

Campaigns and Consultations: The Debate on EU Policymaking Transparency

Written by Miranda Lovell-Prescod and Nikolaos Sarris

and Benedetta Russetti

Part 1 - How can reporting affect civic engagement in EU policymaking?

Introduction

On December 12, 2022, the European Ombudsman published a decision on a complaint raised by a group of civil society organisations regarding the way the European Commission (EC) carried out a public consultation on the *Sustainable Corporate Governance Initiative*. In the first installation of this blog series, we will lay out the case, the rationale behind each side of the debate and the Ombudsman's decision.

The debate that determined the Ombudsman decision raises several questions about campaigns, particularly on how they are treated by the EC and the extent to which they contribute to increased engagement in public consultations. In part two of this series, we will consider these questions by identifying several campaigns and analysing the methods through which campaign organisers increase interest. Ultimately, we will suggest a few points that policymakers should consider when reporting on the key messages and participation rates in order to truly ensure **transparency**.



How did the Commission handle the campaign responses from this public consultation?

The Sustainable Corporate Governance Initiative aims to encourage companies to better manage sustainability related issues in their operations and value chains. In the context of EU Better Regulation, stakeholders are consulted at the various stages of the policy making process, this includes an *open public consultation* which is a questionnaire open to all stakeholder groups on *Have your say* (the official cite of the EC where citizens and businesses can share their views on new EU policies and existing laws). The 12-week public consultation for this initiative took place from October 2020 to February 2021 and attracted the interest of several civil society organisations that mobilised citizens in their networks to participate in the public consultation. As a consequence, a high share of responses (99%) submitted through *Have your say* stemmed from these online campaigns.

According to the Better Regulation toolbox, once a public consultation is launched it should be continuously monitored by the Commission in order to identify the presence of organised campaigns that suggest answers to the public consultation questionnaire. The identified

campaigns should then be analysed separately and their results presented adequately in the synopsis report. The synopsis report is published as an annex to the impact assessment report at the end of all consultation activities and after the College of Commissioners has adopted the legislative proposal. The purpose of this report is twofold on the one hand to inform policymaking on the outcome of activities and on the other hand stakeholders about how their input was considered. Note however, that for each consultation activity another report, the factual summary report, which presents factual information on the input is produced. This report is published on *Have your say* 8 weeks after the public consultation is concluded and before any decision is made.

In this particular consultation, campaign organisers used different means to mobilise their supporters, ranging from providing a pre-filled, standardised response to the public consultation questionnaire to offering citizens the possibility to participate in an online petition. Two campaigns were identified; each coordinated by groups of civil society organisations that did not directly use the *Have your say* portal.



One of these organisations, Friends of the Earth Europe (FoEE), coordinated a petition which

was signed by more than 120 000 citizens. This high rate of participation in the petition sparked a debate between the campaign organisers and the EC on whether these numbers should be made public on *Have your Say*.

The campaign organiser complained that, despite an official request having been filed, the petition results were not presented in the original factual summary report, published on *Have your Say*, nor in the pie chart which showed the overview of responses.

The EC eventually agreed to update the factual summary report and include a reference to the signatures but refused to report on the key messages of campaign responses. The EC argued that, in line with the Better Regulation Toolbox, campaign responses should be analysed separately from non-campaign responses and reported in the *synopsis report*.

In reaction to this, the campaign organiser filed a complaint to the Ombudsman, who decided to open an inquiry on how contributions via campaigns are reported by the EC.

Should the Commission have acted differently to ensure transparency and engagement?

According to the Better Regulation Toolbox: all contributions to a public consultation should be treated and presented equally. The Toolbox recognises that although campaigns are very effective in generating interest among stakeholders and citizens, they should be treated carefully and analysed separately from the “unique” responses. The factual summary report, should provide a quick analysis of the “unique” contributions, whilst the synopsis report should provide an analysis of the campaign-driven responses.

In replying to the Ombudsman’s inquiry, the EC posited that adding information on the key messages of campaign responses would defy the purpose of the factual summary report. Moreover, it pointed out that the consultation

results received outside *Have Your Say* (in this case sent by email) cannot *technically* be included in the statistical representations.

On the other side, the complainants argued that campaign responses were not treated on par with the “unique” responses and that because they were not included in the Factual Summary Report, they were less visible to the general public. Consequently they believed that the campaign responses would have had a limited effect on the decision-making process. In their view, this creates a two-tier system which penalises participation in campaigns and undermines one of the few channels through which European citizens can contribute to the policy-making process.



The European Ombudsman decision

The Ombudsman considered that, in line with the Treaty of the European Union, choices should be made as openly and as closely to the citizens as possible. It underlined that the Better Regulation principles should be applied with some flexibility in their interpretation to ensure that the policy-making process is inclusive and transparent. These principles are based on the idea that citizens should be involved in the

decision-making process and therefore the EC should choose to interpret the provisions in a way that is most favourably for them.

In the same spirit, the Ombudsman concluded that the request to add information about the key messages of campaigns (and the petition) is fair and asked the Commission to better communicate its decisions to campaign organisers. Based on this decision, in the future the EC should include a short description of the content of the responses collected through campaigns in the factual summary report even when these take place outside *Have you Say*.

The conclusion

The reasoning and assessment made by the European Ombudsman generated a discussion about the role of campaigns in the policy-making process. What is clear is that campaigns can be effective in increasing citizens’ participation in public consultation and in some cases and key areas they are able to drive a noticeable share of responses.

But if campaigns can be so influential, isn’t it important for the EC and all those who participate in public consultations to understand how they work and who is behind them? In our next blog we will present our thoughts on why it is important to differentiate between different types of campaigns and how acknowledging these differences can be useful to policy makers and citizens.

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