

## **Complaint to European Ombudsman about privileged industry access to the EU decision-making process on international CO2-rules for the aviation sector**

### **1. Personal details**

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### **2. Against which European Union (EU) institution or body do you wish to complain?**

European Commission - DG MOVE

### **3. What is the decision or matter about which you complain? When did you become aware of it?**

The process for deciding the EU's position at the UN's International Civil Aviation Organisation (ICAO) lacks transparency, not meeting the most basic form of good administrative behaviour. This includes granting access to certain industry actors, while elected institutions such as the Parliament are excluded.

EU negotiating positions to ICAO, as formulated by the Commission, are not published or shared with the Parliament. This lack of transparency makes it difficult to determine the content of proposed measures. In this case, the lack of transparency in drafting the EU's negotiating position on CO2 standards for aircraft led to undue industry influence and consequently [an ineffective CO2 standard](#). This continued with the Commission's refusal to share information on the draft rules for the global offsetting mechanism, undermining the Parliament's ability to scrutinise the decision-making process.

The EU's negotiating positions for ICAO's environment committee (CAEP) meetings are never public. The Parliament organised a delegation visit to the ICAO CAEP meeting in February 2016 which was to finalise the CO2 standard, however ICAO blocked the delegation from attending this meeting.

The Parliament sent a delegation regardless, in order to meet with ICAO officials and observers on a bilateral basis. A briefing paper was prepared for the delegation outlining, among other issues, the negotiating positions of the EU, US and other ICAO actors. These positions were known to all parties within the ICAO negotiations, so no party was put at a disadvantage. When ICAO learned that this briefing was prepared and shared with the Parliament, the author of the report, then a CAEP expert, received a lifetime ban from accessing CAEP papers. No papers have been shared with the Parliament since.

Later, following an access to documents request lodged by the NGO Transport & Environment in accordance with Regulation 1049/2001, it became apparent that certain industry groups, notably Airbus, were given exclusive access to draft the EU's negotiation position. These emails show the Airbus were allowed to directly edit the EU position, and that the final EU position matched precisely the position requested by Airbus. This EU position was never intended to have been released to the public or to the Parliament, so this level of collusion would have gone unchecked. At a hearing of the Parliament's Environment Committee [on February 20th 2018](#), the Commission failed to provide an adequate explanation of this process.

The Commission's continued refusal to provide information to the Parliament continues. The hearing on February 20th 2018 was to discuss the draft rules for the global offsetting mechanism for aviation (CORSIA). At the hearing the Commission stated that while they had a copy of these draft rules, they were unwilling to share them with the Parliament. I believe that same stakeholders, including industry, do have copies of these draft rules.

**4. What do you consider that the EU institution or body has done wrong?**

Decisions made by ICAO are accepted by the EU to have legal effect, as detailed in Council working document 5261/18 (attached). The EU institutions must therefore be transparent in how they interact with ICAO and how they formulate policies in ICAO.

When drafting CO2 rules for aircrafts, the Commission gave Airbus privileged access to the EU decision-making process and allowed Airbus to determine the EU's negotiating position. This privileged access to decision-making was facilitated by a lack of transparency and good administrative behaviour. The result of this privileged access of Airbus is a CO2 standard which does nothing for upholding the Paris Climate Accord or lead to transport decarbonisation.

As demonstrated at the February 20th Committee hearing, the Commission continues to withhold important information from the Parliament regarding the development of rules for CORSIA. This undermines the Parliament's ability to scrutinise the Commission's interactions with ICAO, including the important role the EU plays in the eventual implementation of these policies. The secrecy serves no purpose, as again, I believe other states and industry have access to these drafts. Only the Parliament and the general public are left excluded.

**5. What, in your view, should the institution or body do to put things right?**

EU papers to ICAO's CAEP must be made public at all stages of the negotiation process. This has been a systemic problem. For example, a paper on the possible reintroduction of supersonic airplanes from September 2017 was not made public. Increased transparency will help prevent privileged access to decision makers - as seen in the case of Airbus and the CO2 standards. The papers rarely contain confidential information, and all sides in the negotiations already have access to them.

The Commission should provide all documents, which it has access to, to the Parliament ahead of hearings, so that MEPs can provide informed scrutiny of Commission actions. This is especially the case when other states and industry already have access to such documents.

**6. Have you already contacted the EU institution or body concerned in order to obtain redress?**

The Commission representatives were questioned on these issues at a hearing of the Parliament's Committee on Environment and Public Health on February 20th but failed to provide adequate answers. The Commission claimed that though they had access to the document in question, the draft rules for CORSIA, they were unable to share it. However the Commission played a coordinating in drafting [a proposed common EU response](#) to CORSIA, meaning it must have shared the document with other parties. Furthermore as the EU is not a party to ICAO, there is no one it can be bound by any rules preventing disclosure.

**7. If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?**

Not applicable

**8. Has the object of your complaint already been settled by a court or is it pending before a court?**

No

**9. Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?**

Yes

Date: 27/03/2018