



Contribution to the European Commission's call for evidence for the forthcoming Communication on Better Regulation

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As part of its strategic engagement with the European Union (EU), the Regional Office for Europe of the UN High-Commissioner for Human Rights (OHCHR Europe) offers this contribution as input to the call for evidence launched by the European Commission to inform the forthcoming Communication on Better Regulation, and related initiatives to be presented therein.¹

The below observations are tailored to respond to the questions identified in the referred call for evidence; they should not be regarded as exhaustive and should be read alongside broader recommendations and requirements, in particular those outlined in OHCHR Guidelines for States on the effective implementation of the right to participate in public affairs (hereinafter “OHCHR Guidelines”)² and in relevant communications, reports and case-law of international human rights mechanisms.

Building on its broad human rights mandate, and its engagement on the promotion and protection of civic space, OHCHR stands ready to further support efforts by the European Commission and other EU institutions to improve the EU Better Regulation framework and promote the right to participate in public affairs at EU level.

ABOUT OHCHR EUROPE

Building on its broad human rights mandate and leveraging its thematic and country-specific expertise, advisory role and capacity-building capabilities, OHCHR works to advance international human rights standards and to ensure the participation, protection and recognition of civil society actors. The promotion and protection of civic space have been a long-standing priority of OHCHR Europe.

Through its presence in Brussels, OHCHR Europe engages closely with EU institutions and bodies in close cooperation with OHCHR headquarters and field offices, UN partners and regional actors and civil society, to strengthen policy coherence, protection frameworks and accountability at EU level.

¹ European Commission, Communication on better regulation (Call for Evidence), https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/16232-Communication-on-better-regulation_en.

² OHCHR, Guidelines for States on the effective implementation of the right to participate in public affairs (October 2018), https://www.ohchr.org/sites/default/files/2021-12/GuidelinesRightParticipatePublicAffairs_web.pdf.

Participation as key enabler of all human rights

The right to participate in public affairs, including the right to take part in the conduct of public affairs, has been recognised as fundamental political right under Article 25 of the International Covenant on Civil and Political Rights.

As reaffirmed in OHCHR Guidelines, participation also enables the advancement of all human rights and plays a crucial role in the promotion of democracy, the rule of law, social inclusion and economic development. While the responsibility and accountability for taking decisions ultimately rests with public authorities, the participation of various sectors of society allows the authorities to deepen their understanding of specific issues; helps to identify gaps, as well as available policy and legislative options and their impact on specific individuals and groups; and balances conflicting interests. As a consequence, decision-making is more informed and sustainable, and public institutions are more effective, accountable and transparent. This in turn enhances the legitimacy of States' decisions and their ownership by all members of society.³

The EU Better Regulation reform as a key opportunity to enhance participation

At EU level, the Better Regulation framework guides how the European Commission prepares proposals and implements policies.

OHCHR Europe believes that reflections on a revision of the EU Better Regulation framework offer a key opportunity to address existing gaps and challenges standing in the way of fully realizing the right to participation in EU decision-making. The Office therefore calls on the Commission to use this opportunity to improve the existing legal and policy framework to make rules and practices instrumental to ensure more accessible, meaningful, and inclusive opportunities for stakeholders to take part in the conduct of EU public affairs on the ground.

Using international standards as compass: Key Recommendations

OHCHR Guidelines set out basic principles and practical recommendations on how States can put in practice the right to participate in public affairs in light of international human rights standards and recommendations by human rights mechanisms.

The Guidelines, which were requested by the Human Rights Council and drafted following a wide global consultation process, outline the right's basic principles and cover participation both in electoral and in non-electoral contexts, and at the international level. They provide a key normative basis by conceptualising participation as stage-sensitive, proportionate and continuous process.

Having regard to these basic principles and requirements and building on its previous engagement and recommendations addressed to the EU in this area,⁴ OHCHR Europe offers the following observations as input to the call for evidence launched by the European Commission to inform the forthcoming Communication on Better Regulation.

³ OHCHR, para. 1-2.

⁴ OHCHR Europe, Protecting and expanding civic space in the EU and beyond, https://europe.ohchr.org/sites/default/files/2023-07/Civic%20space%20final_0.pdf, p.12.

1) Better reconciling the need for evidence-based policies and urgent action: ensuring meaningful and inclusive participation since the earliest stages of decision-making

GUIDELINES' BASIC PRINCIPLES AND REQUIREMENTS

- Well-organized participation is key to help ensure evidence-based policymaking in time-sensitive situations. To that effect, decision makers should develop institutional frameworks, including formal permanent structures, to ease meaningful participation at all stages of decision-making.
- Discriminated or marginalized groups should be adequately represented including in permanent structures and particularly encouraged to participate.
- Participation before decision-making should be ensured, in terms of shaping the agenda of decision-making processes and ensuring that a diversity of priorities and needs are duly taken into account when all options are still open.

In line with OHCHR Guidelines' basic principles and requirements, creating **permanent participatory mechanisms organized by policy area, or better leveraging existing fora** such as Commission-led experts groups, groups within the European Economic and Social Committee, the Fundamental Rights Platform led by the EU Agency for Fundamental Rights (FRA), or the future EU Civil Society Platform, could ensure improved and more timely information sharing to rights holders and stakeholders, and promote continued participation so that input can be more easily and timely gathered including in time-sensitive situations.⁵

Such structures shall be made genuinely **accessible to and inclusive of individuals and groups that are marginalized or discriminated against**, in particular women, persons with disabilities, and persons belonging to minorities, and persons from disadvantaged socioeconomic backgrounds.

The opportunity of relying on permanent consultation structures would enable the Commission to **ensure participation from a very early stage of decision-making**, when all options are still open⁶, giving stakeholders and rightsholders the opportunity to participate in shaping the agenda of policy processes before decisions are taken.⁷ This would also allow the Commission to more easily conduct **systematic and informed impact assessments** (IAs), including in time-sensitive situations. OHCHR Europe underlines that IAs, in particular as regards human rights implications of policy and legislative initiatives, remain essential and, while they may need to be performed through expedited procedures under certain circumstances, they should never be dispensed with, including for implementing and delegated acts. The Commission could also consider revising the **composition of the Regulatory Scrutiny Board** to include external independent experts, including from civil society, to enhance participation and feedback at the impact assessment stage.

⁵ OHCHR Guidelines, para.56-57.

⁶ OHCHR Guidelines, para.70.

⁷ OHCHR Guidelines, para.64.

2) Ensuring a holistic approach to stakeholder consultations: structured, diverse and transparent consultation processes across all stages of policy making

GUIDELINES' BASIC PRINCIPLES AND REQUIREMENTS

- Participation in decision-making processes shall happen at different stages and through different means. Modalities of participation should vary in function of the level of participation and the context and stage of decision-making.
- ICTs can offer key support to a more holistic approach to stakeholder consultations provided that efforts are made to strengthen equal and meaningful participation and address digital divides.
- In a spirit of openness and transparency, information regarding the decision-making process, avenues to contribute and stakeholder engagement should be proactively and timely disseminated in an appropriate manner.

OHCHR Guidelines highlight how structured participation mechanisms relying on different tool across the various stages of decision-making can help make input-gathering efforts more effective and avoid repeated or fragmented consultation processes.⁸

The use at EU level of **public consultations and calls for evidence**, including through information and Communication Technology (ICT) is welcome as it can expand opportunities for rights holders and stakeholders to contribute to EU policy making. In this respect, OHCHR Europe underlines the importance of ensuring sufficiently long consultation periods, maximize outreach to ensure equal participation and close digital divides, especially for women, persons with disabilities, older persons, persons living in rural areas and persons belonging to minorities.⁹ Among others, EU ICT public consultations tools could be translated into national and local languages and their accessibility and user-friendly interfaces could be improved.

Alongside public consultations and calls for evidence, **more structured partnerships with civil society** could also be sought to allow for more targeted contributions at different stages of the decision-making process. These may include formal and informal civil dialogue practices, as well as efforts to enhance the participation of rightsholders and stakeholders in existing fora such as **Commission-led expert groups**.

In order to further promote participation in EU policy making, additional efforts could be made to disseminate **clear and detailed information regarding decision-making processes** for which input is sought and **available participation mechanisms**. These may be achieved, for example, through strengthened engagement with regional and national civil society platforms and by better leveraging dialogues with national parliaments. In addition, in a spirit of openness and transparency, **information about stakeholder engagement during policy processes** should be made publicly available.

⁸ OHCHR Guidelines, para.53.

⁹ OHCHR Guidelines, para.88-91.

3) Practical steps to make EU laws simpler and easier to implement in practice: better enabling and ensuring participation during implementation and evaluation

GUIDELINES' BASIC PRINCIPLES AND REQUIREMENTS

- Institutions should communicate the results of participation processes in a timely, comprehensive, and transparent manner.
- User-friendly and accessible information should be proactively made available at all stages of implementation, for example through dedicated websites, email alerts, and targeted engagement.
- Effective participation should be enabled in monitoring and evaluating progress in the implementation of laws and policies.

As highlighted by OHCHR Guidelines, mechanisms and practices to ensure participation after decision-making are key to make laws simpler and easier to implement.

At EU level, efforts to ensure **more systematic, transparent and clear feedback of how contributions are considered and used**, including through webpages of public consultations and calls for evidence, and more elaborate information within explanatory memoranda to proposals, would promote continued engagement of rights holders and stakeholders in subsequent phases in support to implementation and evaluation of EU laws and policies.¹⁰

The Commission could also consider ensuring **more proactive and consistent information on efforts to ensure implementation**.¹¹ This may include better dissemination of progress reports on implementation, but also disclosing relevant and timely information about **infringement proceedings**, while ensuring confidentiality of exchanges between the Commission and national authorities. This may include the more systematic publication of detailed press-releases, for example, and efforts to ensure as comprehensive and timely as possible responses to individual requests for access to information or individual complaints.

The European Commission could also consider ways to **enhance participation and transparency when monitoring implementation and evaluating laws and policies**¹², both through social audit tools and targeted stakeholder consultations. The Commission could also consider further promoting civil society stakeholders' engagement in, and contributions to, **Commission-led transposition workshops, implementation dialogues and expert groups**. More participatory implementation and evaluation frameworks will help identify criticalities and adjustments needed to ensure better implementation on the ground¹³, and provide the evidence needed to inform reality checks, fitness checks and reflections on the necessity and proportionality of revision or simplification efforts.

¹⁰ OHCHR Guidelines, para.79.

¹¹ OHCHR Guidelines, para.85.

¹² OHCHR Guidelines, para.84.

¹³ OHCHR Guidelines, para.82.