

Strengthened e-participation in European environmental decision-making

Discussion Paper

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1 Preface

“How can citizens and NGOs participate in European environmental decision-making? How can the involvement of civil society be improved at EU-level?” were central questions at the “Aarhus Workshop”.

On 24. March 2021, the Independent Institute for Environmental Issues (UfU) e.V. and the University of Coimbra organised the fourth digital “Aarhus Workshop” to discuss public participation and access to justice at European Union level. While UfU hosted and moderated the fourth “Aarhus Workshop”, Prof. Dr. Alexandra Aragão, who is a reknown Portuguese Professor at the Faculty of Law of the University of Coimbra, teaching environmental law, European law, risk governance and food security law, enriched the event with her well-founded and substantial presentations and contributions.

More than 20 Aarhus-interested participants from environmental associations, foundations, universities, governmental organisations as well as legal professionals took part in the fourth digital “Aarhus Workshop”. Most participants were from Germany, Portugal and Slovenia, the three countries holding the EU Trio Council Presidency in 2020 and 2021.

The Workshop focused on two main questions: “How can citizens and environmental NGOs participate in European environmental decision-making?” and “How can electronic public participation in European environmental decision-making be strengthened?” Ms. Aragão gave an overview of the multifaceted public participation opportunities in Europe, e.g. public consultations, legislative initiatives, citizen science or the Eurobarometer. After the systematic presentation of central reactive and proactive participation options for European citizens and environmental NGOs by Ms. Aragão, a panel discussion on online public consultations followed, which are conducted by the European Commission. Participants in the multi-stakeholder panel discussion were a legal scholar, two environmental NGO experts and one participation expert:

- Prof. Dr. Alexandra Aragão, University of Coimbra
- Rebecca Humphries, Senior Public Affairs Officer at WWF European Policy Office (EPO)
- Dr. Raphael Weyland, Head of Brussels Office at Nature and Biodiversity Conservation Union (NABU) in association with BirdLife Europe, as well as
- Anna Renkamp, Senior Project Manager Bertelsmann Stiftung.

The publication at hand documents the findings, discourses and open questions of the workshop’s participants. It presents the different perspectives on the topic of electronic participation, as well as the challenges and barriers identified by the participants. It offers recommendations for action on how to improve online public consultations conducted by the European Commission. Thereby, the paper aims to provide impulses for digital participation practices by the European Union and to stimulate further debates and discussions on digital environmental democracy in Europe.

We would like to take this opportunity to thank all participants of the “Aarhus Workshop” and those sharing their experiences and expertise with us, in particular.

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2 Brief Summary in Plain Language

This text deals with electronic public participation, also called “e-participation”. The paper is mainly about European e-participation in environmental matters. This means the dialogue between citizens or organisations and people who make important political decisions for the European Union. Citizens and civil society organisations can be summarised as “the public”. The public has the right to be involved in decision-making processes, as laid down in the so-called Aarhus Convention. All countries that have accepted this international agreement must also respect it.

The European Union itself has also accepted the Convention. This means, e.g. when the European Commission makes a decision or a plan likely to have significant impact on the environment, it must ask the public for its opinion. At the moment, it does so via a website called the "Have-your-say-Portal". The question is how the European Commission can improve the involvement of the public.

In the following document, we first describe how the portal works. Then, we explain existing problems regarding electronic public participation. We detected seven difficulties, namely:

1. Not everyone finds e-participation easy
2. Decisions related to financial policies rarely allow e-participation
3. It is difficult to have access to information
4. People do not know that they can participate and how
5. Personal and technical conditions may make participation difficult
6. Often there is not enough time to participate well
7. People do not know what happens after the decision is made

We then provide answers to the following questions: How can people be involved more effectively in political decisions? How can the portal be improved? We have 11 suggestions:

1. Creating structures
2. Additional participation formats
3. Public outreach activities
4. Empowering people
5. Participatory budgeting
6. Effective early participation
7. Easy access, openness and visibility
8. Transparency of procedures
9. Sufficient time-frames
10. Taking due account of the feedback
11. Summary report for all online consultations

We think, it is very important that the European Union takes due account of public feedback. Above all, the European Commission should show which of the public's suggestions it has followed, and which ones it has not and why. If these 11 steps are taken seriously, people can see that their participation makes sense. This is how European electronic public participation can be improved in the future.

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3 Executive Summary

This transdisciplinary paper explores the chances of a new digital exchange culture between the European Union, European citizens and civil society organisations. More precisely, it discusses how to strengthen electronic public participation (e-participation) in European environmental decision-making. It focuses on the question of how responsible and accountable online consultations conducted by the European Commission could be.

Firstly, the status quo is analysed, describing how the European public can participate electronically via the “Have-your-say-Portal”. Then, seven key challenges and deficits when it comes to e-participation in European environmental decision-making are systematically identified:

1. Participation gap
2. Little participation in budgeting and financial policies
3. Lack of openness and transparency
4. Low visibility and low awareness
5. Limited substantive accessibility
6. Insufficient and inflexible time frames for effective participation
7. No follow-up transparency

Secondly, goals on how to improve environmental e-government participation are formulated. At the same time, hands-on proposals on how to improve e-participation are being derived from the problem analysis. The European Commission could consult more effectively and inclusively within the digital realm if it follows a 11-point plan. To improve its digital participation instrument, it should deliver on:

1. Creating structures
2. Additional complementary participation formats
3. Public outreach activities
4. Empowering people
5. Participatory budgeting
6. Effective early participation
7. Easy access, openness and visibility
8. Transparency of procedures
9. Sufficient time-frames
10. Taking due account of the feedback
11. Summary report for all online consultations

While describing the transformative and interdependent steps towards effective e-participation, the dangers of low and non-transparent public participation and non-dialogical decision-making will be highlighted. The most pressing participatory need is the provision of summary reports documenting how public feedback was taken into due account for each consultation. The summary report should show how feedback impacts the final outcome of concrete proposals by the European Commission. Finally, the paper draws a scenario of the future of European environmental e-government with inclusive citizen participation.

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4 Abbreviations & Acronyms

| | |
|-----------------|--|
| DG | The Directorate-General of the European Commission |
| DG CLIMA | The European Commission's Directorate-General for Climate Action |
| DG ENV | The European Commission's Directorate-General for Environment |
| EC | European Commission |
| e.g. | for example |
| e-government | electronic government |
| e-participation | electronic public participation |
| EU | European Union |
| ICT | information and communication technologies |
| NGO | Non-Governmental Organisation |
| MFF | Multiannual Financial Framework |
| OECD | Organisation for Economic Co-operation and Development |
| UfU | Independent Institute for Environmental Issues e.V. |

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6 Electronic Public Participation in European Environmental Decision-making

Europe is facing manifold and interconnected ecological crises like the climate crises, biodiversity loss, excess of plastic waste, water contamination, or soil desertification. European citizens are strongly aware of the need for environmental protection and almost all of them (94%) say protecting the environment is important to them personally.¹ But the framework conditions for public participation in European and governmental decision-making are changing. Decision-making procedures are being transferred to the digital realm. Digitalisation bears a great potential for participation. At the same time, electronic participation can also be challenging for an aging population. There are four prerequisite conditions for effective digital citizen participation: “digital education”², “access to the internet” as well as the “availability of information and communication technologies (ICT)” and of “digital governments”³.

The digitalisation of public decision-making and e-government, which means the provision of effective digital public services, can help to strengthen and empower civil society and its organised actors. Especially young people – the so-called digital natives – have different ideas on how they want to be involved in European policy-making. New digital volunteering and environmental activism on the internet are already shaping the future of the European Union and its Green New Deal. Simultaneously, electronic public participation offers great potential for an active integration and engagement of vulnerable groups such as the elder, disabled or physically challenged people or women.

Indeed, e-government and digital technologies could enable citizens and their organisations to interact more easily, informed and quickly, as well as at lower costs with the European Union and national governments. However, the European bureaucratic apparatus is still struggling in practice to respond to the new digital participatory needs which increased during the worldwide Covid-19 pandemic. Even though the importance of electronic public participation is growing, the European Union is struggling to facilitate modern and more inclusive digitalised

environmental decision-making. This paper⁴ discusses how the European Union could conduct e-participation in a more responsible and accountable way. It paves the way for inclusive electronic environmental democracy in Europe while acknowledging that NGOs and citizens are multifaceted and heterogeneous entities, but are all potential users of EU’s digital public services. The paper thereby focuses

HAVE YOUR SAY

*Better Regulation Portal by the
European Commission:*

<https://ec.europa.eu/info/law/better-regulation/have-your-say>

¹ European Union (2020), *Special Eurobarometer 501 Attitudes of Europeans towards the Environment*, p. 5.

² See e.g. the Digital Education Action Plan (2021-2027) at *European Commission (EC)*, *European Education Area: Quality education and training for all - Digital Education Action Plan (2021-2027)*, last access: 31.1.2022.

³ See e.g. European Commission actions to enhance cross-border digital public services at *EC*, *eGovernment and digital public services*, last access: 31.1.2022, or recommendations by the OECD, where the European Commission participates alongside EU Member States in the work of the intergovernmental economic organisation, see *OECD*, *Digital government*, last access: 31.1.2022.

⁴ Prepared by Kathleen Pauleweit and Larissa Donges, Independent Institute for Environmental Issues – UfU e.V., and Alexandra Aragão, University of Coimbra, with warmly welcomed and helpful contributions by the participants of the fourth “Aarhus Workshop” on 24.3.2021 in the realm of the *EU-AarKo* project by UfU.

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on online-consultations⁵ of the public, initiated by the European Commission via the Have-your-say-Portal.⁶ This web-based portal offers members of the public, stakeholders, scientific and technical experts, opportunities to contribute to initiatives as they take shape before the adoption by the European institutions.

This discussion paper first describes how the public can participate electronically via the online-portal. It then systematically outlays the challenges and deficits of e-participation in European environmental decision-making. Goals and concrete solutions to improve e-participation are proposed. At the same time, the dangers of low and non-transparent public participation and non-dialogical decision-making will be highlighted. Finally, we draw a scenario of the future of European environmental e-governments with inclusive citizen participation.

7 How Can Citizens and NGOs Raise their Voice for the Environment?

Environmental NGOs and environmentally concerned citizens participate in European policy on the environment in many different ways. Civil engagement can take the form of reactive or pro-active participation.⁷

Reactive participation happens when citizens and NGOs are called to participate in ongoing procedures initiated by the European institutions for the adoption of new legal acts or amendment of existing legal acts. Proactive participation, from the perspective of the public, means that they can trigger a legislative change or new legislative proposal in areas where legal rules are missing.

7.1 Status Quo of e-participation in Europe

Historically, citizen involvement in European Community matters used to be limited to the election of the European Parliament. Since the creation of the European Union new opportunities for direct participation were opened. Nowadays, there are several channels that can be used for public participation at the EU level:

Table 1: Channels of public participation on European Union level, Source: own research.

| Reactive Participation | Proactive Participation |
|---|--|
| <ul style="list-style-type: none"> - Electronic Online Consultations - Stakeholder/expert Consultations - European Citizens' Panels and Assemblies - Eurobarometer (Public Opinion surveys) | <ul style="list-style-type: none"> - European Citizens' Initiatives - Petitions to the European Parliament |

⁵ In comparison to informal and analogue or hybrid public participation formats conducted by the EU, see *Pauleweit, Donges (2022)*, Participation — Participation rights in the European Union on environmental protection.

⁶ Citizen participation at Member State level on legislative acts implementing EU legal acts or on preparation of the governmental position towards EU level proposals are not dealt with in this paper.

⁷ More Information on public participation at European Union level at *UfU, Ihr Recht auf Umweltbeteiligung*, last access: 31.1.2022.

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The level of engagement and the degree of citizen influence is different for the various channels. Online consultations are by far the most frequently available opportunity within reach for citizen and NGO participation. However, despite being an exemplary step towards the democratisation of decision-making processes in the European Union, this channel still has flaws.

7.2 Online Consultation System led by the European Commission

Being the EU institution that has the monopoly on legislative initiatives, the European Commission is the main driver in Europe for legislative change. Citizens and NGOs can express their views on new EU policies and existing Union legal acts proposed by the Commission online. The opportunity of e-participation of EU citizens and organisations is exemplary worldwide, nevertheless it needs improvement. For many years civil society actors have contributed to online consultations organised by the European Commission in accordance with the Better Regulation principles.⁸ Policy areas opened for online consultations touch upon European competition, energy, regional, trade and environmental policy. Environmental policy deals with the sustainable development of Europe and agriculture, food safety, biodiversity, waste, water and many more environmental matters.

Citizens and NGOs can comment and give feedback on policy proposals or legal drafts by the European Commission. They often support meritorious legislative proposals and participate in their improvement through constructive contributions. In some cases, they support the withdrawal of proposals or the redesign of certain policy options which could have harmful effects on the environment, nature, animal welfare or human health in and beyond Europe⁹. The current consultation system offers many opportunities to contribute to EU policymaking, including feedback periods for “calls for evidence”¹⁰, online public consultations, targeted consultations and periods for feedback on adopted legislative proposals and draft implementing and delegated acts. Every interested person or organisation can contribute in any of the 24 official languages of the European Union within pre-set time-frames.

The fact that the consultation system is centralised in a web portal allowing day and night as well as fully remote participation is a big advantage of the system. The worldwide access to the Have-your-say-Portal on and beyond working days and hours offers great potential to overcome difficulties and obstacles to public participation previously experienced in feedback processes.

Some emblematic examples of legislative drafts with public consultations are:

⁸ EC, *Better regulation: guidelines and toolbox*, last access: 31.1.2022.

⁹ See e.g. the EU study on deforestation in third countries due to consumption of food and non-food products by the 27 EU countries, EC (DG ENV) (2013), *The impact of EU consumption on deforestation: Identification of critical areas where Community policies and legislation could be reviewed*, last access: 31.1.2022.

¹⁰ Former two consultations on inception impact assessments and roadmaps. A roadmap is a tool to substantiate the political validation of an initiative the European Commission is preparing and, to inform stakeholders about planned consultation work, impact assessments, evaluations, Fitness Checks. It is published at an early stage by the Secretariat-General on the Commission's Have-your-say-Portal and helps stakeholders prepare timely and effective inputs to the policymaking process.

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Table 2: Exemplary list of environmental EU legislative drafts, Source: own research.

| Regulations | Directives |
|---|--|
| <ul style="list-style-type: none"> - Regulation on the application of the Aarhus Convention¹¹ - Regulation on procedures for determining CO₂ emissions of heavy duty vehicles¹² - Regulation on hazardous waste – updated concentration limits for chemical pollutants¹³ | <ul style="list-style-type: none"> - Environmental Crime Directive¹⁴ - Whistle-blower Directive¹⁵ - Air Quality Directive¹⁶ - Industrial Emissions Directive (IED)¹⁷ |

8 Challenges and Deficits of e-participation – What are the Problems?

Despite the potential of e-participation to widen the circle of participants, and to make participation less burdensome, citizens and NGOs still experience manifold challenges when aiming to contribute within the EU policy process. This chapter assesses whether the Commission's public consultations are effective at reaching out to citizens and NGOs and whether their contributions are made use of. It also examines the design of the Commission's consultation platform, the way that the Commission prepared and conducted public consultations and how it informed and made use of the consultation work. The selection of public consultations analysed reveals that the Commission's framework for public consultations is of a high standard,¹⁸ but several issues remain to be solved before effective and dialogical participation of EU citizens can be affirmed. A systematic summary of the experiences, arguments and contributions by participants of the UfU Workshop show how satisfied participants in public consultations in the environmental field are (or are not). The following consultations were analysed:

¹¹ Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6. October 2021 on amending Regulation (EC) 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 356, p. 1–7.

¹² Commission Regulation (EU) 2019/318 of 19 February 2019 amending Regulation (EU) 2017/2400 as regards the determination of the CO₂ emissions and fuel consumption of medium and heavy lorries and heavy buses and the introduction of electric vehicles and other new technologies.

¹³ Regulation (EU) 2019/1021 of 20. June 2019 on persistent organic pollutants (POPs), OJ L 169, 25.6.2019, p. 45–77. The Regulation has been changed by Commission Delegated Regulation (EU) 2020/784 of 8. April 2020, Commission Delegated Regulation (EU) 2020/1203 of 9. June 2020, Commission Delegated Regulation (EU) 2020/1204 of 9. June 2020, Commission Delegated Regulation (EU) 2021/115 of 27. November 2020 and Commission Delegated Regulation (EU) 2021/277 of 16. December 2020.

¹⁴ Directive 2008/99/EC of the European Parliament and of the Council of 19. November 2008 on the protection of the environment through criminal law, OJ L 328, 6. December 2008, p. 28–37.

¹⁵ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23. October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26. November 2019, p. 17–56.

¹⁶ Directive 2008/50/EC of the European Parliament and of the Council of 21. May 2008 on ambient air quality and cleaner air for Europe, OJ L 152 11. June 2008, p. 1–44. The Directive has been changed by Commission Directive (EU) 2015/1480 of 28. August 2015 amending several annexes to Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council laying down the rules concerning reference methods, data validation and location of sampling points for the assessment of ambient air quality, OJ L 226, 29.8.2015, p. 4–11.

¹⁷ Directive 2010/75/EU of the European Parliament and of the Council of 24. November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334, 17.12.2010, p. 17–119.

¹⁸ In line with *European Court of Auditors* (2019), Special report no 14/2019: 'Have your say!': Commission's public consultations engage citizens, but fall short of outreach activities, last access: 31.1.2022.

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Table 3: Analysed electronic public consultations in the environmental field conducted by the European Commission, Source: own research.

| Consultation | Feedback period |
|---|--------------------------------------|
| <u>"2030 Climate Target Plan"</u> | 31. March 2020 – 23. June 2020 |
| <u>"Proposal for a[n amended Aarhus] regulation - COM(2020)642"</u> | 15. October – 10. December 2020 |
| <u>"Amendment of the EU Emissions Trading System (Directive 2003/87/EC) "</u> | 29. October 2020 – 26. November 2020 |
| <u>"Amendment of the Land Use, Land Use Change and Forestry Regulation (EU) 2018/841"</u> | 29. October 2020 – 26. November 2020 |
| <u>"Modernising and simplifying the Common Agricultural Policy [CAP]"</u> | 2. February 2017 – 2. May 2017 |

Seven main areas for improvement were identified which illustrate the structural problems in e-consultations in environmental matters conducted by the European Commission.

1. "Participation gap"¹⁹

The majority of European Union citizens can have access to the internet and ICT at home, school or work. However, for effective participation, citizens do not only need affordable and sustained access to the internet as well as competency with digital technologies but also time and financial means outside of wage and care work in order to be able to effectively participate on often complex EU policy matters. The digital literacy, sustained access to ICT, financial resources and time availability of citizens are not only unevenly distributed within the EU Member States but also among states of the European Union. It translates into the exclusion of certain groups from participation, e.g. of vulnerable persons such the elder, those with lower educational levels or socioeconomic backgrounds and from lower income EU countries.

2. Little participation in budgeting and financial policies

The European Commission generally conducts numerous public consultations on various EU policies and existing Union legal acts on the environment or environment-related matters. Yet, the Multiannual Financial Framework (MFF) serves as an example that the public is excluded on general decisions of profound importance for a sustainable future of Europe. The MFF is a seven-year framework regulating the annual budget of the European Union. The financial framework sets the maximum amount of spending in the budget for broad policy areas ("headings") and fixes an overall annual ceiling on payment and commitment appropriations. A crucial spending EU area or "heading" is "Natural resources and the

¹⁹ Jenkins (2006), "MySpace and the Participation Gap", last access: 31.1.2022.

environment” including the financially extensive EU's common agricultural policy (CAP). Those budget decisions can have strong effects on the level of environmental protection in Europe. It must therefore be criticised that no public consultation has been undertaken by the Commission on the EU's 2021-2027 Multiannual Financial Framework (MFF) – NextGenerationEU²⁰.

Another current example is the second complementary delegated²¹ act to the taxonomy regulation²². The Commission text covers nuclear and natural gas activities and quite surprisingly classifies them as “sustainable” energy sources and investment options in Europe. This was the result of only one expert consultation held by the Commission instead of a broader public consultation.²³

3. Lack of openness and transparency

The public consultation instrument is aimed at EU citizens as well as stakeholders (interest groups, NGOs, civil society organisations and associations). The online instrument works fairly well for the stakeholders, but not for the citizens.

Some stakeholders may be digitally competent, well-equipped with ICT and have other time and personal resources. They are often experts in their fields who are able to participate effectively within the set time frames. But of course, there are exceptions to this rule. Environmental NGOs are one of them. A positive outcome from EU decision-making with fruitful stakeholder engagement has nevertheless been inter alia the European Green Deal.²⁴

But the way some public consultations were formulated in the past created the impression that the Commission had already decided a course of action and simply uses the consultation to validate or legitimise its pre-set decision. Stakeholders furthermore miss consistency in the conduction of online consultations. They have observed differentiated handling of public consultations by the various Directorate-General of the Commission. Furthermore, the procedural steps are often unclear to the interested public.

More critical is the online instrument which needs improvements in order to appeal to European citizens. It has not been designed for the use as a tool by diverse European citizens. The portal lacks visibility, technical and substantive accessibility and contains language as well as others barriers for effective public participation. These flaws will be addressed in detail in the next points.

4. Low visibility and low awareness

The European Commission is not doing enough to promote the Have-your-say-Portal to the European public and to encourage the general public to participate electronically. Visible cross-references on the thematic commission pages to ongoing participation procedures are widely missing.

²⁰ EC, The long-term EU budget, last access: 31.1.2022.

²¹ The act was approved in principle by the EC on 2. February 2022 and it will be formally adopted when all the language versions are available, see EC, EU taxonomy: Commission presents Complementary Climate Delegated Act to accelerate decarbonisation, last access: 31.1.2022.

²² Regulation (EU) 2020/852 of the European Parliament and of the Council of 18. June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13–43.

²³ EC, EU Taxonomy: Commission begins expert consultations on Complementary Delegated Act covering certain nuclear and gas activities, last access: 8.2.2022.

²⁴ *European Council*, European Green Deal, last access: 31.1.2022.

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Citizens generally do not know that the Have-your-say-Portal exists. The portal is mainly designed for professionals who are fluent in English and have relevant policy expertise and experience. The navigation on the site and the relevant documents are often not offered in all official EU languages. The public feedback, which is often provided in English, is not translated to other EU languages.

5. Limited substantive accessibility

The portal is not ready yet for the greater public. Registering to the platform and navigating through it are rather difficult, even if the user knows which relevant act she or he is aiming for. The filter and keyword functions are of limited help to the users. Some information is only available via links to other platforms. This often leads to confusion and disorientation. The platform offers no transfer into easy language²⁵ in contrast to the bureaucratic and technical language used. Moreover, the portal offers no Q&A section or glossary to answer general questions of the public.

The limited user-friendliness of the platform is frustrating, time and resource consuming and limits the ability of civil society to participate effectively in EU decision-making. Moreover, sometimes²⁶ long and time-consuming technical questionnaires²⁷ in a consultation phase limit the circle of capable participants.

6. Insufficient and inflexible time frames for effective participation

The Commission offers consultations on legal acts and policies currently in development mostly for four or eight weeks. On the portal, the Commission states that it “may decide to modify or abandon an initiative at any time”²⁸ which indeed happened in the past. Stakeholders experienced inconstant time frames and non-transparent processes in the past and therefore lack trust in the consultation process itself.

Simultaneously, it has been experienced e.g. in the context of the EU’s common agricultural policy (CAP) that 2.000+ pages documents were the subject of a four-week consultation. Even for professional actors those limited time-frames are challenging, especially when the insufficient system capacities of the Have-your-say-Portal causes the temporary inaccessibility of relevant public consultations (experienced in at least two Member States, namely Portugal and Germany, in 2020). The risk that the portal is down due to too many accesses during the last days of a consultation period is high, which then hinders members of the public to hand in feedback within the strict time-frames.

7. No follow-up transparency

The focus here is on the low transparency whether and how the Parliament - and especially the Commission and the European Council - are taking the outcomes of the public participation into account. More precisely, there is no timely feedback on the consultation results and beyond. How are the contributions considered in the follow-up, and how are these integrated into the decisions of the EU institutions? The consulted participants do not know what happens to their contributions and whether they have any influence on the

²⁵ The use of “easy language” (in German “leichte Sprache”) is e.g. a mandatory legal standard for websites of German public authorities.

²⁶ Regarding offshore renewables, the online form was well-structured and user-friendly.

²⁷ The EC announced in 2021 that it “will improve the structure, content and language of questionnaires to address these concerns.” In *EC (2021), Better Regulation: Joining forces to make better laws*, last access: 31.1.2022, p. 5.

²⁸ *EC, Published initiatives* last access: 31.1.2022.

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final decision at all. To sum up, there is no participatory footprint. Reports on the reasons and considerations upon which the decisions are based are not the norm, but the exception. The highest dissatisfaction is observed among stakeholders when the Council takes further decisive steps before the official period for public consultations on Commission's draft proposals end.²⁹ Decisions by any co-legislative organ before or very shortly after the end of a public consultation period decreases confidence in the process and discourages continued civil engagement. It lowers the trust by the public, the legal scientific community and NGOs that the co-legislators adhere to the rule of law and are committed to international procedural obligations. The impression that the feedback of civil society respondents is being ignored by one or more co-legislators constitutes a threat to the democratic constitution of Europe.

9 Effective e-participation for a sustainable Future of Europe – What do we want?

Citizens and NGOs are not fully aware of how they can generally participate in European environmental policy and via the Have-your-say-Portal in particular. Dealing with the official portal requires special knowledge and digital competences which cannot always be expected. The overarching goal is a "Green and inclusive Europe", in which citizens and stakeholders can participate confidently, critically and creatively in European environmental policy-making. UfU and its partners therefore not only want to inform citizens in a practical, simple and targeted way³⁰ about their participation options. We also promote the path to a digitalised European Commission who offers effective and inclusive public participation possibilities for all its citizens.

Modern digital online services offer new possibilities for the reduction of complexity and support citizen participation. Interactive digital tools can simplify and de-bureaucratise access to information about decision-making processes. They can promote and enhance the participation of a wider public. Intelligent tools can enhance democratic participation by providing targeted assistance in explaining technical terms.

"Europeans deeply care about their environment and the climate crisis. It is crucial that citizens and environmental associations are involved by the European Union in the design and implementation of EU environmental policy at an early stage. At the same time, digitalisation requires the shift of public participation to online formats. Here it is important that the standards of participation that have been attempted and tested for 50 years are also continued online. This is by no means an easy task, because in many European Union countries, even democratic ones, citizens' opinions are increasingly seen as disruptive rather than helpful expressions."

Dr. Michael Zschiesche

Managing Director and Chairman of the Board, Head of the Department Environmental Law & Participation of UfU e.V.

²⁹ On concrete case is the consultation on the Aarhus amendment Regulation.

³⁰ See e.g. three-part brochure series on the European Union and the Aarhus Convention by UfU, Publikationen zur Umsetzung der Aarhus-Konvention auf EU-Ebene, and four-part series of explanatory films by UfU, Die Aarhus-Konvention – einfach erklärt, as well as more detailed information on the Aarhus Convention at European Union level by UfU, Umsetzung in der Europäischen Union, last access: 31.1.2022.

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Therefore, we explore the chances of a new digital exchange culture between the European Union and European citizens. We highlight following needs and urgent steps to reinforce a democratically accountable and digital Europe.

10 Recommendations & Policy Options for the European Commission – What Can Europe do to Solve the Problems?

Despite the high standard of public participation, the Commission should still improve who and how is consulted for broader and more effective public participation in the digital realm. The European Union must hold up to its own democratic standards and procedures as well as rise to the challenge of digital and ecological transitions.

This paper now brings concrete proposals which also enrich the discussions on how to update the EU's Better Regulation rules. We propose an **11-point plan** to improve the Commission's digital participation instrument:

1. Creating structures

Civil society members must have access to affordable and adequate technical equipment. The European Union should support Member States as far as possible by equipping their citizens with internet-enabled technical devices e.g. via special subsidies or funding schemes in social hard cases. Simultaneously, members of the public need sufficiently good and inexpensive access to the internet³¹ in order to engage in digital formats (via their personal devices). The Union should intensify its activities on the European-wide coverage with high-performance gigabit networks.³² It should also promote that Member States offer free mobile data or at least apply social tariffs in social hard cases or public free of charge internet access points in public buildings.

Moreover, the technical execution of the Have-your-say-Portal offers areas for improvement. The basic requirement for e-participation is that the portal runs 24/7, ensuring that it is functional during the last days of consultation periods when there are increased user-rates.

A technical update of the portal's overall design is required so it functions as a frontrunner e-participation-tool. A design and navigation update would make it more attractive, appealing and user-friendly and thus, motivate wider e-participation. The portal also needs to be accessible for people with disabilities and learning difficulties.

The portal could integrate dynamic upload functions for textual proposals and optional questionnaires in order to support participation. The public being consulted should be able to change, revise or delete their feedback or answers in the questionnaires afterwards if necessary. Additional participatory tools could be integrated on each EC proposal, e.g. informal discussion forums, additional questionnaires or polls, visualisation or explanatory tools.

³¹ Especially in e.g. Greece, Lithuania, Portugal; see *OECD Data* (2021), [Internet access \(indicator\)](#), doi: 10.1787/69c2b997-en last access: 31.1.2022.

³² *EC, Connectivity*, last access: 31.1.2022.

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The website should indicate contact points for public complaints around accessibility and the technical conduction of consultations (e.g. on language barriers, special barriers for disabled people, website crash). Technical and accessibility issues should be dealt with immediately. It should also be clearly indicated on the portal that citizens and stakeholders can contact the European Ombudsperson if they encounter significant participation issues.

The European Ombudswoman promotes administrative procedures and practices, accountability and inclusive decision-making:

www.ombudsman.europa.eu/en/home

2. Additional complementary participation formats

There needs to be a shift from a monologue approach to one of dialogue and deliberation. The public e-consultation instrument should be combined with new approaches of dialogue and deliberation formats. This can be warranted through random selection processes and inclusive citizens' panels. This can be of special importance particularly when it comes to controversial topics like climate-friendly infrastructure or eco-taxation and budgeting.

The *Conference on the Future of Europe*³³ is a step into the right direction. The conference presents an excellent opportunity to debate with citizens how to address Europe's environmental challenges and priorities. The Conference's online deliberative platform is a new approach to engage with people on an equal footing over issues they care about like the climate crisis and digital transformation.

Parallel formal and informal consultations on the same topic or legal acts should be cross-referred to on the relevant websites and specific consultation page.

3. Public outreach activities

More financial and personal resources are needed to boost awareness of the Have-your-say-Portal and to encourage more citizens — including those without in-depth knowledge of EU policy-making — to contribute to the consultations. Financial resources are needed to pay European Commission staff that would implement the proposed changes (technical updates, translations, easy language inclusion³⁴, additional participatory elements etc.). There is a need for staff to carry out regular maintenance of the website, especially to prevent system from crashing at high use times. Additional EC staff specialised in communication, outreach and social media is needed to start a Europe wide campaign for the portal. Intensified efforts by the Commission for an engagement with the scientific research community are also needed to encourage and promote science-based decision-making in Europe. The European Union could benefit from the knowledge and experience of public participation experts to meet modern digital participation needs.

³³ *Conference on the Future of Europe*, The future is in your hands, last access: 31.1.2022.

³⁴ See footnote 25.

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4. Empowering people

Compared to analogue public offers, online public services potentially enable access to information and procedures independently of time and location constraints.³⁵ Simultaneously, citizens and their organisations as well as political decision-makers and administrative staff must be aware of and recognise the digital and social challenges in shaping participation processes. Governmental and non-governmental staff and citizens need further education and training on digital competences and participatory environmental governance. The European Union should finance, promote and engage with those trainings. The Union and Member States must safeguard that disadvantaged citizens and local social society organisations have the technical prerequisites for e-participation, e.g. via joint funding schemes.

5. Participatory budgeting

The European Commission should improve on what they consult. Policies of great importance and impact on the state of EU's environment should be prioritised beyond the technical legal drafts. A central issue here is participation in non-environmental but environment-related matters, such as the EU budget for the next planning period. The European Union should engage in participatory budgeting where EU citizens' and stakeholders' priorities and opinions are considered.

6. Effective early participation

It is not only a legal requirement but crucial that public consultations – in conjunction with other complementary formal and informal formats – take place well in advance of the political decision-making process, when options are still undecided and decisions have yet to be taken. When consulting the public, the European Commission should demonstrate its openness for different policy options, for instance by providing alternatives, that can still be adopted as a consequence of public contributions.

7. Easy access, openness and visibility

All the information should be gathered and presented on one website that is barrier-free³⁶, user-friendly, well-structured and permanently available. The navigation through the website and keywords tool bar³⁷ should be straightforward, easy and intuitive. Citizens and stakeholders should be able to access the services they need at any time and be able to view, edit or delete their contributions.

Topics of great relevance and public interest should be supported by optional questionnaires made available to the public – easy to access, to interpret and to submit. The design and formulation of online public consultation questionnaires should be carefully planned. There should always be a free text option for additional comments where methodological concerns or additional comments can be noted.

Translations of the main page and relevant documents into EU official languages are positive starting points. To promote even wider participation, public consultations – at least for priority initiatives of broad public

³⁵ See also more critically number 1 of the chapter "Challenges and Deficits for e-participation – What Are the Problems?".

³⁶ It primarily refers to design for people with disabilities; in the professional discourse referred to as "accessibility", see Henry, Abou-Zahra, Brewer (2014), *The Role of Accessibility in a Universal Web*, last access: 31.1.2022.

³⁷ See EC, *Published initiatives*, last access: 31.1.2022.

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interest – should be translated into all official EU languages. The European-wide consultative process could be enhanced if the public feedback provided would be translated in all EU languages (automatically) or at least into English.

The use of understandable and less technocratic language is needed for wider public engagement. A transfer into easy language³⁸ could further promote civil engagement. The portal should offer not only an easy language option, but a Q&A section and a glossary of difficult terms. This would ensure that European policy-making is highly citizen-oriented and more inclusive, and appealing also for non-experts. Besides the improvement of the portal itself, intensified outreach activities are strongly needed. Information on ongoing public participation procedures, e.g. on subject related official websites of the responsible entities conducting public consultations, is highly welcomed but it is not in itself sufficient. Firstly, it is crucial that the relevant Directorate-General, e. g. on climate action (CLIMA) or environment (ENV), informs the public on its own website.³⁹ And if so, that notice should be visually strongly delineated at the topic-specific website.

Secondly, the European Commission should make use of diverse communication channels available including social media – also in close cooperation with the representations in the European countries and stakeholders like environmental NGOs – to inform the public and promote participation among the greater public.

8. Transparency of procedures

The European Commission needs to take a public commitment, as part of the upcoming reform of the Better Regulation rules, to ensure a transparent approach when carrying out public consultations. In order to prevent the impression of a mere *pro forma* public consultation, they need to provide alternative policy and regulation options. Citizens should be able to obtain information about the participation periods or their shortening in exceptional cases via diverse communication channels.

Public consultations take a transparent approach, if the Commission only opens consultations where it – as well as the Council and the Parliament – will take the responses into account. The entire timely feedback needs to be taken into account. Information is needed on which European or national authority can be accessed. The public consulted has the right to know why their feedback was not taken into account and will not shape EU's future policies.

Further, digitalisation can improve the transparent presentation of procedures and the processing of the results of public consultations. The procedures on legal drafts, plans or programmes including the public consultations should be visualised on the Have-your-say-Portal including important procedural steps, dates, deadlines and substantial information such as related EU legal acts and other helpful documents and information for the public. The visualised procedures should be updated regularly.

Data processing programmes could support the EU institutions' processing of the public feedback. The raw data produced by the programmes, which should found the basis for the summary reports of the public consultations (as explained before), should be publicly available together with the reports.

³⁸ See footnote 25.

³⁹ See an expandable starting point for showcasing ongoing consultations *EC (DG ENV), Chemicals are everywhere*, last access: 31.1.2022.

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Those measures would enhance the participatory footprint, transparency and the accountability of EU law and policy-making.

9. Sufficient time-frames

The European Commission should extend the participation time-frames if an act or policy is complex and/or extensive requiring more time for participation. The participation periods mentioned in the legal norms of four to eight weeks are to be understood as minimum periods, not maximum periods.⁴⁰

An exceptional reduction of the participation periods should always be justified in writing and made available on the portal. The Commission should use all other available communication channels to inform the public of exceptional reductions of the participation periods.

10. Taking due account of the feedback

All principle actors of the legislative process, namely the Commission, Council and Parliament of the European Union, shall take due account of the public feedback. Consequent and consistent consideration of the outcomes of public consultations is required especially by the Directorate-Generals of the European Commission conducting the consultations.⁴¹ In order to promote democratic legitimacy and acceptance of decisions by the EU trio-legislator, contributions by the people (and their organisations) need to be considered adequately.

Article 9 Paragraph 5 Aarhus Regulation on plans and programmes:

“In taking a decision on a plan or programme relating to the environment, [EU] institutions and bodies shall take due account of the outcome of the public participation. [They] shall inform the public of that plan or programme, including its text, and of the reasons and considerations upon which the decision is based, including information on public participation.”

11. Summary report for all online consultations

A summary report outlaying the participatory footprint is key for transparency. The Commission should always publish reports summarising the feedback received and explaining how the stakeholders' views were taken into account. A

summary report documenting how the relevant Directorate-General consulted the public should be mandatory for all consultations and be updated on the Have-your-say-Portal.

To strengthen transparency and acceptance of e-consultations, those reports should indicate how and which feedback is taken into account and which is followed or dismissed. It should state substantial reasoning on which stakeholder views have been followed when developing policy proposals or legal drafts. The report should clarify why certain feedback or options were dismissed.

The summary report should not only describe the procedural steps of the formal consultation but also of additional (informal) consultations or related participatory activities, e.g. expert or citizen dialogues etc.

⁴⁰ E.g. article 9 Aarhus Regulation.

⁴¹ See e.g. EC (2021), Better Regulation: Joining forces to make better laws, last access: 31.1.2022, p. 6.

11 On a Path with Inclusive and Effective e-participation – What to Conclude?

The digitalisation of administrative services has enormous potential to enhance public participation in European decision-making. From the user's point of view, the Have-your-say-Portal ideally serves as a central point of contact for all questions on European policy-making and legislative processes. Citizens and NGOs should receive proactive and targeted information on participation opportunities. Additionally, the information should be provided early enough, be reliable and unbureaucratic. This includes not only formal participation procedures but also informal and basic democratic formats that suit the needs of the diverse citizens of the European Union. Online tools and portals should be user-friendly, appealing and based on high technical standards.

Future questions to be answered by the European Union are:

- How can citizens and stakeholders be proactively reached to promote participation? How can information reach those who need it as effectively as possible?
- How do we move step by step from a kind of "riddle to fetch information" to a kind of "duty to bring" information to European citizens and stakeholders? What smart applications/automated programmes could be used wisely and prudently?

These questions and many more must be answered on the way to a digital European legislation and administration. The European legislator and administration should use modern ICT tools. Digitalisation of public participation is hereby not an end in itself, but follows the premise of information and the use of engaging services in a demand-oriented and uncomplicated manner. The European Union should deal thereby with transparency and at the same time data protection requirements in an exemplary manner to be a frontrunner in the world. A modern, up-to-date administration gives users sovereignty over their data. The Union should further encourage that environmental organisations which are crucial for shaping a green future, in view of their competences, confidently approach new and innovative solutions. It should also welcome a strong, digitally competent and well-equipped civil society that effectively participates in environmental matters. Meanwhile, citizens must continue to have the choice on which level of digitalisation they use. Traditional participation channels must not disappear just as much as personal consultations of citizens and civil society actors. Nor can all services be fully digitalised in the same way. For example, in the case of complex and technical legislative processes, expert workshops with in-depth professional exchange could foster good law-making. Complementary systems of analogue and digital participation as well as formal and informal formats can promote the desired socio-ecologic transformation of Europe.

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