

# Environment: access to information and justice, public participation, application of the Aarhus Convention

2020/0289(COD) - 05/10/2021 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council 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.

The proposed revision of the Aarhus Regulation aims to improve the implementation of the Aarhus Convention. The EU and its 27 Member States are parties to the 1998 Aarhus Convention, which gives members of the public the right of access to information and participation in environmental decision-making, as well as the right to seek redress if these rights are not respected.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows

## *Improving access to justice in environmental matters in the European Union and its Member States*

The amended text stresses that access to justice in environmental matters, both via the Court of Justice of the European Union (CJEU) and the national courts as Union courts, is an important support measure to help deliver the European Green Deal transition and a means of strengthening the role which civil society can play as watchdog in the democratic space.

## *Clarification of the definitions of 'administrative acts' and 'administrative omissions'*

The revision of Regulation (EC) No 1367/2006 is intended to improve access to administrative and judicial review at EU level for citizens and environmental non-governmental organisations who have specific doubts about the compatibility with environmental law of administrative acts with an impact on the environment.

Members clarified that the term 'administrative act' should include any non-legislative act adopted by an institution or body of the Union, having legal and external effect and containing provisions which may conflict with environmental law. The definition of 'administrative omission' was also introduced, namely any failure of a Union institution or body to adopt a non-legislative act which has legal and external effects, where such failure may contravene environmental law.

## *Request for internal review of administrative acts*

Environmental non-governmental organisations as well as **members of the public** would have the right to request an internal review of acts and omissions of an administrative nature by the institutions and bodies of the Union.

However, members of the public would have to:

- show that the alleged breach of Union environmental law **infringes their rights** and that, unlike the rest of the public, they are directly affected by the impairment, for example in the case of an imminent threat to their health and safety;

- demonstrate that there is a **sufficient public interest** and that the request is supported by at least 4000 members of the public who are resident or established in at least five Member States and that at least 250 members of the public come from each of these Member States.

In order to ensure the effectiveness of internal review procedures, members of the public should be represented either by an environmental non-governmental organisation meeting the criteria set out in the revised Regulation (EC) No 1367/2006 or by a lawyer qualified to practise before the courts of a Member State.

In the event that a Union institution or body receives multiple requests for review of the same administrative act or administrative omission, the institution or body could combine the requests and treat them as one. The Union institution or body should state its reasons in a written reply as soon as possible.

### ***Publication of requests and final decisions, and online systems for receipt of requests***

Union institutions and bodies should publish all requests for internal review as soon as possible after their receipt, as well as all final decisions on those requests as soon as possible after their adoption. They could establish online systems for receipt of requests for internal review and may require that all requests for internal review be submitted via their online systems.

Where the Union institution or body fails to act, the non-governmental organisation or other members of the public that made the request for internal review could institute proceedings before the Court of Justice.

In a **statement annexed to the legislative resolution**, the Commission noted the concerns expressed and the conclusions adopted by the Aarhus State Aid Compliance Committee.

These conclusions call on the EU to take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on state aid measures taken by the European Commission which contravene EU law relating to the environment.

The Commission is currently analysing the implications of these findings and will publish an assessment by the end of 2022. If appropriate, by the end of 2023, it will come forward with measures to address this issue.