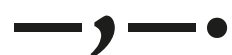


HOW TO: SUBMIT FEEDBACK TO AN EU PUBLIC CONSULTATION



The European Institute
for Animal Law & Policy

ACHIEVING BETTER TREATMENT FOR ANIMALS

THE *good* LOBBY



The European Institute for Animal Law & Policy

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www.thegoodlobby.eu

How to: Submit feedback to an EU public consultation

EXPERTISE FOR A MORE HUMAN WORLD

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INTRODUCTION

In the EU, the only institution that can start new legislation (or reform it) is the European Commission. Over the last decade, the EU committed to more transparency in the adoption and reform of EU laws. One central instrument to ensure transparent rule-making in the EU has been public consultations, which allow all parties, including individuals and nonprofits, a means to express their views, data and positions on policies, laws, and regulations at the very beginning of the preparation.



WHAT IS A PUBLIC CONSULTATION IN EU LAW

1.1. PUBLIC CONSULTATION

Public consultations, called public notice and comment in the US, are a mechanism whereby people can express their views to lawmakers in the course of setting policy orientations and drafting legislation. A public consultation is usually preceded by a “notice”: a publication calling for people to participate in the public consultation by submitting their opinion – called “feedback” – on a particular issue for which the government is seeking comments. Before the Internet, and sometimes still today at local levels (municipal level for instance), participation in public consultations takes the form of in-person meetings with feedback given orally or in writing. Like local and national public consultations, the European Commission first issues a notice and opens a period to collect written feedback, which can be submitted electronically through the “Have Your Say” Portal.

1.2. WHO CAN PARTICIPATE

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1.3. THE DIFFERENT TYPES OF PUBLIC CONSULTATIONS

Public consultations are of different types and go through different stages, which generally follow the legislative process – that is, the process that the different EU institutions follow when they adopt a new law, or update (“revise”) an existing one. At each stage, the European Commission publishes a different type of document on which it requests feedback from the public.

1.3.1. ROADMAP

A roadmap is a document describing a policy issue and justifying the launch of a public consultation. This roadmap provides the objectives of the consultation, as well as the consultation's future stages. Feedback to a roadmap is the first stage of an EU public consultation and is the most open type of feedback. Notably, feedback to a roadmap can influence the scope of the revision of an existing law. The Commission opens public consultations on roadmaps to collect feedback on a general policy issue before starting to work on new legislation. The Commission thus hopes to primarily receive practical feedback outlining specific issues that individuals encounter in their daily life and recommendations on how to fix such issues.

1.3.2. INCEPTION IMPACT ASSESSMENT

The European Commission opens a public consultation for feedback on an inception impact assessment rather than on a roadmap when the impact of a law or policy greatly impacts the economy, environment, or society. A public consultation on the inception impact assessment goes in greater detail than a public consultation on a roadmap.

1.3.3. PUBLIC CONSULTATION

During this second phase, which is the proper "Public Consultation" phase of the public consultation process, the European Commission collects the citizens' views in a more targeted way based on the feedback they received during the roadmap phase. At this stage, the Commission already presents options it considers for future legislation. This feedback often takes the form of a questionnaire.

1.3.4. DRAFT LEGISLATIVE ACT

In this third phase, the Commission collects feedback on a legislative proposal (i.e.: a bill, an act) that the EU administration and legal services drafted based on the previous rounds of feedback. The European Commission often conducts this feedback period before or in parallel with negotiations with the co-legislators – the Council of the EU and the European Parliament – which also receive this feedback to inform their decision during these negotiations.

1.3.5. ADOPTED ACT

At the end of the Public Consultation cycle, the European Commission collects feedback on the adopted act.

1.3.6. DRAFT NON-LEGISLATIVE ACT (IMPLEMENTING REGULATION)

There are two types of regulations in EU law: Delegated Acts and Implementing Acts (see the infographic). EU law refers to them as “non-legislative acts,” because these acts are adopted by the European Commission only, as opposed to “legislative acts,” which follow the legislative process in the Parliament and the Council.

For non-lawyers, regulations – i.e. Delegated and Implementing Acts – are the rules that give clearer definition to a law. These rules essentially indicate to the administrations the ways in which they should implement the law to make it effective. In that sense, regulations largely affect the ways in which a law will be implemented in practice.

For example, in the case of the 2018/848 Organic Regulation¹, the legislative act includes a general provision that “Organic production shall pursue the [general objectives of] contributing to high animal welfare standards and, in particular, to meeting the species-specific behavioral needs of animals.”² The regulations will substantiate such a statement by setting the details of animal welfare rules, such as maximum density levels for each species.

The Commission seeks feedback on Implementing and Delegated Acts, when these are updated or enacted. Feedback on Implementing and Delegated Acts is all the more relevant because the Council and the Parliament are not consulted on regulations to the same extent as for legislation.

Furthermore, even though regulations are limited to detailing the ways in which a law should be implemented in practice and should not affect the substance of the legislative act, there sometimes exists a fine line between strictly technical implementing regulations and the substance of a law.

1. Despite its name, a “Regulation” in EU law is a legislative act. There are two types of legislative acts: Directives and Regulations. The difference between the two has to do with how Member States should incorporate it (“transpose” it) into their national law

2. Regulation 2018/848 of 30 May 2018 on Organic Production and Labeling of Organic Products, 2018 O.J. (L 150) 1– 92 (EU), Article 4.

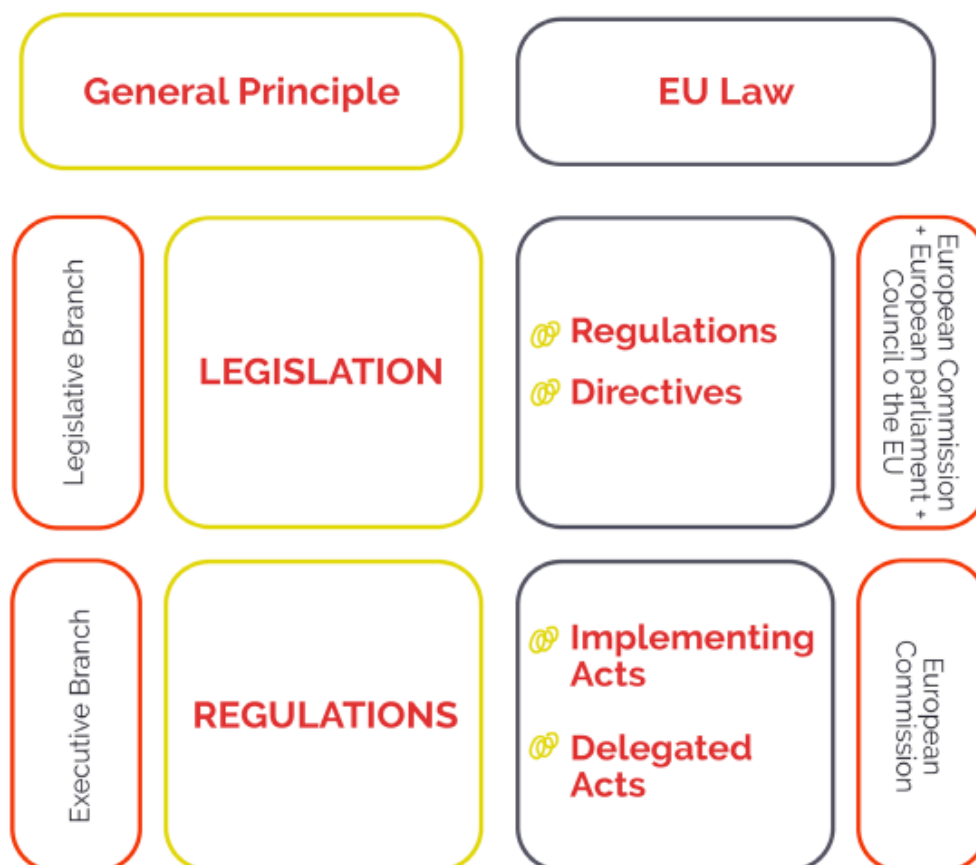
For example, in the case of the 2018/848 Organic Regulation, one might consider that the density levels allowed on farms set in the Annex by way of an Implementing Act¹ do not fit the idea that the Legislature had when it provided that organic products should promote “high animal welfare standards.”

For these reasons, public consultations on Non-Legislative Acts constitute a check on the European Commission’s executive power in adopting technical regulations.

1.3.7. OTHER DOCUMENTS

The European Commission regularly submits other documents to public feedback, such as evaluation, impact assessment reports, staff working documents, etc. The public consultation page provides all background documents necessary for public feedback.

Infographic - Legislation and Regulations in EU Law



¹ Commission Implementing Regulation 2020/464 of 26 March 2020 laying down certain rules

for the application of Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the documents needed for the retroactive recognition of periods for the purpose of conversion, the production of organic products and information to be provided by Member States, 2020 O.J. (L 98) 2 - 25 (EU). Animal Law E.

1.4. FEEDBACK TO A PUBLIC CONSULTATION: HOW IMPACTFUL?

The general consensus is that feedbacks to public consultations only have a marginal influence in rule making¹. EU public affairs professionals perceive feedback to public consultations as an important, but supplemental lobbying tool to more structured lobbying work conducted in parallel in the EU institutions.

Even though the impact of feedback is quite limited in influencing rule-making, for-profit actors frequently use this opportunity to submit their views to the European Commission. As a result, feedback received by the European Commission commonly suffers from an imbalance in terms of representation of interests. Such an imbalance is further exacerbated by the complexity of the procedure and scope of public consultations for whomever is not well versed in EU public affairs. As a result, submissions from public interest groups and citizens, especially during public consultations on draft acts, can be disqualified because they fall outside the scope of the issue for which feedback is sought, or do not include recommendations that are detailed or technical enough for the European Commission to take it into account in an efficient way.

Why contributing to a public consultation?



To make your voice heard by policy-makers



To balance the representation of interests



To support a lobby strategy



As a communication platform

1. Alberto Alemanno, *How Much Better is Better Regulation? Assessing the Impact of the Better Regulation Package on the European Union – A Research Agenda*, *European Journal of Risk Regulation*, 3 (2015) at 11 – 12; Mariolina Eliantonio and Aneta Spendzharova, *The European Union's New "Better Regulation" Agenda: Between procedures and Politics*, *European Journal of Law Reform*, 19 (2017), at 9.

HOW TO CONTRIBUTE TO A PUBLIC CONSULTATION

2.1. FINDING A PUBLIC CONSULTATION

The European Commission publishes past, ongoing, and upcoming public consultations on the Have Your Say web portal: <https://ec.europa.eu/info/law/better-regulation/have-your-say/> initiatives. All public consultations are searchable per policy area, topic, stage, keywords, date, type of acts, and documents. Every three months, Animal Law Europe provides a selection of public consultations on laws and regulations affecting the treatment of animals, available through its quarterly newsletter.

2.2. PREPARING THE FEEDBACK

2.2.1. IDENTIFYING THE TYPE OF CONSULTATION

> ROADMAP

The European Commission is seeking views on a general policy issue. In this case, the content of the feedback should be policy oriented, supported by practical examples drawn from daily experience.

> INCEPTION IMPACT ASSESSMENT

Like the roadmap, the European Commission is scoping out the general views on a policy issue, but this time on an issue that specifically impacts a group of people. In this case too, the content of the feedback should be policy-oriented, supported by on-field and daily experience.

> DRAFT LEGAL ACT

Feedback to a draft legal act is more technical compared to a feedback to a roadmap or an inception impact assessment.

First, it is important to check the scope of the draft legal act, by reading the recitals¹ of the proposed draft act. If the draft legal act concerns a non-legislative act, refer to the Legislative Act to get a better sense of where the final adopted text will end up in the finalized version.

¹ Recitals are the text at the start of an EU act that sets out the context, justifications, and objectives of the act reasons in a non-normative language and apolitical style. Recitals are introduced by the word "whereas" and are umbered, unless there is only one.

Second, if you would like to voice your concerns over the Commission's draft, you can offer amendments to the draft legal act. Try to substantiate these proposed amendments by supporting them with scientific and legal arguments. Provided you have a good command of it, the use of EU jargon at this stage is welcome. If you don't have a good command of EU jargon, remain technical and concise.

Lastly, an important note: The Commission is unlikely to take feedback outside of the scope of the draft act into account. This is why feedback to a draft act is not a good place to present campaign talking points, which are recommended for roadmap consultations instead.

For example, the Draft Implementing Act on Livestock Production Rules in the 2018/848 Organic Regulation is about setting maximum density levels and minimum weaning ages. Therefore, proposing a ban on certain industry practices such as mutilations or castration without anesthesia falls outside the scope of the Draft Implementing Act for which the European Commission seeks feedback. Rather, the European Commission is likely to take into account recommendations for different levels of density, or minimum weaning ages on certified organic farms. Because a ban on certain industry practices would be enacted in the Legislative Act, this recommendation should have been formulated earlier in the public consultation process – typically at the roadmap stage.

2.2.2. IDENTIFYING THE FORMAT OF THE CONSULTATION

- > Questionnaire When the public consultation takes the form of a questionnaire, it is recommended to focus on the answers for which you have an opinion to express, and to answer “I don't know” or “No opinion” to the questions that are beyond your interest or expertise.
- > Written Feedback Public consultations under the form of a written contribution have a 4,000 character limit. This feedback can be the summary of a larger written contribution if you submit one (see infra). Make sure to detail the issue you are writing about, and suggest recommendations in a concise way.

2.2.3. ATTACHING A WRITTEN CONTRIBUTION

The Have Your Say Portal always offers participants the option of attaching a short written contribution. It is always a good idea to do so, to explain your answers to a questionnaire or substantiate your feedback. The document should be concise, usually less than 10 pages, and should state issues at stake and

recommendations to address them. Always try to tie an issue to a recommendation and if you do, try to be as precise as possible. Your contribution can go as far as proposing language or amendments to existing legislation. The attached written contribution typically follows the outline of a position paper. If you submit a position paper, make sure it falls within the scope of the public consultation and re-order your recommendations from more relevant to less relevant.

If you coordinate with other participants, never submit duplicates, as the official policy is to disqualify duplicates. To avoid such an issue when coordinating with others, a good practice is to provide bullet points, and invite them to submit their contribution in their native language with selected examples from their respective country.

All feedback submitted on the Have Your Say Portal must respect users community guidelines. The use of abusive and offensive language is prohibited.

2.3. SUBMITTING FEEDBACK

The Better Regulation Portal will prompt you to log in or create an account. Anyone can create an account. Organizations are advised to register on the Transparency Register, but if your organization is not registered, the Portal allows you to submit your feedback as an individual on behalf of an organization.

Feedback periods extend from 4 to 12 weeks. You have until the date indicated on the public consultation page at midnight Brussels time (GMT +1) to submit your feedback.

Once you have submitted your feedback, you will receive an automated email confirming your submission. You can also check it was published on the public consultation page. All feedback submissions are made public, so after you have completed your submission, you can communicate about it on the usual social media channels using the #EUHaveYourSay hashtag. You can also monitor other feedback submissions, and consult past feedbacks for all publications; they are all recorded and publicly accessible on the pages of past public consultations.

RESOURCES

3.1. OFFICIAL DOCUMENTATION

European Commission, Have Your Say Portal: <https://ec.europa.eu/info/law/better-regulation/have-your-say>. European Commission, Better Regulation: Taking Stock and Sustaining our Commitment – Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, (2019)

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The Good Lobby

The Good Lobby is a non-profit civic start-up committed to equalizing access to power for a more plural, inclusive and democratic society. We believe that every citizen can make a difference in their community. To this end, we inspire, train and help citizens to influence major policy decisions, hold their political representatives accountable and share new solutions with these officials.

To drive our impact, we build unconventional collaborations and alliances with and among NGOs, progressive companies, consultancies, and philanthropic organizations. Ultimately, our mission is to help citizens and other organizations to set up 'good lobbies', enabling them to balance the undue influence of special interest groups.



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