

Complaint to the European Ombudsman

Maladministration of the European Commission in its decision to revise the Water Framework Directive in the RESourceEU Action Plan



Introduction

On the third of December 2025, the European Commission released its RESourceEU Action Plan. On Page 8 it reads,

“In addition to the guidance, by Q2 2026 the Commission will review and revise the Water Framework Directive building on stakeholders’ input and experiences in Member States, paying particular attention to simplification and the need to address potential bottlenecks, in order to promote circularity and access to critical raw materials in the EU, while protecting the environment and human health”.

The Complainants (The European Anglers Alliance, the European Environmental Bureau, Surfrider Foundation Europe, Wetlands International European Association and the European Policy Office of WWF – hereinafter referred to as ‘we’) have reason to believe that this announcement, as well as the unfolding process, is lacking procedural guarantees necessary to ensure evidence-based decision making, policy coherence and public involvement. We therefore believe that the declaration quoted above, the steps that preceded it (or the lack thereof) and those that followed it, reveal a pattern of maladministration on the part of the European Commission. Their cumulative effect amounts to a flagrant deviation from established due process, one that materially affects citizens' rights.

The following sections will develop the three main procedural misgivings, which consist of:

1. The decision to review is not based on best available evidence and is incoherent,
2. The lack of early, effective, equal and balanced participation,
3. The measure chosen is inappropriate to the end pursued.

We ask that the Office of the European Ombudsman conclude to maladministration and issue appropriate recommendations to remedy the procedural deficiencies.

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Context

- Water resilience and water security are one of the Commission's 2024-2029 priorities, as highlighted in the Political guidelines released on 18 July 2024. This is also reflected in the title of Commissioner Roswall, responsible for 'Environment, Water Resilience and a Competitive Circular Economy', and in her mission letter which entrusts her to "*address water efficiency, scarcity, pollution and water related risks*".
- Strengthening the competitiveness of European industries is also one of the Commission's key priorities, and securing access to raw materials is tied to it. However, Europe's long-term competitiveness depends on the functioning of natural systems, and the European Commission has recognised that the costs of not implementing EU environmental legislation amount to approximately €180 billion per year in health impacts and environmental damage (European Commission, [Update of the costs of not implementing EU environmental law](#), 2025).

Summary of events

The Environmental Omnibus

- The von der Leyen II Commission has put simplification of legislation as a key part of the Commission's efforts to strengthen European competitiveness. From January 2025 to June 2026, the Commission has proposed 12 so called omnibus proposals. A Call for Evidence to simplify environmental legislation (the Environmental Omnibus) was launched on 22 July 2025 and open for comments until 10 September. In just 10 days, close to 200,000 citizens responded to the consultation, urging the European Commission to stop any weakening of environmental laws.
- On 10 December 2026, the European Commission presented a package of six legislative proposals, including a proposal for a Regulation on speeding up environmental assessments. The proposal has been [heavily criticized](#) by environmental NGOs as yet another example of how the Commission is bending its own procedures to weaken protection of health and environment.
- While none of the legislative changes directly amends the WFD, the commitment to review and revise the WFD was reiterated in the chapeau communication.

The RESourceEU Action Plan

- On 3 December 2025, the European Commission published the RESourceEU Action Plan that aims to improve the EU's access to Critical Raw Materials. Without prior announcement, the Action Plan stated that *"by Q2 2026 the Commission will review and revise the Water Framework Directive building on stakeholders' input and experiences in Member States, paying particular attention to simplification and the need to address potential bottlenecks, in order to promote circularity and access to critical raw materials in the EU, while protecting the environment and human health"*.
- The Action Plan also announced the publication, in Q1 2026, of a Guidance for the implementation of the Water Framework Directive during the permitting of new projects and existing activities, with a particular focus on the mining sector.

The Call for Evidence on the targeted WFD revision

A Call for Evidence consultation on the targeted revision of the WFD was held between 17 March and 14 April 2026. The Call for Evidence states that the problem the initiative aims to tackle is based on input from stakeholders (the Critical Raw Materials sector).

- It continues by inviting *"Stakeholders from the CRM sector ... to provide evidence... and problems"*.
- The consultation received over 3000 responses, the majority (87%) from citizens. The Commission's assessment of the responses showed an ["overwhelming" opposition \(European Comissions's presentation from the 16 April Strategic Coordination Group meeting\)](#) to any weakening of the WFD from citizens, civil society, most public authorities and local communities, academia/scientific organisations, water industry and sectors dependent on water quality (agri-food, part of the agriculture sector, tourism and recreation, fisheries, aquaculture).
- This [matter has also been brought up as a parliamentary question](#).

- DG ENV highlighted “*Limited Evidence for Legislative Bottlenecks: A recurring theme across a significant volume of feedback — particularly from scientific organisations and public authorities — is the lack of concrete evidence that the WFD itself is the cause of permitting delays or that is preventing the issuance/renewal of permits. No evidence that the legislation itself leads to technically or disproportionately costly requirements on companies.*” ([see again presentation of the 16th of April SCG meeting](#)).

Correspondence with the European Commission

We have made multiple administrative approaches to the European Commission, urging the Commission not to revise the WFD as there is no evidence this is needed.

- In February, we along with other NGOs and drinking water suppliers sent a letter to the European Commission where we [urge it not to revise the Water Framework Directive](#)
- Our organisations were among the many environmental and civil society organisations that responded to the Call for Evidence urging the Commission to refrain from revising the WFD, see submissions from [the EEB](#), [WWF European Policy Office](#), [Wetlands International Europe](#) and [Surfrider Foundation](#).
- In April we, along with other NGOs, sent [another letter to the European Commission, urging not to revise](#), and this time making clear our concerns on the procedural violations that now make up this complaint.

The reply from the European Commission

On the 14th of August 2026 we received a reply from Eric Mamer, the Director-General of DG Environment to our April letter that asserts that the Commission is “*convinced that the process fully respects the Commission’s Better Regulation Guidelines and the requirement for decisions to be based on best available evidence*” (see Document 1. Reply EM). The response reiterates that “*the Commission’s announcement of a targeted review aims to address challenges identified by the mining and metal processing sectors in complying with the provisions of the Water Framework Directive, particularly in the context of new projects for the mining of critical raw materials and related processing activities*” and also highlights that “*At a time when the security of supply is more important than ever, swift action to address these challenges is imperative*”.

Access to Information request on the decision to review and revise the WFD

In order to elucidate the grounds behind the decision “*to review and revise*” the WFD by Q2 2026, we submitted an **access to information request (2026/0703)** to clarify how the decision was made in the run up to the publication of the RESourceEU Action Plan.

An answer was provided on the 11th of May 2026.

Grounds for the Complaint

The following sections will develop the three main procedural misgivings we believe are constitutive of maladministration:

1. The decision to review is not based on the best available evidence and incoherent,
2. The lack of early, effective, equal and balanced participation,
3. The measure chosen is inappropriate to the end pursued.

Each section will present Findings of Fact relevant to each argument, and the subsequent Legal Grounds for the complaint. As a conclusion, we present the Remedy Sought by this complaint.

I. The decision to review is not based on the best available evidence and is incoherent

I.I Findings of Fact

The Water Framework Directive (WFD) background and trajectory

- The [WFD 2020 Fitness Check](#) states that *“The Water Framework Directive has been found to be sufficiently prescriptive regarding the pressures to be addressed, yet flexible enough to accommodate emerging challenges”*. The Fitness Check concludes ***“...that there is limited room for simplification and reduction of the Directives’ administrative burden without jeopardising [its] objectives”***. The measures of the WFD are deemed **appropriate to the objectives**.
- The objectives of the WFD to work towards improving the status of our waters are still relevant, as evidenced by the [2024 State of the Water](#) report and the [2025 Implementation Report](#). They both encourage full implementation of the Directive.
- In its WFD [Implementation Report of February 2025](#), the Commission issues a series of commitments to improve implementation. **None of these anticipate the need for a revision**. The Report also reads as follows: *“It is worrying to note that several Member States have already indicated that they intend to make extensive use of exemptions in 2027, either by applying less stringent environmental objectives or extending the deadline”*.
- The [2026 Court of Auditors report on CRM EU policy](#) highlights ‘Lengthy and complex permitting creates a bottleneck for mining in the EU’ as one of the main implementation challenges and elaborates with the following: *“... almost half of the member states identified environmental and social considerations (such as pollution and the “not in my backyard” effect) as the primary obstacle to increasing domestic extraction. Six member states have indicated that bottlenecks arise from both insufficient administrative capacities in the public sector (for example to grant mining and exploitation licences) and nature protection – particularly in the context of the Water Framework Directive and the Natura 2000 Directives”*.

The revision of the WFD in the context of the Water Resilience Strategy

- The EU [Water Resilience Strategy](#) highlights that “Achieving water resilience will depend on enhanced implementation of the comprehensive EU water acquis”.
- On 21 October 2025, Environment Ministers stressed in the [Council Conclusions](#) on the EU Water Resilience Strategy “the urgent need for improved implementation of existing EU water legislation across sectors”, a call which had also been made in the European Parliament’s [INI report on water resilience in 2025](#). The abrupt change in direction has been remarked on by a [Parliamentary Question that asks the Commission to provide a justification](#) for this shift.
- The European Water Resilience Forum took place on 8 December 2025, 5 days after the RESourceEU Action plan was launched. No reference to the WFD revision was made there by all the high-level speakers of the European Commission, despite enhanced implementation of the comprehensive EU water acquis being one of the foundations of the EU Water Resilience Strategy, as [pointed out by MEP Thomas Bajada](#).
- The Water Resilience Strategy announced Structured Dialogues where the Commission and Member States discuss national implementation of the WFD. These Dialogues are ongoing. A revision of the core text halfway through these Dialogues means that only some Member States would be able to frame their commitments to better implementation taking the proposal as a starting point.

The decision to revise was not supported with evidence

- No assessment or evaluation, no explanatory memorandum nor public notification has been provided before the decision to revise the WFD was announced in December 2025.
- The Commission’s call for evidence states that the “RESourceEU action plan proposes a targeted revision of the WFD to address specific challenges its implementation poses for CRM projects”. It also states that “An impact assessment will be produced **to generate an evidence base for the targeted revision of the WFD**”.
- In the call for evidence, stakeholders are invited to provide concrete evidence demonstrating difficulties resulting from the interplay between CRM projects and water legislation. Stakeholders from the CRM sector are particularly invited to provide evidence of specific bottlenecks and problems in the permitting of CRM projects that stem from the WFD, and to indicate possible areas for simplification. **This plea denotes that the European Commission is not in possession of sufficient evidence that there is a problem with the WFD - despite already indicating the intention to carry out a revision.**

The problem this initiative aims to tackle exists only in the context of stakeholders in the CRM industry

- The Call for Evidence states that the problem at hand are issues brought up by the CRM sector.
- The response received from the Commission re-iterates that “the Commission’s announcement of a targeted review aims to address challenges identified by the mining and metal processing sectors in complying with the provisions of the Water Framework Directive, particularly in the context of new

projects for the mining of critical raw materials and related processing activities" (see Document 2. Reply EM).

Access to Information request on the decision to review and revise the WFD

In order to elucidate the grounds behind the decision *"to review and revise"* the WFD by Q2 2026, we submitted an **access to information request (2026/0703)** to clarify how the decision was made in the run up to the publication of the RESourceEU Action Plan.

- The response shows that the initial intention of DG Grow was to issue a legislative proposal modifying both the CRMA and the WFD (Document 2. Proposal for a Regulation).
- DG ENV submitted on 26 November its reply to the interservice consultation (Document 3. Response ISC) for this proposal, and considers it *"absolutely essential to delete"* references to the WFD from the proposed regulation for the following reasons (paraphrased for brevity): the WFD has just undergone a revision that has introduced new flexibilities, the very far-reaching changes proposed in the text submitted to ISC are not impact assessed, the call for evidence on the environment omnibus gathered a strong call for not amending environmental legislation, an assessment of the latter revealed that most of the challenges in relation to permitting for critical raw materials projects raised by stakeholders were related to national implementation of the WFD, the recent Council Conclusions and the European Parliament report on Water Resilience share the same conclusion that the priority is to enhance the implementation of the WFD rather than developing new legislation.
- The response concludes that DG ENV is also tabling a proposal on environmental permitting acceleration, which will also speed up permitting for CRM projects and that it will in 2026 carry out a stress testing of the WFD and **evaluate the need for possible legislative measures**, *"building on stakeholder input and experiences in Member States, and paying particular attention to the need to promote circularity and access to critical raw materials in the EU, while protecting the environment and human health"*.

I.II Legal Grounds

The announcement in an Action Plan sets out a course of action. This is to be understood by third parties and the public, including our organizations, as though they may reasonably rely on that commitment. It is following the principle of legitimate expectations and legal certainty (confirmed in Article 41 of the Charter of Fundamental Rights) that we treat the sentence contained in the RESourceEU Action Plan subject of this complaint as a set policy objective that the European Commission will follow through on, and why this section contests the process followed – or, not followed – for this decision to be made.

The decision is not based on the best available evidence

The RESourceEU Action Plan thus sets out a policy option that has not been properly evaluated and does not meet the **'evaluate first' principle** of the Better Regulations Framework. Lessons from implementation and evaluations such as fitness checks all form part of the 'evaluate first' approach to policy development (page 8, [Chapter 1 of the Better Regulations Toolbox](#)). The results of the [7th implementation report on the WFD and the Floods Directive \(2025\)](#) and the mentioned fitness check should all be taken into consideration to respect the

policy cycle approach in which the Commission evaluates first, and then, knowing what works and what does not, designs new initiatives (page 23, [Chapter 1 of the Better Regulations Toolbox](#)).

None of the conclusions of any of the mentioned evaluations conclude that a revision of the WFD is necessary or even recommended. In fact, the [WFD 2020 Fitness Check](#) states that “*The Water Framework Directive has been found to be sufficiently prescriptive regarding the pressures to be addressed, yet flexible enough to accommodate emerging challenges*”. The Fitness Check concludes “... *that there is limited room for simplification and reduction of the Directives’ administrative burden without jeopardising [its] objectives*”.

Furthermore, one could argue that the impact assessment currently under preparation serves as this evaluation. To that we would answer that “*in line with the ‘evaluate first’ principle, evaluation of EU intervention precedes work (i.e. the impact assessment) dealing with the revision of that (or related) intervention*” (Page 385, [Chapter 6 of the Better Regulations Toolbox](#)).

The decision is not Coherent with EU policy, nor has it obtained Political Validation

The [Better Regulations Guidelines](#) (BRG) establish a **Coherent approach** whereby the EU policymaking cycle commences with a clear forward planning and political validation. This principle hails that EU laws cannot be adopted in isolation; every initiative must sit consistently within the broader policy architecture the EU has committed to. Consistency is ensured by aligning policies with high-level, long-term objectives and principles such as “do no significant harm”, “digital by default”, the European Climate Law, the UN SDGs, and strategic foresight ([page 5 of the BRG](#)).

Rather than aligning the WFD revision with these overarching objectives, the Commission has pursued a narrowly framed legislative adjustment driven by industrial and raw materials' interests, without assessing its systemic interactions. This incoherence is not merely a policy failure; it is a legal one.

Political validation on the other hand, is a procedural gateway that must be crossed before any substantive work begins and must be understood as giving the green light to proceed with further. “It should not be interpreted as a decision that prejudges the outcome of any impact assessment or later political discussion in the College” ([Better Regulations Guidelines](#)).

In practice it is required before launching the Call for Evidence, stakeholder consultation, undergoing RSB scrutiny, or interservice consultation (footnote 28 of the [Better Regulations Guidelines](#)). This principle operates via a valid entry in the Decide tool. Exemptions from guidelines can be requested at this stage (e.g. political urgency, emergencies, confidentiality needs).

Political validation and Coherence are therefore ensured by the dutiful fulfilment of procedural guarantees. One of these guarantees is the Inter Service Consultation (ISC) (page 9, Chapter 1, [Better Regulation Toolbox](#)). The ISC specifically exists to catch incoherence across DGs before a proposal goes public. On the 26/11/2025 Ms JORNA KERSTIN, Director General of DG GROW receives a reply from DG ENV to the Interservice Consultation by DG GROW (Ref.: ISC/2025/10868 and ISC/2025/10869). We have referred to this document in the facts and it is attached as Document 3. Response ISC. The first line states:

*“Thank you for consulting DG ENV on the ResourceEU Action Plan and on a legislative proposal with amendments to the Critical Raw Materials Act and the Water Framework Directive. We can give a positive opinion which is conditional upon the integration of all ENV comments, **including the deletion of any amendment to the Water Framework Directive**”.*

The response evidences that the commitment to amend the WFD, contradicts the response from DG ENV to this ISC on the same matter, and therefore suggests that procedural guarantees for political validation were not fulfilled.

In addition, the comment attached to the proposal (Document 2. Proposal for a Regulation) clearly states that the proportionate policy option is the Guidance developed in 2026 and the Stress Test envisioned. More on proportionality in the following section.

The exact quote from DG ENV is:

“... it will in 2026 carry out a stress testing of the WFD and evaluate the need for possible legislative measures, building on stakeholder input and experiences in Member States, and paying particular attention to the need to promote circularity and access to critical raw materials in the EU, while protecting the environment and human health”

The exact text of the RESourceEU Action Plan, subject of this complaint, is:

“... by Q2 2026 the Commission will review and revise the Water Framework Directive building on stakeholders’ input and experiences in Member States, paying particular attention to simplification and the need to address potential bottlenecks, in order to promote circularity and access to critical raw materials in the EU, while protecting the environment and human health”

The RESourceEU Action Plan has ignored the outcome of the ISC on the same matter by forgoing the opposition from DG ENV to delete any reference to amendment of the WFD. The ISC envisages a stress test, the RESourceEU Action Plan promises review and revision.

The ISC is a precondition for the correct functioning of the European Commission's Rules of Procedure. Disregarding the outcome of the ISC cannot be seen as fulfilling [Article 21 and 12 of the European Commissions rules of procedure](#), notably the requirement to “endeavour to frame a proposal that has the agreement of the departments consulted. In the event of a disagreement, it shall append to its proposal the differing views expressed by these departments, without prejudice to Article 12”.

Unjustified deviation from Better Regulations Framework

The Better Regulation Framework (comprised of the Better Regulation Guidelines (BRG) 202120 and Toolbox (BRT) 202321) aim at ensuring that the European Commission develops policy on evidence, transparency, and stakeholder input, with defined, auditable procedures.

As showcased in this section and the two to follow, the European Commission has deviated from the pathway prescribed by the Better Regulation Framework. There might be “occasions when certain procedural steps or processes cannot be done or need to be shortened or simplified for good reasons (e.g. political urgency, the need to respect confidentiality and security concerns etc.)” ([Chapter 1, Tool 1 of the Better Regulation Toolbox 2023](#)). Nonetheless, in order to invoke exemption: “... the need for flexibility or an exception should already be described (and justification provided) in the relevant fields of the Decide IT platform. The main exceptions concern: a deviation from the ‘evaluate first’ principle, not conducting an impact assessment, not conducting a public consultation (when procedurally required). The agreement of the Vice-President responsible for ‘better regulation’ will then explicitly cover the intended exception”.

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

If no deviation to the Better Regulation Guidelines has been notified following the procedure in the Better Regulation Toolbox 2023, Chapter 1.3, then the Commission must follow its Better Regulation Framework, including its principles on evaluating first, coherence and obtaining political validation.

II. Lack of early, effective, equal and balanced participation

By announcing both the review and revision simultaneously, the Commission's RESourceEU Action Plan has contravened the requirement of early and effective participation.

The Commission should have conducted a comparison of policy options, including those which do not include a revision, and set up a Call for Evidence at the stage of the review (before deciding on the revision). We believe lack of proper assessment of various policy options does not allow for informed decision making regarding the revision of the WFD.

II.I Findings of Fact

The Call for Evidence limits its scope to only one policy option

- The name of this Call for Evidence is *"Call for Evidence for an Impact Assessment; Targeted revision of the Water Framework Directive (2000/60/EC)"*. Under policy options it states, *"This initiative **will** review and revise the WFD"*. This scope conditions the type of evidence and participation they will receive to only one available policy option: revision.
- During the dedicated Strategic Coordination Group of the Commission Implementation Strategy meeting on the 16th of April 2026, the Commission stated that there would **not be a 'no revision' policy option in the impact assessment**.
- In the response to our [letter of 29 April 2026](#) addressed to President von der Leyen concerning the ongoing targeted revision of the Water Framework Directive, Eric Mamer responds (see Document 1. Reply EM), to our lament of a lack of equal and balanced participation that *"A dedicated meeting with the members of the Strategic Coordination Group of the Commission Implementation Strategy was also held on 16 April"* had taken place.

The Call for Evidence calls for a biased representation of stakeholders

- The phrasing *"Stakeholders from the CRM sector are **particularly invited** to provide evidence of specific bottlenecks and problems in the permitting of CRM projects that stem from the WFD, and to indicate possible areas for simplification"* is inherently problematic since it favours one type of response, from one type of stakeholder.

The actions preceding and following the Call for Evidence created for a biased representation of stakeholders

- Since the decision to revise the WFD was made, over [574,039 people have objected to it](#).
- After the RESourceEU Action Plan, we have been made aware that the European Commission has been organising Stakeholder Roundtables and Implementation Dialogues (such as one with farmers, on 18

February 2026, with Swedish industry representatives on 8 April and Swedish civil society on 16 April and then one on the 5th of May). [We often only hear of them after they have already occurred and have not been invited to participate or provide input.](#)

- Data from *Integrity Watch* (see Document 4. Annex 1) shows that the European Commission held 35 meetings with stakeholders specifically on the Water Framework Directive between 1 December 2025 and 10 July 2026. Out of those 35 meetings, 18 were held with business and trade associations, 8 with companies and groups, and only 7 with NGOs. 16 of those meetings were held with the mining sector, including six meetings with Euromines (labelled as “European Association of Mining Industries, Metal Ores & Industrial Minerals”). Most of the meetings are with members of cabinet of Commissioner Roswall. The full list of meetings is available in Document 4. Annex 1.
- The same report shows that Swedish state-owned mining company LKAB had 26 meetings with senior Commission officials since the Von der Leyen 2 Commission took office, including 12 on either the Water Framework Directive, the RESourceEU Action Plan, simplification or competitiveness. The list of meetings is also presented in Document 5. Annex 2.
- [Corporate Europe Observatory](#) also reports two Commissioners heading all the way to Swedish mining town Kiruna for a site visit, and that on 19 September LKAB forwarded to the Commission a list of 63 simplification proposals for EU legislation from the Swedish government in Summer 2025. This list includes the Water Framework Directive.
- Up until his succession this year, Jan Moström was President and CEO of LKAB Europe, he served that position [for a decade](#). Since 2003 he also served as President of Euromines.
- [Data from De Smog](#) showed that the mining sector’s leading trade association, Euromines, held 108 meetings with Commission representatives in 2025, compared to 30 the previous year, according to the EU transparency register. DeSmog counted at least eight meetings directly related to the ReSourceEU Action Plan, and a further 19 on critical raw minerals and two on water. This compares to a total of nine on these topics from the year before — a 220 percent increase of meetings on those subjects.

II.II Legal Grounds

The goal of a Call for Evidence is to satisfy the consultation requirement under *Article 11 TEU*. This obligation is further developed under Protocol (No. 2) Article 2 on the Application of the Principles of Subsidiarity and Proportionality, whereby, **before** proposing legislative acts, the Commission is to consult widely. There is only one exception to this, and that is under cases of **exceptional urgency**, though it must still give reasons for its decision in its proposal.

We find the procedure followed in the Call for Evidence to not have been done in accord to this principle for **two reasons**. The first has been alluded to in the previous section and it has to do with the fact that the Call for Evidence has conditioned the policy outcome before allowing for public participation. The second is that stakeholders' opinions were not regarded in a balanced manner.

Call for Evidence conditions policy option

Article 6 of the Aarhus Convention, also enshrined in Chapter 7 of the [Better Regulation Toolbox](#), requires early and effective participation, “*when all options are open*” (Aarhus Convention Compliance Committee, ACCC/C/2006/16 (Lithuania)).

The Aarhus Convention Compliance Committee (ACCC) as established under the UNECE Aarhus Convention issues findings on whether signatory parties — including the EU — have met their obligations on access to information, public participation, and access to justice in environmental matters. Although not under the jurisdictional scope of the European Ombudsperson, we believe that their caselaw is instrumental in elucidating what counts and what does not count as “*early and effective*” participation.

On the matter of the Call for Evidence already conditioning the policy option, we have our answer in case ACCC/C/2014/104 (Netherlands): **public participation after zero or other options were excluded does not meet requirement “when all options are open”**. Under ‘Objectives and policy options’, the Call for Evidence states that “*This initiative will review and revise the WFD by building on input from stakeholders and the experience with implementation of the WFD in Member States, paying particular attention to simplification and the need to address potential bottlenecks*”. **In the absence of all but one policy options, there is little more to say on the matter.**

Call for Evidence does not heed due and equal account of stakeholder input

The Call for Evidence states its initiative is sparked from one main source: “***This initiative will review and revise the WFD by building on input from stakeholders and the experience with implementation of the WFD in Member States, paying particular attention to simplification and the need to address potential bottlenecks***”.

This translates into: The Commission has paid particular attention to stakeholders who requested simplification of the WFD, as shown by the mining industry [response to the omnibus consultation](#). Page 19 of the [Better Regulation Guidelines](#) states that “***One should avoid granting privileged access to some stakeholders.***”

The Call for Evidence also says that “*Input received in response to the calls for evidence launched to inform several simplification packages, including the Environmental Omnibus, will be taken into account*”. Articles 6, 7 & 8 of the Aarhus Convention and their EU counterparts found in Articles 2 and 3 of Directive 2003/35/EC require that due account shall be taken of the outcome of public participation. This means that participation will be listened to.

Hundreds of thousands of citizens have opposed the revision of the WFD, as showcased in the facts preceding the first section. In addition, in the Call for Evidence for the Environmental Omnibus: [196,118 responses](#) poured in from European citizens in ten days, urged the European Commission to stop any rollback of EU nature laws under the guise of “*simplification*”. Many of those messages mentioned the need to keep the water legislation untouched.

Case ACCC/C/2008/29 (Poland): States that due account of public input doesn't give the public a veto, but the decision-maker must show how participation was actually factored in. The Call for Evidence already conditions one policy option, therefore implying a decision has been made, but does not show how participation in that decision has been taken into account.

Proceeding exclusively with the policy option of revision after such clear public opposition does not constitute due account of the outcome of participation. Especially if there is no explanation as to why this input has been ignored.

Superposing the input of one industry sector over hundreds of thousands of responses, does not create equality before the law (EU Charter of Fundamental Rights, Article 20 — Equality Before the Law). It does not align with the principle of transparency of EU law either (Article 1 TEU) which requires “*decisions are taken as openly as possible*”.

For decades the signatory NGOs have contributed faithfully to the innovative Common Implementation Strategy of the Water Framework Directive since its establishment in 2001 and do not understand the change in collaborative spirit among European Commission services, Member State authorities, EU stakeholders and NGOs that took decades to build – all working towards effective and efficient achievement of the WFD objectives for the benefit of people and nature.

III. The policy option chosen is not appropriate to the aim pursued

III. Findings of Fact

A. The policy measure chosen is not proportional to the aim pursued

The policy option chosen is not necessary

- In June 2026, LKAB received its permit renewal for [mining operations in Malmberget](#) within a Natura 2000 zone, the same month they also received a permit for operations in [Gällivare](#).
- June also saw the approval of mining operations for the company [Boliden](#).

Enough flexibility already exists within the WFD

- The aim pursued by this revision, *“to address the bottlenecks in permitting”*, is already offered by the WFD. In the Commissions’ own words: *“The Water Framework Directive has been found ... flexible enough to accommodate emerging challenges”*.
- Article 4(4) provides time exemptions for achieving the objectives which have been applied to between 79% and 99.9% of the total length/area of waterbodies with bad, poor or moderate ecological status.
- Article 4(5) offers the possibility of setting less stringent environmental objectives.
- Article 4(6) allows for temporary deterioration in status resulting from unforeseen circumstances.
- And finally, Article 4(7) allows for exemptions due to new modifications of the physical characteristics of a water body, alterations to levels of groundwater and sustainable human development activities. Mining activities can and do benefit from these exemptions. For example, in Germany, mercury pollution due to lignite mines affects most surface water bodies in the Elbe river basin, which are covered by an exemption under Article 4(5) WFD.
 - Mines can be considered *“of overriding public interest”* under Article 4(7) WFD (see balancing of interest developed by EFTA Court, E-13/24).

Additional exemptions were added in 2026

- **Temporary deterioration** of chemical (1 year) and biological (3 years) quality elements **was introduced as well as the relocation of pollution from one water body to another**. This [recent incorporation](#) has not had the chance to yield the desired results, therefore a revision of the WFD must be considered premature.
- In May, the Commission issued [Guidance for the implementation of the Water Framework Directive with a particular focus on the mining sector](#) (C/2026/2836). It walks through eight specific **existing mechanisms** - mixing zones, natural background concentrations, screening procedures, Article 4(7) exemptions, the two new 2026 exemptions (short-term impacts and pollutant relocation) - all of which can facilitate mining permits without revising the Directive. This document is the Commission's own evidence that the WFD revision is unnecessary. Its 18 pages demonstrate that **existing law already accommodates mining permitting through existing flexibilities**.

B. The stated objective of the WFD revision “to address the bottlenecks in permitting” is better achieved through other, more proportionate, policy options

- The [2026 Court of Auditors report on CRM EU policy](#) highlights ‘Lengthy and complex permitting creates a bottleneck for mining in the EU’ as one of the main implementation challenges and elaborates with the following: “... *almost half of the member states identified environmental and social considerations (such as pollution and the “not in my backyard” effect) as the primary obstacle to increasing domestic extraction. Six member states have indicated that bottlenecks arise from both insufficient administrative capacities in the public sector (for example to grant mining and exploitation licences) and nature protection – particularly in the context of the Water Framework Directive and the Natura 2000 Directives.*” The solution is to increase funding and administrative capacities to implement the WFD objectives.
- The Report recommends, as a solution “... *to establish national one-stop shops (single contact points) by February 2025. One-stop shops were to be responsible for both mining project applications and permits. However, as of November 2025, only 16 of the 27 member states had created these one-stop shops.*” As Member States establish these one-stop shops, and as funding and administrative capacities are enhanced, we can boost implementation of the WFD and enhance access to CRM mining licenses simultaneously.
- The new CRM Act (2024) [is specifically designed to significantly fast-track permitting processes for strategic raw materials projects](#). Allowing for shorter deadlines for permit-granting; priority access to administrative support and financing and the presumption of public interest, which facilitates access exemptions under Article 4(7). As previously mentioned, the [European Court of Auditors found out that Member States have still not fully implemented these provisions due to funding and administrative deficiencies](#). This policy option is much more proportionate and better suited to the aim pursued.
- The [proposed Regulation for the speeding up of environmental assessments \(Article 14 and annex\)](#) also aims to grant the status of public interest to certain projects developed for strategic sectors or categories and flags that they “*may be considered to have an overriding public interest*”, with regards to the obligations of WFD Article 4(7).

- Finally, the [proposal for a revision of the Acceleration of permit-granting procedures Directive](#) also addresses the exact same objective: permit granting.
- The ISC response, attached as Document 3. Response ISC details all of these, and other policy options as better suited to achieve the results aimed by the RESourceEU Action Plan, and condition approval on the removal of all references to an amendment of the WFD.

C. The measure chosen is not adequate to the end pursued

- The mentioned [Court of Auditors Report](#) on the CRM policy “... shows that almost half of the member states identified environmental and social considerations (such as pollution and the “not in my backyard” effect) as the primary obstacle to increasing domestic extraction”.
- [Studies show](#) that trust in institutions tend to reduce resistance to mining projects. In contrast, large [environmental impacts](#), lack of participation, and distrust towards state and extractive companies tend to increase resistance.
- If the stated objective is to upscale mining of CRM in Europe, but the primary obstacle in half of the EU is local oppositions, this proposed revision is not adequate. Reducing environmental ambitions will have the opposite effect and amplify concerns with pollution displacement of population and access to water. The deficient public participation process will sow distrust towards the EU and Member States. Shortening permitting procedures will reduce chances of public participation and will exacerbate [local opposition](#) and [negative attitudes to EU policy](#).

Removing environmental protection will exacerbate public opposition to mining. The policy option thus is not appropriate to the aim pursued.

D. The legal basis chosen does not match the policy options effects

- The Commission legal basis chosen for the Call for Evidence is Article 192(1).
- The RESourceEU Action Plan aims to accelerate our critical raw materials strategy to adapt to a new reality. The legal basis for this is Article 114 of the Treaty on the Functioning of the European Union.
- The response to our access to information request (2026/0703) shows that the initial intention of DG Grow was to issue a legislative proposal modifying both the CRMA and the WFD. The legal basis cited for this is the following:

“In line with Article 114 of the Treaty on the Functioning of the European Union, the proposed regulation aims to contribute to the well-functioning [sic] of the single market, notably by reinforcing and clarifying the rules ensuring a secure and sustainable supply of critical raw materials for the Union.

In line with Article 192(1) of the Treaty on the Functioning [sic] of the European Union, the proposed regulation aims at introducing a change in the exemption provided to Member States for reaching certain environmental [sic] objectives, providing for legal certainty to Member States and their national authorities.”

The Commission asserts (in the Call for Evidence) that the object of the revision is to address problems that “... stem from the application of the WFD’s provisions preventing the deterioration of water bodies (**non-deterioration principle**), which restrict the discharge of pollutants from CRM projects into water bodies.”

III.II Legal Grounds

As we have been explaining, the text of the RESourceEU Action Plan promises to revise the WFD, forgoing the possibility of non-revision. The Call for Evidence reiterates this promise, once more forgoing the possibility of non-revision. The Commission explicitly stated during the dedicated Strategic Coordination Group of the Commission Implementation Strategy meeting on the 16th of April 2026, that there would not be a ‘no revision’ policy option. **This has given no option to compare policy options.**

The principle of proportionality (Art. 5 TEU) and Better Regulation Frameworks state that before adopting a measure, the Commission must identify and compare alternative options to ensure the chosen measure is **necessary, suitable, and least restrictive**. The content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The [Code of Good Behaviours](#) tasks the Commission with ensuring that measures taken are proportional to the aim pursued. Case C-58/08 has held that Courts can annul measures if policy alternatives are not properly assessed.

A targeted revision that could weaken the ecological quality requirements of the WFD exceeds what is necessary when the problem is demonstrably one of administrative under-resourcing.

The objective pursued by the revision of the WFD to facilitate permitting is already being pursued through the multiple different policies that have not had enough time, funding or capacity to yield their desired results and thus, the proposal to amend the WFD is not necessary nor proportionate.

The Call for Evidence indicates that the problems the initiative aims to tackle is the difficulty the CRM industry has with complying with the non-deterioration principle. The proposal to amend one of the Directive’s core principles (Article 4.1) would change a core principle of the Directive, jeopardise its objectives and have far reaching consequences on human, ecological and economic resilience. These consequences have not been sufficiently evaluated. If the consequences are not evaluated, the measure cannot be deemed proportionate.

There is concrete, quantified evidence demonstrating how mining projects that do not respect the highest environmental standards have enormously destructive consequences for people and local economies, for decades after the event. Considering the fact the proposal will necessarily deteriorate the environment and the water cycle, and the public interest due to health and broad socio-economic impacts as well as the importance of the water cycle, the EU Commission should have conducted a comprehensive assessment of potential policy options (Better Regulation Toolbox, Chapter 2) which would have evidenced that there were indeed much more appropriate policy options on the table.

In [Case T-13/99](#) the Court of First Instance upheld that the European Commission “*is not to adopt arbitrary measures ... [it] must ensure that any measures that it takes ... are based on as thorough a scientific risk assessment as possible*”.

With regards to the suitability of the measure, the WFD and the hurdles stemming from its implementation have been subject to ample scrutiny. So have the measures addressing CRM access. In none of these evaluations is the WFD revision recommended. The hurdles to CRM access, that this revision aims to solve, are in no way addressed by this measure. It is our position that the lowering of environmental standards will only increase public opposition to mining and thus have the opposite effect. To that we would quote paragraph 14 of Case 40-

72 on the appropriateness of the disputed measure: *"the observation suffices that these measures do not appear on issue as obviously inappropriate for the realization of the desired object"*.

Finally, on the matter of legal basis, the Call for Evidence cites as its basis *"the Treaty on the Functioning of the European Union, in particular Article 192(1), with regard to ensuring a high level of environmental protection,"* stating that the revision aims to address problems that *"stem from the application of the WFD's provisions preventing the deterioration of water bodies (non-deterioration principle), which restrict the discharge of pollutants from CRM projects into water bodies"*.

This policy option does not contribute to any objective of Article 191 TFEU. By acknowledging that mining activities struggle to comply with the non-deterioration principle and framing the revision as a means of facilitating compliance, **the Commission implicitly admits that the outcome will be environmental harm, which cannot be reconciled with the objectives of Article 191(1), nor with the precautionary and polluter-pays principles under Article 191(2).**

The proposal responds solely to industry requests, contravenes the Commission's long-standing political trajectory. By preconditioning the policy option in the Call for Evidence, it forecloses the proper evaluation required under Article 191(3) TFEU. In [Case T-13/99](#), the Court of First Instance held that the Commission *"is not to adopt arbitrary measures, which cannot in any circumstances be rendered legitimate by the precautionary principle, [and] must ensure that any measures that it takes, even preventive measures, are based on as thorough a scientific risk assessment as possible"*.

Access to Critical Raw Materials has never been legitimised under Article 191, likely because it falls outside that Article's scope. It has instead consistently been regulated under Article 114 TFEU (internal market basis). The CJEU has made clear that the choice of legal basis must follow the objective and content of the measure, not the drafter's political preference. As confirmed in [Case C-48/14 \(European Parliament v Council\)](#), concerning radioactive substances in water: *"If the Treaties contain a more specific provision that is capable of constituting the legal basis for the measure in question, the measure must be founded on that provision... Article 31 EA constitutes a more specific legal basis for protecting the health of populations against radioactive substances in water intended for human consumption than the general legal basis resulting from Article 192(1) TFEU"*.

CRM legislation has consistently been framed as a market/industrial instrument, governed by Article 114 TFEU, while the WFD rests on the environmental basis of Article 192(1) TFEU. Revising the latter to serve the former inverts the legal hierarchy between these two frameworks and undermines the "do no significant harm" principle.

Remedy Sought

Revising a Directive where the core rules, objectives, or level of protection are amended usually follows the process whereby the Commission: (1) seeks political validation (2) establishes a coherent and evidenced definition of the problem it is trying to solve (3) gathers scientific evidence and expert input, (4) in parallel, consults the public, conducts an impact assessment and conducts a review of the assessment with a Regulatory Scrutiny Board.

The Ombudsperson's own [Code of Good Behaviours](#) (Article 18) requires that every decision which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision. It asks that officials of the European administration avoid making decisions which are based on brief or vague grounds.

This process was not adequately followed in the announcement of a WFD revision in the RESourceEU Action Plan, with indications that it lacked political validation and evidence that the Commission has not been able to establish a coherent and evidenced definition of the problem it is trying to solve. The RESourceEU Action Plan also did not respect the outcome of the Inter Service Consultation (Document 3. Response ISC) which made approval conditional on the complete removal of any mention to the WFD. The RESourceEU Action Plan contradicts the outcome of this consultation, and shifts from *“evaluate the need for possible legislative measures”* to *“review and revise”*.

An argument could be made that the RESourceEU Action Plan does not in itself revise the Directive. However, we believe it sets the course for this to be done and, in its phrasing, it has limited the scope and policy options to one: *review and revision*. The effect that this phrasing has on the procedure is evidenced on the subsequent Call for Evidence, which amid several procedural misgivings, limited the evidence collected to only one possible policy option. The only remedy we see is to rectify and respect this process.

For that reason, we ask the **Office of the European Ombudsman to conclude to maladministration.**

We seek the following remedy:

The Commission has the right of initiative to retract this targeted revision at any given moment. We ask that the European Ombudsman to conclude it is recommendable to retract this initiative for a targeted revision of the Water Framework Directive due to the political incoherence of its decision, the lack of an evidenced definition of the problem it is trying to solve, the procedural deficiencies that have affected the subsequent Call for Evidence and the fact that the policy option chosen is inappropriate for the aim pursued.

We ask the European Ombudsman to recommend that the Commission allow for the 2026 Guidance to be implemented and that, in the future, any legislative proposals should only be released or announced where they are properly justified, evaluated and assessed.

The RESourceEU Action Plan may appear to be a harmless intention-setting document, but it has already set out a course whose effects could be devastating. Scrutiny of a policy instrument should not be calibrated to its formal legal status, but to the effects it may plausibly produce. To an experienced reader, the Action Plan effectively promises a sectoral derogation from the non-deterioration principle under the Water Framework Directive. This is not a mere adjustment of a technical threshold: it opens the very legal backstop that has kept the ecological status of Europe's waters from sliding backwards, it sets a precedent

that every other sector will in turn invoke. This promise has been made without evidence of its necessity, by skipping the procedural safeguards that should have preceded it, and without allowing the public, the co-legislators, or the Commission's own services the opportunity to weigh the catastrophic and likely irreversible ecological consequences this derogation could trigger. That is not sound administration, it is maladministration in its most consequential form; the kind discovered only once the harm it was meant to prevent has already occurred.