

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)

Made in accordance with Article 4(1) of the Statute of the European Ombudsman¹

The three cases concern how the European Commission applied its 'Better Regulation' rules and other procedural requirements when preparing legislative proposals concerning corporate sustainability due diligence (983/2025/MAS), countering migrant smuggling (2031/2024/VB) and the Common Agricultural Policy (1379/2024/MIK). The Commission considered these proposals to be urgent and, therefore, omitted steps foreseen in its rules, such as impact assessments and public consultations. The complainants, which are civil society organisations, considered these omissions to be in breach of the Commission's 'Better Regulation' rules. In two cases, the complainants also argued that the Commission failed to check the legislative proposals' consistency with the EU's climate goals, as required by the European Climate Law. In one case, the complainant was further concerned that the Commission breached its Rules of Procedure on inter-service consultations.

The Ombudsman opened inquiries into the three cases. She received the Commission's written reply in all three cases, inspected the relevant files of the Commission and her inquiry teams met with representatives of the Commission in the context of two inquiries.

The Commission replied that the 'Better Regulation' rules are not binding law but a set of policy-making tools for collecting relevant information that should be applied in a proportionate manner. It also argued that it had collected all relevant evidence before adopting the legislative proposals in question, consulted stakeholders and conducted the climate consistency assessments and the inter-service consultation in line with the applicable rules.

Based on her inquiries, the Ombudsman found a number of procedural shortcomings in how the Commission prepared the legislative proposals that, taken together, amount to maladministration.

In particular, the Ombudsman found that the Commission adopted a broad interpretation of 'urgency' and failed to sufficiently justify the 'urgency' of the legislative proposals towards the public and to document its derogations from the applicable Better Regulation rules. The Ombudsman also found that the Commission has not put in place a procedure that would ensure, as required by the Treaties and case law, a transparent, evidence-based and inclusive preparation of 'urgent' legislative proposals. The Ombudsman further found

¹ Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.253.01.0001.01.ENG&toc=OJ%3AL%3A2021%3A253%3ATOC

that, by not keeping proper records of mandatory consistency checks of its proposals with the EU's climate goals, the Commission failed to act in an accountable manner.

To address these shortcomings, the Ombudsman made two recommendations. The Ombudsman recommended that the Commission should ensure a predictable, consistent and non-arbitrary application of its Better Regulation rules, by defining 'urgent' situations that justify a derogation from the requirements set out in the rules. Furthermore, where derogations are granted, the Commission should establish a procedure to ensure that the urgent preparation of legislative proposals still complies with the principles of a transparent, evidence-based and inclusive law-making process. To assist the Commission in this task, the Ombudsman made four suggestions, which include clarifying its stakeholder consultation rules for urgent proposals and ensuring that the evidence supporting its proposals is published in good time to enable a public debate before legislation is adopted.

Background

1. The European Commission is "*a key player in the legislative process*".² It has in principle the exclusive right to initiate the EU legislative process by putting forward legislative proposals.³ The Commission's power of initiative includes the power to determine the subject matter, objective and content of a proposal.⁴
2. The Commission has broad discretion in the exercise of this power, as its action involves political, economic and social choices, as well as complex assessments and evaluations.⁵ It must, nonetheless, be able to show that it has considered all relevant factors, circumstances and evidence.⁶ The Commission is further bound by the principle of transparency⁷ and the Treaty-based obligation to take decisions "*as openly and as closely as possible to the citizen*".⁸ To this end, the Commission is required to carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.⁹
3. It is in this context that the Commission adopted its Better Regulation rules, which consist of 'Guidelines'¹⁰ and an associated 'Toolbox'¹¹. The Better Regulation rules aim to ensure that "*political decisions [are] prepared in an open and transparent manner, informed by the best available evidence, including via the comprehensive involvement of stakeholders*"¹². Key elements of Better Regulation are the wide consultation of all interested parties ('stakeholder consultations')¹³ and assessments of the environmental, social and economic

² Judgment of 4 September 2018, Case C-57/16 P, *ClientEarth v Commission*, paragraph 88.

³ Article 17(2) of the Treaty on European Union (TEU).

⁴ Judgment of 4 September 2018, Case C-57/16 P, *ClientEarth v Commission*, paragraph 87.

⁵ Judgment of 3 December 2019, Case C-482/17, *Czech Republic v Hungary*, paragraph 77.

⁶ Judgment of 3 December 2019, Case C-482/17, *Czech Republic v Hungary*, paragraph 81.

⁷ Articles 10(3) TEU and 15(1) of the Treaty on the Functioning of the European Union.

⁸ Articles 1 and 10(3) TEU.

⁹ Article 11(3) TEU.

¹⁰ European Commission, *Better Regulation Guidelines*, Staff Working Document SWD(2021) 305 final, available at: https://commission.europa.eu/document/download/d0bbd77f-bee5-4ee5-b5c4-6110c7605476_en?filename=swd2021_305_en.pdf.

¹¹ European Commission, *Better Regulation Toolbox*, July 2023, available at: https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20Jul%202023%20-%20FINAL.pdf.

¹² Better Regulation Guidelines, p. 5.

¹³ Better Regulation Guidelines, p. 9.

impacts of a range of policy options ('impact assessments')¹⁴ before legislative proposals are adopted or initiatives proposed. The Commission considers its Better Regulation rules to be *"one of the most advanced regulatory approaches in the world"*.¹⁵

4. The Better Regulation rules are the concrete expression of fundamental constitutional principles set out in the Treaties and the case law of the EU courts, principles that bind the Commission. The impact assessment and public consultation requirements are furthermore anchored in the Interinstitutional Agreement on Better Law-Making,¹⁶ which provides that *"the Commission will carry out impact assessments of its legislative initiatives [...] which are expected to have significant economic, environmental or social impacts. The initiatives included in the Commission Work Programme or in the joint declaration will, as a general rule, be accompanied by an impact assessment. In its own impact assessment process, the Commission will consult as widely as possible"*.

5. The Ombudsman received three complaints raising similar issues regarding how the Commission prepared several legislative proposals that it considered 'urgent'.

- **Case 983/2025/MAS ('the Omnibus case')** is about how the Commission prepared a legislative proposal to amend the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD),¹⁷ which is one of the proposals that forms part of the Commission's 'Omnibus I' simplification package.¹⁸ The stated aim of the proposal is to safeguard the competitiveness of the EU economy in the face of geopolitical challenges. The complaint concerns the amendment of the CSDDD only.

The Commission presented the legislative proposal, without an impact assessment, on 26 February 2025. The explanatory memorandum accompanying the proposal indicates that the Commission did not prepare an impact assessment due to *"the issue of competitiveness [being] of critical urgency as it directly influences the European Union's ability to achieve sustainable economic growth and maintain its position in the global market"*.¹⁹

The Council adopted its mandate (the 'general approach') for negotiations with the Parliament and the Commission on 23 June 2025. The European Parliament adopted its negotiating position on 13 November 2025.

- **Case 2031/2024/VB ('the migration case')** is about how the Commission prepared two legislative proposals to strengthen EU legislation on preventing and fighting migrant smuggling. The two legislative proposals are (i) a proposal for a Regulation on enhancing police cooperation in relation to the prevention, detection

¹⁴ Better Regulation Guidelines, p. 10.

¹⁵ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - 'Better regulation: Joining forces to make better laws', COM(2021) 219 final, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=COM:2021:219:FIN>.

¹⁶ According to Article 295 TFEU, interinstitutional agreements *"may be of a binding nature"*. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ 2016 L 123, p. 1, https://eur-lex.europa.eu/eli/agree_interinstit/2016/512/oj/eng.

¹⁷ COM(2025) 81 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52025PC0081>.

¹⁸ For further information, see: https://commission.europa.eu/publications/omnibus-i_en.

¹⁹ COM(2025) 81 final, p. 12.

and investigation of migrant smuggling and trafficking in human beings, and on enhancing the European Union Agency for Law Enforcement Cooperation's (Europol) support to preventing and combating such crimes and amending Regulation (EU) 2016/794²⁰ and (ii) a Directive laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA²¹. The stated aim of these proposals is to address ongoing challenges at the EU's external borders and implement the renewed EU action plan against migrant smuggling.

The Commission presented the two legislative proposals, without an impact assessment, on 28 November 2023. The explanatory memorandum accompanying the proposal for a Regulation indicates that the Commission did not prepare an impact assessment, as it had little or no choice available due to the urgent operational need to improve Europol's support to Member States on countering migrant smuggling. The explanatory memorandum accompanying the proposal for a Directive does not give any reason for the absence of an impact assessment.

The two legislative acts have not yet been adopted by the European Parliament and the Council.

- **Case 1379/2024/MIK ('the CAP case')** concerns how the Commission prepared a proposal to amend legislation related to the Common Agricultural Policy (CAP).²² The legislative proposal was adopted in response to protests by farmers in several EU Member States against, among other things, certain EU rules that farmers considered as imposing an excessive burden on them. The legislative proposal aimed at providing farmers with greater flexibility in complying with certain EU rules for the protection of the environment.

The Commission presented its legislative proposal, without an impact assessment, on 15 March 2024. The explanatory memorandum accompanying the proposal indicated that the Commission did not prepare an impact assessment due to the political urgency of tabling the proposal.

The legislative act was adopted on 13 May 2024.²³

6. The complainants²⁴ in all three cases were concerned that the Commission breached its Better Regulation rules by putting forward the relevant legislative proposals without

²⁰ COM(2023) 754 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023PC0754>.

²¹ COM(2023) 755 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52023PC0755>.

²² COM(2024) 139 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024PC0139>.

²³ Regulation 2024/1468 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2021/2115 and 2021/2116 as regards good agricultural and environmental condition standards, schemes for climate, environment and animal welfare, amendment of the CAP Strategic Plans, review of the CAP Strategic Plans and exemptions from controls and penalties, OJ L 2024/1468, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1468>.

²⁴ Complaint 983/2025/MAS was submitted by ClientEarth, Notre Affaire A Tous, Clean Clothes Campaign, European Coalition for Corporate Justice, Global Witness, Transport & Environment, Antislavery International, and Friends of the Earth Europe; complaint 2031/2024/VB was submitted by European Digital Rights (EDRi) and PICUM (Platform for International Cooperation on Undocumented Migrants) on behalf of the ProtectNotSurveil coalition; complaint 1379/2024/MIK was submitted by ClientEarth and BirdLife Europe and Central Asia.

conducting impact assessments, despite knowing that these proposals would have significant impacts. The complainants emphasised significant impacts of these proposals, such as on the environment, sustainability and the climate goals of the EU, as well as on human rights. The complainants were not convinced by the Commission's position that, in the specific circumstances of each of these cases, the Commission had been required to act in urgency and could therefore derogate from the impact assessment requirement.

7. The complainants in the Omnibus and CAP cases were also concerned that the Commission breached the European Climate Law²⁵ by failing to conduct and publish a climate consistency assessment of the legislative proposals²⁶.

8. The complainant in the Omnibus case was further concerned that the Commission breached its Rules of Procedure by conducting a shortened fast-track inter-service consultation on the legislative proposal at issue.

9. The complainants in all three cases wrote to the Commission about their concerns and, dissatisfied with the Commission's replies, they turned to the Ombudsman in July 2024 (CAP case), November 2024 (migration case) and April 2025 (Omnibus case) respectively.

The inquiry

10. The Ombudsman opened inquiries into the three complaints to examine whether the Commission had complied with its Better Regulation rules and other procedural requirements in preparing the legislative proposals at issue. In particular, the Ombudsman inquired into the following issues:

- how the Commission assessed whether the legislative proposals were 'urgent' and thus required a derogation from certain requirements in the Better Regulation rules;
- whether the Commission followed the applicable procedures to derogate from the requirements in its 'Better Regulation' rules and how related decisions were recorded;
- how the Commission ensured that, despite the derogation, the urgent preparation of the legislative proposals complied with the principles of a transparent, evidence-based and inclusive law-making process;
- whether the Commission conducted 'climate consistency assessments', in line with the European Climate Law, and how the results of such assessments were recorded (Omnibus and CAP cases); and,

²⁵ 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 L 243, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1119>.

²⁶ The European Climate Law introduced a requirement for the Commission to verify the consistency of both existing EU legislation and new legislative proposals with the climate policy objectives (Article 6(4)).

- how the Commission conducted its inter-service consultation on the legislative proposal in the Omnibus case.

An overview of the issues raised in the three complaints that the Ombudsman inquired into is included in Annex I.

11. During the inquiries, the Ombudsman asked to inspect the Commission's files, including the Commission's records of derogations from the Better Regulation rules, as well as documentation on climate consistency assessments, analytical documents and stakeholder consultations in relation to the legislative proposals at issue.

12. The Ombudsman received the written replies of the Commission in all three cases²⁷ and her inquiry teams held meetings with representatives of the Commission in the Omnibus and CAP cases.²⁸ Subsequently, the Ombudsman received the complainants' comments on the Commission's replies and meeting reports.

1. Compliance with Better Regulation rules

Arguments presented to the Ombudsman

By the complainants

13. In all three cases, the complainants argued that the Commission breached its Better Regulation rules by omitting certain procedural requirements.

14. In the Omnibus and CAP cases, the complainants argued that the public has a "*legitimate expectation*" that the Commission will be consistent in how it applies its internal rules on Better Regulation. Although the Better Regulation rules are not a binding act as such, they constitute "*a set of concrete rules and tools to implement the public's right to democratic participation in legislative processes*". In this regard, the complainants considered that the Better Regulation rules are an instrument to implement Articles 10 and 11 of the Treaty on European Union (TEU), according to which "*every citizen shall have the right to participate in the democratic life of the Union*"²⁹ and "*the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent*".³⁰

15. In the Omnibus and migration cases, the complainants argued that the legislative proposals at issue have significant impacts on the environment, sustainability and human rights, and that the Commission had several policy options to choose from. Normally, in

²⁷ <https://www.ombudsman.europa.eu/en/doc/correspondence/en/211281>,
<https://www.ombudsman.europa.eu/doc/correspondence/215919>,
<https://www.ombudsman.europa.eu/en/doc/correspondence/en/201482>.

²⁸ <https://www.ombudsman.europa.eu/en/doc/inspection-report/en/208118>,
<https://www.ombudsman.europa.eu/doc/inspection-report/215918>.

²⁹ Article 10(3) TEU.

³⁰ Article 11(3) TEU.

such cases, an impact assessment must be carried out before the Commission adopts its legislative proposal. In the cases at hand, beyond a reference to the urgency of the situation, the Commission did not explain why it had not been possible for it to conduct an impact assessment. In view of this, the complainants considered that the Commission had misused the scope for flexibility provided for in the Better Regulation rules.

16. More generally, the complainants are concerned about the risk of an arbitrary application of the Better Regulation rules by the Commission, aggravated by the lack of transparency of decisions to exempt legislative initiatives deemed 'urgent' from certain requirements set out in these rules.

17. The complainants further argued that, in the absence of impact assessments, the Commission did not explain how it took into consideration the best available evidence, including scientific data, during the preparation of the legislative proposals. In particular, the complainants questioned the logic of the Commission's reference to the results of the previous impact assessments on the relevant legislative proposals.

18. In the Omnibus case, for instance, the complainants argued that, if circumstances had changed so drastically that it was necessary to amend legislation that had not even entered into force, it was difficult to see how the Commission could rely on a previous impact assessment according to which a broad scope of application and solid obligations were deemed appropriate. If the Commission had identified a change of circumstances, this should have led the Commission to gather evidence and assess if and how these new circumstances affected its initial impact assessment.

19. In addition, the complainants were concerned that the Commission had, in the absence of an impact assessment, collected insufficient evidence regarding environmental and human rights impacts:

- As regards the proposal in the Omnibus case, the complainants considered that in the 'analytical document', which, according to the Better Regulation rules, substitutes for a full impact assessment, the Commission limited itself to describing the various demands business associations had presented for amending the CSDDD and explaining how it balanced these requests against the objectives of the CSDDD.
- As regards the proposals in the migration case, the complainants argued that the data underpinning the Commission's proposals was out of date and selective.
- As regards the proposal in the CAP case, the complainants claimed that certain studies referenced in the analytical document were still in preparation, while the document also contained unsubstantiated statements and focused on information about administrative burdens for farmers.

20. As regards the CAP and migration cases, the complainants pointed to the fact that the Commission had not published the analytical document within the three-month time line set out in the Better Regulation rules. This document is meant to substitute for the impact assessment and to summarise the evidence base of the proposal. In the CAP case, the Commission published the analytical document more than nine months after it had

adopted the proposal and seven months after the adoption of the legislation by the co-legislators. Thus, in the complainant's view, this document could not have informed the public debate and/or assisted the co-legislators in taking an informed decision.

21. Finally, the complainants in the Omnibus and CAP cases argued that the Commission breached its Better Regulation rules by not conducting public consultations on such important policy initiatives.

- In the Omnibus case, the complainant argued that the 2023 call for evidence and the 2024 hybrid events, cited by the Commission in its explanatory memorandum, covered only the CSDR and not the CSDDD. It further argued that spontaneous stakeholder submissions cannot replace a formal public consultation as they are made without knowledge of the preparation process of the proposal or of its content. The complainant also contended that the 'reality check' of February 2025 was not only conducted without the stakeholders' knowledge of the content of the proposal, but that it was also unclear how participants were selected and whether all stakeholders could voice their opinion during these meetings. Furthermore, the Commission invited very few civil society representatives, compared to business representatives.
- In the CAP case, the complainants argued that the Commission's *ad hoc* consultations could not be deemed to constitute 'targeted consultations' because the Commission had neither mapped the relevant stakeholders, nor did it seek "*a whole spectrum of views to avoid bias or skewed conclusions*". Instead, it consulted representatives of the agricultural sector only.

22. Moreover, in both the Omnibus and CAP cases, the complainants argued that the right to participate in EU decision-making processes concerning environmental matters is protected by EU law (Articles 10 and 11 TEU, and Articles 6 to 8 of the Aarhus Convention³¹).

By the Commission

23. The Commission argued that the Better Regulation rules do not lay down binding legal rules that would constrain the Commission's discretion, nor do they constitute binding legal commitments towards the public, as explicitly stated therein.³² Instead, Better Regulation is a set of instruments that the Commission's departments should apply in a proportionate manner to make sure that the Commission has relevant and timely information on which it can base its proposals.

24. The Commission pointed out that the Better Regulation rules expressly provide for the possibility to apply exemptions from specific requirements, for instance, in urgent cases.

25. In the context of the Ombudsman's inquiries, the Commission presented various reasons for why it considered the specific legislative proposals at issue 'urgent'. Some of

³¹ UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), 25 June 1998, Articles 6 to 8, available at: <https://unece.org/DAM/env/pp/documents/cep43e.pdf>.

³² Better Regulation Guidelines, p. 3.

these reasons had already been mentioned in the explanatory memoranda accompanying the legislative proposals.

- In the Omnibus case, the Commission referred to the deteriorating economic climate with reference to the 'Draghi report'.³³ In the Commission's view, there was an urgent need to strengthen the competitiveness of EU economic actors and reduce regulatory burden. The Commission emphasised that demanding reporting obligations imposed by the CSRD and CSDDD were supposed to become applicable soon, whereas the Commission wished to give companies and Member States more time and guidance to prepare for them. The Commission had to put forward the proposals urgently to both postpone the application of the relevant requirements and simplify them at the same time. Otherwise, the amendment process would have been longer and more complicated, resulting in more uncertainty for companies.
- In the migration case, the Commission said that no impact assessment was carried out as the Commission had little or no policy choice, notably due to the urgent operational needs to improve Europol's support to the Member States on countering migrant smuggling. The Commission added that the explicit political commitments demonstrated the urgency, which was further confirmed by the political support during the preparation of the proposal. It referred to its President having declared the need and intention to act in the field.³⁴ The Commission also referred to an upward trend in migration in 2023 and to information from EU agencies about rapidly developing smuggling activities. The Commission pointed out that the European Council and the Council had acknowledged the importance of countering migrant smuggling.
- In the CAP case, the Commission said that the basic act concerning CAP, which the proposal was supposed to modify, had been adopted before the COVID-19 pandemic and the Russian invasion of Ukraine. The Commission realised that the requirements imposed in that basic act were too burdensome for farmers to meet in practice. Faced with the protests of farmers in 2024, the Commission considered it extremely urgent to amend the basic act, meaning that there was no time for an impact assessment or a public consultation. The situation was exceptional due to the vast extent of the farmer protests throughout Member States, which had partly turned violent. There was a risk that the protests would get out of hand. The Commission said that its assessment was confirmed by the fact that the co-legislators adopted the Commission's proposal within two months and, moreover, without any substantial changes.

26. As regards possible exemptions from the requirements in the Better Regulation rules, the Commission explained that the decision to grant derogations is always taken by the

³³ The Draghi report: A competitiveness strategy for Europe (Part A), September 2024, available at: https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.

³⁴ The Commission referred to the 2023 'State of the Union' speech, a letter to the European Parliament expressing the intention to prioritise work on this topic, the Commission Work Programme for 2024; a call to action built on the conclusion of a Ministerial Conference in September 2023 and the decision to convene a Conference on a Global Alliance to Counter Migrant Smuggling in November 2023, where the President presented the proposal.

member of the Commission responsible for Better Regulation, which is currently the Commissioner for Implementation and Simplification.

27. Although the Better Regulation rules formally mention two procedures - one applicable *before* and another one *after* the political validation of the initiative³⁵ - both procedures foresee the involvement of the said Commissioner. Thus, the relevant decision always lies with the Commissioner, as a representative of the Commission's political level. In exceptionally urgent cases in which there is no prior planning of the initiative, the Secretariat-General and/or the President's Cabinet are involved in the validation of the first procedural step leading to the adoption of the initiative, such as the launch of the inter-service consultation.³⁶ This may also involve the decision to exempt the initiative from certain requirements in the Better Regulation rules.

28. The Commission further clarified that the Better Regulation rules are designed in such a way that the Commission's administrative departments (Directorates-General) request political validations of their plans, including possible exemptions from the Better Regulation requirements, from the responsible member of the Commission. The objective of this system is to make sure that the Commission's administrative departments invest their resources in preparing only those initiatives and in a form that the Commission's political level supports.

29. The Commission added that, when exemptions are requested at the planning stage of the proposal, they are recorded in the Commission's internal 'Decide' system, whereas there is no standard format to record exemptions granted when there is no planning of the initiative due to urgency.

30. As regards the four specific legislative proposals at issue, the Commission explained the following:

- As regards the initiative at issue in the Omnibus case, the Deputy Secretary-General for Policy Coordination, in consultation with the Cabinet of the Commissioner for Implementation and Simplification, had informed the Cabinet of the Commissioner responsible for the initiative, via email, that a 'Staff Working Document' should be prepared. That meant that an analytical document, rather than a full impact assessment, was requested. The Commission said that no 'Decide' entry was prepared due to the political urgency.
- As regards the initiatives at issue in the migration case, the Commission said that there was "*no planning of the initiatives*" due to the urgency and, thus, the responsible Directorate-General made no formal request for a derogation.

³⁵ There are two procedures for granting derogations, that is, before and after the political validation of the initiative to draft a legislative proposal. It is the Vice-President of the Commission responsible for Better Regulation, who can grant derogations before the political validation. In such a case, the derogation is recorded in the Commission's internal 'Decide' system. After the political validation, it is the Director within the Commission's Secretariat-General responsible for 'Better Regulation', in consultation with the Cabinet of the said Vice-President, who can grant derogations.

³⁶ European Commission, Communication from the President to the Commission, The Working Methods of the European Commission, Brussels, 1.12.2019, P(2019) 2, p. 9, available at: https://commissioners.ec.europa.eu/document/download/0dbda7ed-b7fb-4d7e-9e62-6c8b0f54be62_en?filename=working-methods.pdf.

- As regards the initiative at issue in the CAP case, *“the Commission’s Secretariat-General was consulted in the preparator phase of this initiative and granted authorisation to launch a fast-track interservice consultation of the legislative proposal on 5 March 2024. This confirmed the political validation of the initiative.”* This authorisation was an implicit validation of the fact that the initiative would be prepared without an impact assessment and a public consultation. It was evident internally that the Commission’s political leadership had validated the initiative in question as it was the leadership itself that requested the responsible Directorate-General to prepare the initiative in the first place and to present it urgently without preparing an impact assessment and conducting a public consultation. The Commission further clarified that as there had been *“no planning of the initiative”* it had not formally recorded any derogations from the requirements in the Better Regulation rules.

31. The Commission emphasised that all initiatives had been politically validated and prepared in line with the instructions of the Commission’s political level.

32. The Commission considered the evidence-base of all initiatives subject to the three inquiries sufficient, despite the absence of an impact assessment. In the context of the inquiry in the Omnibus case, the Commission provided some additional information regarding how the initial impact assessments underpinning the CSRD and CSDDD informed the Commission’s work on the proposal for the amendment of this legislation. In particular, the Commission referred to cost calculations and the impact assessments that had been prepared to accompany the *initial* legislative acts and to certain updated figures.

33. Regarding the foreseen timeline for the publication of the analytical documents, the Commission explained that,

- in the context of the inquiry in the CAP case, at the time of adopting the Better Regulation rules, the publication deadline of three months appeared reasonable and feasible, and still does to date in almost all cases. However, the CAP case was exceptional due to urgency and due to the fact that the analytical document also covered other initiatives.
- regarding the migration case and the fact that it did not publish the analytical document within the three-month deadline, the Commission said that it had to include information addressing queries from Member States, and to reflect the results of discussions that took place between January and March 2024.³⁷

34. Finally, the Commission argued that, under the Better Regulation rules, it is not mandatory to conduct a public consultation if there is no impact assessment.

- In the Omnibus case, the Commission said that the public consultation was substituted by a series of events and other forms of collecting information from stakeholders, which the Commission listed.
- In the CAP case, the Commission stated that its objective was to get input from farmers on where the burden originates from, help them tackle it and identify

³⁷ The Commission published the analytical document for the two proposals four and a half and five and a half months after the adoption of the legislative proposals.

areas for improvement. It was considered that the main farming organisations could provide the most hands-on information, allowing the Commission to develop the practical solutions put forward in the legislative proposal. It was considered that consulting other stakeholders would not be meaningful at this early stage, because the Commission wanted to discuss with the stakeholders “*directly concerned*”. It was therefore a conscious decision not to consult other stakeholders at the same time as the four main farming organisations. Moreover, the Commission said that it was generally aware of the position of environmental organisations on the matter. Sufficient information had also been gathered from feedback received from Member States, the Committee on Agriculture and Rural Development of the European Parliament and within the scope of the prior impact assessment of 2018 and a prior public consultation.

The Ombudsman's assessment

Preliminary remarks on the nature of the Better Regulation rules

35. The Commission has committed itself to the Better Regulation rules to ensure a transparent, evidence-based and inclusive policy and law-making process, as required by the Treaties and the case law of the EU courts. The Ombudsman has consistently held that EU institutions and bodies should apply the rules they have established for themselves.³⁸ This ensures consistency, transparency and avoids any sense of arbitrariness in the way the EU administration works.³⁹ The Better Regulation rules are referred to in the Interinstitutional Agreement on Better Law-Making.⁴⁰

36. The Court of Justice has held that internal measures adopted by an EU administrative authority, although they may not be regarded as ‘rules of law’ which the administration is always bound to observe, nevertheless form rules of practice from which the administration may not depart in a given case without giving reasons that are compatible with the principle of equal treatment. More particularly, the EU Courts have held that, in adopting such rules of conduct and announcing, by publishing them, that they will apply these rules to the cases to which they relate, the administrative authority in question imposes a limit on the exercise of its discretion and cannot thus depart from those rules “*under pain of being found, where appropriate, to be in breach of the general principles of law, such as equal treatment or the protection of legitimate expectations*”.⁴¹ In essence, such internal measures determine, generally and abstractly, the procedures and methodology which the Commission has bound itself to use.

³⁸ Decision in case 1474/2018/TE on alleged shortcomings and biases in the European Commission’s preparation of its policy and legislative proposal on the reduction of single-use plastic products, paras. 28-30, available at: <https://www.ombudsman.europa.eu/en/decision/en/111569>.

³⁹ Decision in case 1474/2018/TE, *ibid*, para. 29.

⁴⁰ See footnote 16.

⁴¹ Judgment of 28 June 2005, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri A/S v Commission*, paras. 209-211, available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=59846&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11937880>.

37. As far as the observance by the Commission of its own Better Regulation rules is concerned, the above considerations are particularly important when the Commission prepares legislative proposals. As noted above, the Commission is “*a key player in the legislative process*”,⁴² given that it has, in principle, the exclusive competence to initiate the EU legislative process by putting forward legislative proposals.⁴³

38. In order to scrutinise and attempt to influence the preparatory steps of the legislative process, stakeholders rely on and plan their activities in accordance with the Commission’s Better Regulation rules. Interested parties, economic operators, civil society organisations, and stakeholders more generally expect to obtain access to information about the Commission’s initiatives, to present their views on these initiatives during targeted and public consultations and, subsequently, to obtain access to the Commission’s impact assessments and present their views on these assessments as early as possible, even before the legislative procedure is formally launched with the presentation of the legislative proposal to the European Parliament and the Council. This is evidenced by cases brought to the EU courts about public access to the Commission’s draft impact assessments⁴⁴ and related complaints to the Ombudsman.⁴⁵

39. It follows from the case law quoted above that the adoption of rules by the Commission, such as the Better Regulation rules, generates legitimate expectations from the public that the Commission will comply with such rules. It is also good administrative practice.

40. The fact that the Better Regulation rules expressly state that they do not lay down binding legal rules does not change the fact that, by adopting these rules, the Commission has imposed a limit on the exercise of its discretion.⁴⁶ If the Commission departs from the Better Regulation rules without, for instance, giving sufficient reasons for departing from its requirements, then it risks breaching the public’s legitimate expectations and, by the same token, the principles of good administration.

41. In any case, by departing from the rules and principles underlying Better Regulation, the process leading to the adoption of a legislative proposal risks being no longer transparent, evidence-based and inclusive, which is one of the stated objectives of the Better Regulation rules.⁴⁷

42. It is against this background that the Ombudsman assessed the Commission’s compliance with its Better Regulation rules in the three complaints at issue.

⁴² Judgment of 4 September 2018, Case C-57/16 P, *ClientEarth v Commission*, para. 88.

⁴³ Article 17(2) TEU.

⁴⁴ Judgment of 4 September 2018, Case C-57/16 P, *ClientEarth v Commission*, para. 92.

⁴⁵ See for instance, case 1053/2023/MIK on the failure by the European Commission to take a final decision within the applicable time limit on two requests for public access to the impact assessments and opinions of the Regulatory Scrutiny Board regarding the envisaged revision of REACH and the Mercury Regulation, available at: <https://www.ombudsman.europa.eu/en/decision/en/183548>.

⁴⁶ Judgment of 28 June 2005, Joined Cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, *Dansk Rørindustri A/S v Commission*, paras. 209-211, available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=59846&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11937880>.

⁴⁷ Better Regulation Guidelines, p. 3.

The notion of ‘urgency’

43. There is no doubt that the Commission has over recent years faced some unprecedented situations, such as the COVID-19 pandemic, the migration crisis, the energy crisis that followed the invasion of Ukraine by Russia and the ensuing humanitarian, financial and military challenges in providing urgent assistance to Ukraine, all within an unstable geopolitical context, that required it to react ‘urgently’. Procedures must be in place that allow the Commission to decide quickly, including on the adoption of legislative proposals.

44. With this in mind, the questions that arise in the three Ombudsman inquiries are (a) what circumstances justified the recourse to an urgency procedure, (b) who decided on the recourse to an urgency procedure and (c) how the Commission ensured that the urgent preparation of the legislative proposals still complied with the principles of a transparent, evidence-based and inclusive law-making process.

a. What circumstances justified the recourse to an urgency procedure

45. It is undisputed that the initiatives subject to the Ombudsman’s three inquiries would have *normally* required the performance of an impact assessment.

46. ‘Impact assessments’, that is, evidence-based analytical exercises that “*look at the problems to be tackled, the objectives to be achieved, the trade-offs to consider, options for action and their potential impacts*”,⁴⁸ are required where a legislative proposal is likely to have significant economic, social and environmental impacts and where the Commission has different policy options to choose from.⁴⁹ Initiatives that require an impact assessment also require a public consultation.⁵⁰

47. That said, the Better Regulation rules provide for the possibility to derogate from their requirements “*for good reasons*”, such as “*political urgency, the need to respect confidentiality and security concerns*”.⁵¹ The notion of ‘political urgency’ is not however defined in the said rules.

48. In all three inquiries, the Commission derogated from the requirement to carry out an impact assessment for its initiatives, referring to the ‘urgency’ of the situation.

49. In the context of the Ombudsman’s inquiries, the Commission presented a broad interpretation of ‘urgency’ and its discretion to derogate from the Better Regulation rules, also in view of its understanding, as outlined above, that these are internal rules which do not bind the Commission. The Commission thus considered the initiatives subject to the Ombudsman’s inquiries as ‘urgent’ on very different grounds, such as in view of evolving political priorities of the Commission’s leadership in response to current challenges

⁴⁸ Better Regulation Guidelines, p. 3.

⁴⁹ Better Regulation Guidelines, p. 30.

⁵⁰ Better Regulation Guidelines, p. 18.

⁵¹ Better Regulation Toolbox, p. 10.

(Omnibus case), shifting geopolitical trends and challenges (migration case) and growing and intense social protests against certain EU policies (CAP case).

50. The Commission must surely retain a margin of discretion in defining the circumstances which it considers to be 'urgent'. However, the broad interpretation of 'political urgency' used by the Commission in these three cases risks rendering the application of the requirements of the Better Regulation rules challenging for the public to understand and to predict. Following the Commission's broad interpretation, any situation could in principle be considered 'urgent' if decided so by the political leadership of the Commission.

51. In that regard, the Ombudsman further notes that the explanations provided by the Commission in the explanatory memoranda as to why the situation in each of these three cases was 'urgent' were either brief or absent. In the migration case in particular, the Commission indicated, in relation to the proposal for a Regulation, that it had little or no choice available due to the urgent operational needs to improve Europol's support to Member States on countering migrant smuggling. However, the Commission did not explain, in the relevant section of the memorandum, how the claimed urgency would limit the policy options available to it. Regarding the proposal for a Directive, the Ombudsman notes with concern that, in the relevant section of the explanatory memorandum, the Commission merely indicated that it would exceptionally not carry out an impact assessment without providing any explanation.

52. Moreover, although the legislative proposal in the Omnibus case refers in its recitals to the issue of competitiveness being of "*critical urgency*", as it directly influences the European Union's ability to achieve sustainable economic growth and maintain its position in the global market, the Commission's webpage dedicated to the simplification process and the Better Regulation rules clearly presents the simplification objective as a (political) "*priority*". Likewise, both analytical documents accompanying the Omnibus I package refer to the Commission simplifying the existing relevant Directives as a "*priority*". For the Ombudsman, the notions of urgency, on the one hand, and priority, on the other, are not synonymous.

53. It is not clear whether the Commission, when preparing the proposal at issue in the Omnibus case, derogated from some of the Better Regulation rules because of 'urgency' or because of a 'priority' underpinning the Commission's work programmes⁵². The whole webpage of the Commission dedicated to the many legislative efforts undertaken and ongoing (13 legislative packages in total) for a "*simpler regulation*" and reduced regulatory burdens to achieve a "*more competitive and attractive Europe*" appears more as a reflection of the Commission's priorities than of an objective urgency.

54. The lack of a definition of 'urgency' in the Better Regulation rules, which allows the Commission to derogate from requirements that it has imposed on its own law-making activities, undermines predictability, consistency and legal certainty and thus cannot be good administration. Furthermore, the explanatory memoranda in the three cases did

⁵² https://commission.europa.eu/law/law-making-process/better-regulation/simplification-and-implementation/simplification_en.

not provide sufficient justifications for the ‘urgency’ of the legislative proposals in question, which cannot be good administration either.

55. For the Ombudsman, the Commission should ensure a more predictable, consistent and non-arbitrary application of the Better Regulation rules, by

- defining the notion of ‘urgency’ in the context of Better Regulation; and
- clearly explaining in the explanatory memorandum accompanying its legislative proposals why a derogation was needed.

b. Who decided on the recourse to an urgency procedure and how

56. The Better Regulation Toolbox sets out a procedure for granting derogations,⁵³ which foresees that:

“– When a politically sensitive and important initiative is first presented for political validation, the need for flexibility or an exception should already be described (and justification provided) in the relevant fields of the Decide IT platform. The main exceptions concern: a deviation from the ‘evaluate first’ principle, not conducting an impact assessment, not conducting a public consultation (when procedurally required). The agreement of the Vice-President responsible for ‘better regulation’ will then explicitly cover the intended exception.

– If an exception is required after validation, DGs must seek approval from the Director responsible for ‘better regulation’ in the Secretariat-General in consultation with the Cabinet of the Vice-President responsible for ‘better regulation’.

DGs must request approval by sending a message to the following functional mailbox and should describe (1) what is being requested; (2) why it is needed: [...]”

57. In all three inquiries, the Ombudsman inspected the documentation relating to the internal decisions to exempt the initiatives at issue from the requirements of the Better Regulation rules.

- In the Omnibus case, the Commission provided the Ombudsman with an e-mail from the then Deputy Secretary-General, who informed the responsible Directorates-General that a ‘Staff Working Document’ should be prepared, which the Commission’s administration interpreted to mean an ‘analytical document’ substituting for an impact assessment. No reason for the decision was given.
- In the CAP and migration cases, the Commission did not provide the Ombudsman with any written record of a decision. Instead, the Commission provided the Ombudsman with documentation related to the adoption of the proposals and to the launch of the relevant inter-service consultations, arguing that the fact that

⁵³ Better Regulation Toolbox, p. 10.

such steps received political validation proves that there was political support for the decision to derogate from the requirements of the Better Regulation rules.

58. The Ombudsman could thus not establish whether the procedure, as set out in the Better Regulation rules, was followed.

59. The Ombudsman is concerned about this lack of proper records relating to the procedure and subsequent decisions to exempt the initiatives in question from the requirements of the Better Regulation rules. Such informal working arrangements relating to important steps in the preparation of a legislative proposal by the Commission, such as validating a derogation from an impact assessment (and public consultation), can quickly become detrimental to transparency and accountability⁵⁴ and cannot provide sufficient assurances to the public that the Commission applied the Better Regulation rules in a consistent, non-arbitrary and predictable way. **The absence of such formal records cannot be good administration.**

60. The Commission should therefore 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.

c. How the Commission ensured that the urgency procedure complied with the principles of a transparent, evidence-based and inclusive law-making process

61. According to the Better Regulation rules, where an **impact assessment** is required but an exemption is granted, an 'analytical document' presenting the evidence behind the proposal and cost estimates should be prepared within *three* months of the initiative's adoption by the Commission.⁵⁵ The Ombudsman understands that analytical documents are meant to ensure, in the absence of an impact assessment, that legislative proposals are presented with a minimum level of transparency, informing the co-legislators and the public of the evidence on which the proposals are based.

62. The Commission prepared such analytical documents in relation to all legislative proposals subject to the Ombudsman's inquiries.

63. The Ombudsman understands that the complainants were concerned that the analytical documents published by the Commission do not provide a comprehensive analysis of the impacts on the environment, sustainability, and human rights.

64. It is not for the Ombudsman to assess the evidence underpinning the legislative proposals, including the substance of analytical documents prepared by the Commission and accompanying these proposals. It is primarily the role of the co-legislators to decide whether they have received sufficient evidence from the Commission to make an informed decision about the legislative proposals in front of them. The Ombudsman observes, however, that, in the Omnibus and in the CAP cases, the Commission relied on

⁵⁴ See Article 24 of the European Code of Good Administrative Behaviour, available at: <https://www.ombudsman.europa.eu/en/publication/en/3510>.

⁵⁵ Better Regulation Guidelines, p. 30.

information from impact assessments completed in the context of previous initiatives and years before the legislative proposals were adopted. In the CAP case, the Commission also referred to certain studies that were still ongoing and, in any case, most of the studies relied on concerned the administrative burden on farmers rather than, for instance, impacts on the environment. This may raise legitimate doubts regarding the comprehensiveness of the evidence underlying the Commission's analysis. In such cases, it is particularly important that the Commission explains to the public whether and how the results of previous impact assessments remain valid or have been updated, and how it ensured that all relevant evidence was considered. The Ombudsman notes, in this regard, that **the Better Regulation rules do not describe in any particular way what information analytical documents should contain and in which form.**

65. The complainants in the CAP and migration cases were also concerned about the timing of the publication of the analytical documents.

- In the CAP case, the analytical document was published more than *nine months* after the Commission's adoption of the proposal, and *seven months* after the co-legislators had already adopted the legislation in question.
- In the migration case, the analytical documents were published *four and a half* and *five and a half* months after the Commission's adoption of the proposals, but before the adoption of the legislation in question.

66. If the rationale for publishing analytical documents is to ensure that, in the absence of an impact assessment, legislative proposals are presented with a minimum level of transparency, thus informing the co-legislators and the public of the evidence on which the proposals are based, it is crucial for the Commission to publish such documents in a timely manner. It is difficult for the Ombudsman to see what role analytical documents could play if they are published months after the legislative proposal and even the legislation has been adopted.

67. Publishing analytical documents beyond the three-month deadline set out in the Better Regulation rules, or even after the legislation's adoption, cannot be good administration. To avoid such situations from occurring in the future, the Ombudsman makes a suggestion for improvement below.

68. As regards **public consultations**, the Better Regulation rules⁵⁶ set out that internet-based public consultations with a minimum of twelve weeks are mandatory for initiatives with impact assessments. The Toolbox explains that "*[a] public consultation is not always necessary for political and/or sensitive initiatives not accompanied by an impact assessment. In these cases, it is at the discretion of a [Directorate-General] whether a public consultation is needed. For such initiatives, the 'call for evidence' can be complemented with targeted or specialised consultations of specific stakeholder groups, experts or EU decentralised agencies and other EU bodies, which can be more relevant to gather specific technical input.*"⁵⁷

69. During the inquiries into the Omnibus and CAP cases, the Commission confirmed that, given that derogations from the impact assessment requirement had been granted, the

⁵⁶ Better Regulation Guidelines, p. 16.

⁵⁷ Better Regulation Toolbox, p. 463.

Commission was not required to conduct a fully-fledged public consultation. A separate derogation was therefore not required. Instead, the Commission explained that it consulted stakeholders in the following manner:

- As regards the initiatives at issue in the Omnibus case, the Commission said that it relied on various activities and sources, such as a ‘call for evidence’ on the rationalisation of reporting requirements conducted between October and December 2023, hybrid events with stakeholders in November 2024, spontaneous stakeholder submissions, and a two-day ‘reality check’ and workshop at political level with selected stakeholders in February 2025.
- As regards the initiative at issue in the CAP case, the Commission’s public consultation was substituted by an *ad hoc* consultation of the four main farming organisations.

70. In the Ombudsman’s view, it is questionable whether the Commission conducted its ‘urgent’ decision-making in these cases “*as openly as possible*”, as required by the Treaties.⁵⁸

71. As regards the Omnibus case, the Commission was not able to explain how it selected stakeholders for the February 2025 events and ensured a balanced representation. In addition, by actively selecting stakeholders to participate in these meetings, the Commission might have excluded other potentially interested stakeholders from participating, especially considering that, according to the documents shared with the Ombudsman, most invited stakeholders were industry representatives.

72. The other stakeholder activities mentioned by the Commission in the Omnibus case included a call for evidence from October to December 2023, hybrid events in May and November 2024, and the various stakeholders’ position papers, letters and bilateral meetings. However, these activities did not specifically relate to the legislative proposals in question but referred to simplification and reporting obligations in more general terms. Even though many stakeholders referred to sustainability reporting requirements in their contributions, others may have been unaware of the scope of the consultation and may have been unable to raise their specific concerns.

73. 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.

74. The Commission’s failure to seek a broad, more balanced consultation of stakeholders on the legislative proposals at issue in the Omnibus and CAP cases cannot be good administration.

⁵⁸ Articles 1 and 10(3) TEU.

75. In view of the above, the Ombudsman considers that the urgent preparation of the legislative proposals at issue in the Ombudsman's inquiries did not fully comply with the principles of a transparent, evidence-based and inclusive law-making process.

76. The inquiries also revealed certain shortcomings in the Better Regulation rules as such. Under these rules, an impact assessment and a public consultation are either performed or a derogation is granted.

77. Where derogations are granted, the Commission should establish a procedure that ensures that the urgent preparation of legislative proposals does not weaken the essence of a transparent, evidence-based and inclusive law-making process. The Ombudsman notes that the Commission is planning a simplification of its Better Regulation framework in the first half of 2026.⁵⁹ She invites the Commission to take on board her findings in this inquiry in that context, including the following:

78. First, the Commission should ensure that the analytical document,⁶⁰ which replaces the impact assessment in case of 'urgency', informs the co-legislators and the public of the evidence on which the legislative proposals are based in a timely manner and as soon as the legislative proposal is adopted, reflecting thus the urgency of the matter. The Better Regulation rules should also lay down minimum substantive requirements that analytical documents should fulfil.

79. Second, the Commission should clarify that stakeholder consultations, conducted where a derogation from the impact assessment requirement has been granted, still need to comply with the general principles and minimum standards applicable to all public consultations.⁶¹ The Better Regulation rules should therefore provide guidance on how stakeholder consultations are to be performed under 'urgency'.

2. Compliance with the European Climate Law

Arguments presented to the Ombudsman

80. The complainants in the Omnibus and CAP cases argued that the Commission failed to conduct 'climate consistency assessments' of the relevant legislative proposals, as required by Article 6(4) of European Climate Law. For the complainants, 'climate consistency assessments' are mandatory for all policy initiatives by the Commission, even where the Commission derogates from the impact assessment requirement. The

⁵⁹ According to the European Commission's Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Commission work programme 2026*, COM(2025) 870 final, 21 October 2025, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025DC0870>.

⁶⁰ The Better Regulation Guidelines, p. 30, say the following: "Where an impact assessment is required in principle, but this is not possible and a derogation is granted, 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."

⁶¹ Better Regulation Guidelines, pp. 14/15.

complainants were concerned that, in practice, the Commission conducts climate consistency assessments only for initiatives that are accompanied by an impact assessment.

81. The Commission acknowledged that all impact assessments should include a climate consistency assessment. In the context of the inquiry into the Omnibus case, the Commission clarified that, while there is no specific format to record the climate consistency assessment in the absence of an impact assessment, it is still carried out. Specifically,

- as regards the Omnibus case, the Commission said that it had conducted a climate consistency assessment and referred in this regard to several sections in the explanatory memorandum of its legislative proposal, as well as to an e-mail, which it provided to the Ombudsman inquiry team for inspection. The Commission specified that it had calculated how many companies would be affected by the legislative proposal at different reporting thresholds. This calculation was not specifically labelled as a ‘climate consistency assessment’.
- as regards the CAP case, the Commission said that a climate consistency assessment had been performed and the analytical document addresses climate and environmental impacts. However, the Commission provided no record of a climate consistency assessment being carried out before the publication of the analytical document, which occurred more than nine months after the adoption of the legislative proposal. The Commission said that its assessment had concluded that the legislative proposal had minimal consequences for emissions into the atmosphere, which was later explained in the analytical document⁶², and which meant that the proposal would have no significant impact on the EU’s climate goals.

The Ombudsman's assessment

82. The European Climate Law sets a legally binding target of net zero greenhouse gas emissions by 2050. EU institutions and Member States are bound to take the necessary measures at the EU and national level to meet the target, considering the importance of promoting fairness and solidarity among Member States.

83. Article 6(4) of the European Climate Law stipulates that the Commission must conduct a ‘climate consistency assessment’ before the adoption of *“any draft measure or legislative proposal”*. It is clear that this legal obligation is independent of whether or not the Commission is conducting an impact assessment of the legislative proposal.

84. Moreover, it follows from Article 6(4) of European Climate Law that the Commission must include the ‘climate consistency assessment’ in any impact assessment accompanying these measures or proposals, *“and make the result of that assessment publicly available at the time of adoption”*. The provision does not specify where the climate consistency assessment should be included in the absence of an impact assessment. However, the result of that assessment must, in any case, be publicly available at the time of the proposal’s adoption.

⁶² The Commission referred to p. 31 of the analytical document, which is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024SC0360>.

85. In the Omnibus case, the Commission stated in the explanatory memorandum and in the analytical document that there are no negative climate effects from the legislative proposals, without however any further explanation. The Ombudsman asked the Commission to inspect any internal documentation on the climate consistency assessment, but did not receive any clear record. Insofar as the Commission referred to the general calculation of companies affected by the changed reporting obligations in different scenarios in the explanatory memorandum and the analytical document, there is no indication that this calculation was performed as part of a climate consistency assessment. This makes it difficult for the Ombudsman to ascertain that the documents in question contain sufficient evidence of a climate consistency assessment being *effectively* carried out.

86. In the CAP case, the Commission referred to brief or general statements in its explanatory memorandum and analytical document to demonstrate that it had conducted a climate consistency assessment. The Commission did not provide the Ombudsman with any internal record of a climate consistency assessment being *effectively* carried out before the adoption of the legislative proposal.

87. The Ombudsman is concerned by the absence of clear internal records of a climate consistency assessment being effectively carried out before the adoption of the legislative proposals at issue in the Omnibus and CAP cases. The Ombudsman also finds that the Commission did not publish, in a clear manner, the results of any climate consistency assessment when adopting the relevant legislative proposals, as foreseen in Article 6(4) of European Climate Law. This cannot be good administration.

88. The Commission should issue guidance, for example in its Better Regulation rules, on how Article 6(4) of the European Climate Law should be implemented for legislative proposals that are not accompanied by an impact assessment. In particular, the Commission should 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.

3. Compliance with the Commission's Rules of Procedure on inter-service consultations

Arguments presented to the Ombudsman

89. The complainants in the Omnibus case noted that the inter-service consultation on the draft legislative proposal was concluded within 24 hours, starting on a Friday evening, with the deadline ending on Saturday evening. The complainants were concerned that

such a short inter-service consultation might have undermined the coherence of the proposed EU legislation.

90. The Commission stated that its Rules of Procedure foresee the possibility of a fast-track inter-service consultation.⁶³ In this case, an additional technical meeting was organised on Saturday morning for the Commission's departments participating in the inter-service consultation, which ensured that this consultation was conducted properly. The Commission confirmed that all consulted departments provided comments before the deadline.

The Ombudsman's assessment

91. The Commission's Rules of Procedure⁶⁴ foresee at least ten working days for an inter-service consultation. In urgent cases, the Commission can shorten the consultation period to at least 48 hours, except when otherwise provided for by the Secretariat-General. Normally, the inter-service consultation is conducted via the 'Decide' IT tool.

92. The Commission enjoys wide discretion in establishing its internal organisation and deciding on means of cooperation among its administrative departments. The fact that the Commission has laid down specific rules on inter-service consultations ensures that, in formulating its policy proposals, the Commission takes a holistic and well-balanced perspective on the matter by allowing its relevant departments, which each offer their own specific expertise and knowledge of their stakeholders' position on the matter, to provide meaningful input on a proposal.

93. In this context, while the Commission's Rules of Procedure foresee a fast-track interservice consultation for urgent initiatives and even the possibility for the Secretariat-General to decide individually on the length of an urgent inter-service consultation, the principles of good administration require that such decisions be reasoned and recorded. Furthermore, the length and timing of an inter-service consultation should not only reflect the urgency of the situation, but also allow the different departments of the Commission to contribute in a meaningful manner.

94. The Ombudsman acknowledges that there may be circumstances warranting a significantly shortened inter-service consultation. However, the Ombudsman is not convinced that the circumstances were such for the legislative proposal at issue in the Omnibus case. Specifically, the Commission did not provide her with any record of the reasons for the exceptional urgency underlying its decision to derogate from the usual ten working days under the standard procedure and 48 hours under the fast-track procedure. At the same time, the material inspected by the Ombudsman inquiry team does not allow the Ombudsman to conclude that all consulted Directorates-General could provide meaningful input within less than 24 hours.

95. The Ombudsman therefore considers that, by shortening the inter-service consultation to less than 24 hours over a weekend, the Commission excessively limited

⁶³ Article 60 of the Commission Decision 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission, <https://eur-lex.europa.eu/eli/dec/2024/3080/oj/eng>.

⁶⁴ Ibid, Article 59.

the possibility of its departments to provide meaningful input on the legislative proposal in question.

96. Good administration furthermore requires that the Commission ensure that, when it decides that the duration of an inter-service consultation needs to be shortened because of urgency, justifications for that decision are duly recorded.

97. Based on the three inquiries, the Ombudsman identified various procedural shortcomings in how the Commission prepared the legislative proposals at issue, which, taken together, amount to maladministration:

- Lack of a definition and a broad interpretation of the notion of ‘political urgency’ in the Better Regulation rules, which risks rendering the application of requirements that the Commission imposed on its own law-making activities unpredictable, inconsistent and arbitrary.
- Failure to sufficiently justify the ‘urgency’ of its legislative proposals.
- Absence of any clear records of the Commission’s internal decisions, and underlying reasoning, to derogate from the requirements of its Better Regulation rules.
- Delayed publication of the analytical documents in the CAP and migration cases.
- Failure to ensure consultation of all relevant stakeholders on the legislative proposals in the Omnibus and CAP cases.
- Absence of clear internal records of a climate consistency assessment being carried out before the adoption of the legislative proposals in the Omnibus and CAP cases, as well as no clear publication of the assessment’s result, as foreseen in Article 6(4) of the European Climate law.
- Failure to ensure that its departments could provide meaningful input on the legislative proposal in the Omnibus case, by shortening the inter-service consultation to less than 24 hours over a weekend, and absence of any records of the reasoning underlying its decision to launch the significantly shortened inter-service consultation.

98. To remedy these shortcomings, the Ombudsman makes two recommendations and four suggestions below.

Recommendations

On the basis of the inquiries into complaints 983/2025/MAS, 2031/2024/VB and 1379/2024/MIK, the Ombudsman makes the following recommendations to the European Commission:

1. The Commission should ensure a predictable, consistent and non-arbitrary application of the Better Regulation rules, by

- **defining the notion of ‘urgency’ in the context of Better Regulation, possibly in the context of the rules’ upcoming revision;**
- **recording any internal decisions to exempt legislative proposals from the requirements of the Better Regulation rules, including who requested the exemption, on which grounds, and who granted it;**
- **clearly explaining in the explanatory memorandum accompanying its legislative proposals why a derogation was needed.**

2. Where derogations are granted, the Commission should establish a procedure to ensure that the urgent preparation of legislative proposals still complies with the principles of a transparent, evidence-based and inclusive law-making process, as required by the Treaties and the case law of the EU courts. The Commission could do so in the context of the upcoming revision of the Better Regulation rules. To assist the Commission in this task, the Ombudsman also makes four suggestions below.

The Commission and the complainants will be informed of this recommendation. In accordance with Article 4(2) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by 25 February 2026.

Suggestions for improvement

1. The Commission should ensure that the analytical document, which replaces the impact assessment in case of ‘urgency’, informs the co-legislators and the public of the evidence on which legislative proposals are based in a timely manner and as soon as the legislative proposal is adopted, thus reflecting the urgency of the matter. The Better Regulation rules should lay down minimum substantive requirements that analytical documents should fulfil in that respect.

2. The Commission should clarify that stakeholder consultations, conducted when a derogation from the impact assessment requirement has been granted, still need to comply with the general principles and minimum standards applicable to all public consultations. The Better Regulation rules should provide guidance on how such stakeholder consultations are to be performed under ‘urgency’.

3. The Commission should issue guidance, for example in its Better Regulation rules, on how Article 6(4) of the European Climate Law should be implemented for legislative proposals that are not accompanied by an impact assessment. In particular, the Commission should 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.

4. The Commission should ensure that, when it decides that the duration of an inter-service consultation needs to be shortened, the justifications for that decision are duly recorded. Only in exceptional situations of urgency should the duration be less than the 48 hours foreseen in its fast-track procedure and adequate reasons should be given.

A handwritten signature in black ink, reading "Teresa Anjinho". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Teresa Anjinho
European Ombudsman

Strasbourg, 25/11/2025

Annex I

Issues raised by the complainants	Case 983/2025/MAS	Case 1379/2024/MIK	Case 2031/2024/VB
Compliance with the Better Regulation rules	The Commission did not respect its Better Regulation rules by failing to conduct impact assessments.		
Analytical documents	The ‘analytical documents’, which replaced the impact assessments, did not contain sufficient evidence to justify the proposals.		
		The analytical document was published too late.	
European Climate Law	The Commission failed to conduct ‘climate consistency assessments’, thus breaching Article 6(4) of European Climate Law.		
Stakeholder consultations	<i>Ad hoc</i> consultations replacing public consultations prioritised certain stakeholders and thus were insufficient.		
Inter-service consultations	The interservice consultation was rushed and not in line with the Commission’s rules of procedure.		