieve this, it is crucial to frame questions in a non-biased manner, thus allowing stakeholders to suggest whatever course of action they deem fit. This requirement could equally be

⁵⁵ Ibid, 4th guiding principle.

⁵⁶ Ibid, 5th guiding principle.

included in p. 14 or within the description on how to plan and conduct the consultation under section 5 of chapter II in the Better Regulation guidelines.

Summary of recommendations for question 2:

1. Maintain internet-based public consultations as the primary method of consulting the public and continue enabling citizens to contribute in any of the EU official languages;
2. Clearly explain in advance any new methods of evidence-gathering (such as the so-called “reality checks” or “dialogues”), including the principles of selection of participants, rules of engagement, process, the timeline and manner of receiving feedback, and expected outcomes;
3. Maintain adequate timeframes for all steps of the consultations, including preparation and submission of the opinion and feedback on how the consultations influenced the policy choices made.
4. Guarantee balanced and diverse representation for targeted consultations and other evidence-gathering method not opened to the public.
5. Frame questions in a non-biased manner and allow for submission of opinions on issues that are not pre-determined by the Commission.

3 What practical steps could be undertaken to make EU laws simpler and easier to implement in practice (for example as regards the legal instruments, the use of delegated and implementing acts, or the application of digital tools, etc.)?

ClientEarth is in favour of simple and easy to implement laws. Simplification of language or procedures that are unnecessarily complex or burdensome can be beneficial. However, the way the Commission is currently implementing its “simplification” agenda through Omnibus proposals risks making EU laws more complex, undermines legal uncertainty and investment predictability, removes essential safeguards protecting the human health of Europeans and Europe’s last bits of nature and favours the interests of powerful corporations and foreign governments over European businesses, in particular SMEs.

In its recent conclusions, the Environmental Council underlined that “simplification should not impede or lower the level of health, climate resilience and environmental protection, should follow the principles of better regulation and should ensure long-term legal stability and predictability for business and society.”⁵⁷ The current Commission practice does not align with this call.

In order to ensure the competitiveness of the European Union, ClientEarth recommends clear, stable legal requirements instead of a flurry of legal proposals that introduce complicated exceptions. Legal texts should not be re-opened prior to their implementation, thus undermining legal certainty and a predictable business environment. Moreover, different Directorate Generals (DGs) of the Commission should not be tasked with preparing legislative proposals on overlapping issues, as has been happening through the push for a simplification package from every DG. In sum, this would mean an immediate halt to the current practice of Omnibus proposals.

Simplification should instead focus on areas where there is indeed a double requirement. For instance, perceived ‘double work’ can be addressed by effective implementation of the ‘once-only’ principle – as set out by the Commission’s Communication on implementation and simplification.⁵⁸ In chemical policies for example, ideally, companies should report their data on chemical uses only once and this information can then be used to feed data requirements under EU legislation.

Moreover, to further the implementation of EU law, clear requirements should be introduced to facilitate automatic compliance. This prevents having to adjust and reconsider EU laws after they have proven to not be complied with in practice, as is frequent issue when the effectiveness of EU laws are evaluated. One example for this is to tie compliance with EU law directly to receiving EU Funding, as for example currently required under Article 11 of the EMFF Regulation.⁵⁹

⁵⁷ Europe’s Environment 2030 - Building a more climate resilient and circular Europe - Council conclusions, approved by the Council at its 4146th meeting held on 16 December 2025, 16856/25, para. 13.

⁵⁸ European Commission Communication on implementation and simplification, “A simpler and faster Europe”, p.10, available at: <
https://www.europarl.europa.eu/cmsdata/293146/item%2013_Simplification_Communication_en.pdf>.

⁵⁹ Regulation (EU) 2021/1139 of the European Parliament and of the Council of 7 July 2021 establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004, 13 July 2021, OJ

Summary of recommendations for question 3:

1. Halt the current practice of Omnibus proposals instead providing clear and stable legal requirements that ensure Europe's competitiveness, while protecting human health and nature;
2. Focus simplifications on areas where there are requirements that are truly duplicative, such as by implementing the "once-only" principle in the context of data reporting in the chemicals context;
3. Enhance the enforcement of EU legislation to prevent frequent re-assessments and amendments, for instance by introducing more requirements that tie

L 247/1. This provision will likely soon be taken over in the new Multi-Annual Financial Framework - see Article 3(4) Proposal for a Regulation of the European Parliament and Council establishing the conditions for the implementation of the Union support to the Common Fisheries Policy, to the European Ocean Pact and of the Union's maritime and aquaculture policy as part of the National and Regional Partnership Fund set out in Regulation (EU) [...] [NRP Fund] for the period from 2028 to 2034, COM/2025/559 final.

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