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From: General Secretariat of the Council
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Subject: Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 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
– Preparation for the trilogue

I. INTRODUCTION

1. On 14 October 2020, the Commission transmitted to the Council a Proposal¹ for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 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 bodies².

¹ Doc. 11853/20.

² OJ L 264 of 25.9.2006, p. 13.

2. The proposal aims at addressing findings by the Aarhus Convention Compliance Committee ("ACCC") of 2017 in case ACCC/C/2008/32³ (hereafter "case C-32") concerning the EU's compliance with the Convention, while fully respecting the fundamental principles of the EU legal order and its system of judicial review.
3. On 17 December 2020, the Council adopted a General Approach for negotiations with the European Parliament⁴.
4. On 20 May 2021, the Parliament adopted in plenary 35 amendments to the Commission proposal.
5. On 2 June 2021, the Committee of Permanent Representatives ("Coreper") examined the amendments of the Parliament in view of the first trilogue, revisiting at the same time the Council position in light of the Advice of the ACCC of 12 February 2021 on the Commission proposal⁵ and the opinion of the Council Legal Service⁶.
6. Trilogues were held on 4 and 22 June 2021. Coreper was debriefed on the outcome on 9 and 23 June 2021 respectively.
7. In follow-up to the trilogues, technical meetings were held on 8, 11 and 25 June and on 1 July 2021, in the understanding that text provisionally agreed at technical level would have to be confirmed at political level. On 25 June and 1 July progress was made on a number of issues. The texts as provisionally agreed at technical level are set out in the fourth column of the four column table annexed to this note.

³ See <https://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html>

⁴ Doc. 13937/20.

⁵ The Commission had explicitly asked the ACCC for this Advice on its proposal. The advice is available under https://unece.org/sites/default/files/2021-02/M3_EU_advice_12.02.2021.pdf.

⁶ Doc. 8721/21.

8. The next trilogue is scheduled for 12 July 2021. In view of the need to achieve agreement between the co-legislators before the summer break in order to be able to present solutions in ACCC compliance case C-32 at the next Meeting of the Parties to the Convention (18-21 October 2021), this trilogue should be the last one and agree a comprehensive compromise package.

II. PRESIDENCY APPROACH SUGGESTED IN VIEW OF THE UPCOMING TRILOGUE

10. Overall, the Presidency will continue to underline in negotiations with the Parliament the need to focus on the issues raised by the ACCC in its findings/advise in case C-32 and avoid going beyond the ACCC requests. However, in view of striking a deal on 12 July, the Presidency will need some flexibility from Member States, including on issues going beyond case C-32, to be able to achieve a balanced compromise proposal. It is understood that any flexibility of the Council needs to be reciprocated by the Parliament and that all compromise proposals should be seen as part of an overall compromise, in the understanding that nothing is agreed until everything is agreed.
11. A number of open issues remain to be discussed in the trilogue of 12 July, namely:
 - a) The broadening of the standing beyond NGOs (AM 29)
 - b) The inclusion of non-legislative acts requiring implementing measures at Union or at national level (AM 23)
 - c) The inclusion in the Regulation of non-legislative acts regarding state aid (AM 24)
 - d) The inclusion of wording related to non-prohibitive costs (AM 34)
 - e) The possibility for third parties to comment on review requests (AM 28)
 - f) The obligation to set up a public register for requests and the replies thereto (AM 31)
 - g) Access to information on the positions of Member States expressed in decision-making procedures (AM 25)

Precise drafting suggestions of the Presidency on each of these issues are included in the fourth column of the four column table in annex to this note⁷.

12. In short, the Presidency suggests that an overall compromise package of the Council includes the following positions:

a) The broadening of the standing beyond NGOs (AM 29)

The Presidency intends to propose to the Parliament to discuss the criteria for standing, in particular the numbers in para 1a. (new) letter b) of AM 29, based on a possible proposal by the Commission. The discussion on the criteria might require some flexibility on the side of the Council.

The Presidency will continue to reject the inclusion of criteria for broadening the standing in a Delegated Act.

b) The inclusion of non-legislative acts requiring implementing measures at Union or at national level (AM 23)

The Presidency is seeking guidance of the Member States regarding their flexibility to agree to the deletion of the exemption of provisions of legal acts requiring implementing measures, either:

- at national level, or
- at Union level and at national level, as requested by the Parliament.

Subject to flexibility of Member States, the Presidency intends to request flexibility of the Parliament on key issues constituting a red line for the Council.

c) The inclusion in the Regulation of non-legislative acts regarding state aid (AM 24)

The Presidency suggests to reject amendment 24 regarding the inclusion of acts regarding state aid in the Regulation as red line for the Council.

d) The inclusion of wording related to non-prohibitive costs (AM 34)

The Presidency suggests to accept a recital on costs subject to the Parliament showing flexibility on another amendment rejected by Council and subject to the Parliament dropping amendment 34 related to costs.

⁷ The texts in the fourth column show the changes compared to the General Approach (new text underlined and bold, deletions in strikethrough).

e) The possibility for third parties to comment on review requests (part of AM 28)

The Presidency proposes that the Council rejects this part of the amendment. However, some flexibility for concessions might be needed in order to obtain flexibility from the Parliament on another issue of importance to the Council.

f) The obligation to set up a public register for requests and the replies thereto (AM 31)

The Presidency suggests to accept an obligation for EU institution and bodies to publish all review requests and the replies thereto as part of a final compromise package, subject to the Parliament dropping another amendment rejected by the Council.

g) Access to information on the positions of Member States expressed in decision-making procedures (AM 25)

The Presidency suggests to reject amendment 25 on access to information on positions expressed by Member States in decision-making procedures, including subsequent compromise proposals of the Parliament, as red line for the Council.

IV. CONCLUSION

In light of the above, delegations are invited to:

- confirm the approach suggested by the Presidency in view of the upcoming trilogue;
- indicate their position and flexibilities on the compromise package suggested by the Presidency.

03 July 2021

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 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
(Text with EEA relevance)

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof, Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments, Having regard to the opinion of the European Economic and Social Committee ¹ , Having regard to the opinion of the Committee of the Regions ² , Acting in accordance with the ordinary legislative procedure,		THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof, Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments, Having regard to the opinion of the European Economic and Social Committee ¹ , Having regard to the opinion of the Committee of the Regions ² , Acting in accordance with the ordinary legislative procedure,	

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
<p>Whereas:</p> <p>¹ OJ C , , p. .</p> <p>² OJ C , , p. .</p>		<p>Whereas:</p> <p>¹ OJ C , , p. .</p> <p>² OJ C , , p. .</p>	
<p>(1) The Union and its Member States are Parties to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (‘the Aarhus Convention’) ³, each with its own as well as shared responsibilities and obligations under that Convention.</p> <p>³ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).</p>		<p>(1) The Union and its Member States are Parties to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (‘the Aarhus Convention’) ³, each with its own as well as shared responsibilities and obligations under that Convention.</p> <p>³ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).</p>	

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 1 Recital 2			
<p>(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council⁴ was adopted in order to contribute to the implementation of the obligations arising under the Aarhus Convention by laying down rules on its application to Union institutions and bodies.</p> <hr/> <p>⁴ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 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 (OJ L 264, 25.9.2006, p. 13).</p>	<p>(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council⁴ was adopted in order to contribute to the implementation of the obligations arising under the Aarhus Convention by laying down rules on its application to Union institutions and bodies. <i>This Regulation therefore amends Regulation (EC) No 1367/2006 in order to implement Article 9(3) and 9(4) of the Convention.</i></p> <hr/> <p>⁴ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 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 (OJ L 264, 25.9.2006, p. 13).</p>	<p>(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council⁴ was adopted in order to contribute to the implementation of the obligations arising under the Aarhus Convention by laying down rules on its application to Union institutions and bodies.</p> <hr/> <p>⁴ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 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 (OJ L 264, 25.9.2006, p. 13).</p>	<p><i>Council:</i> Not acceptable</p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 2 Recital 3			
<p>(3) In its Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 December 2019, entitled ‘The European Green Deal’ the Commission committed itself to consider revising Regulation (EC) No 1367/2006 to improve access to administrative and judicial review at Union level for citizens and environmental non-governmental organisations who have concerns about the compatibility with environmental law of decisions with effects on the environment. The Commission also committed to take action to improve their access to justice before national courts in all Member States; to this end, it issued a Communication on ‘Improving access to justice in environmental matters in the EU and its Member States’.</p>	<p>(3) In its <i>communication</i> of 11 December 2019 <i>on the</i> European Green Deal, the Commission committed itself to consider revising Regulation (EC) No 1367/2006 to improve access to administrative and judicial review at Union level for citizens and environmental non-governmental organisations who have <i>specific</i> concerns about the compatibility with environmental law of <i>administrative acts</i> with effects on the environment. The Commission also committed to take action to improve their access to justice before national courts in all Member States; to this end, it issued <i>the communication of 14 October 2020 on improving</i> access to justice in environmental matters in the EU and its Member States <i>in which it affirms that ‘access to justice in environmental matters, both via the Court of Justice of the EU (CJEU) and the national courts as Union courts, is an important support measure to help</i></p>	<p>(3) In its Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 December 2019, entitled ‘The European Green Deal’ the Commission committed itself to consider revising Regulation (EC) No 1367/2006 to improve access to administrative and judicial review at Union level for citizens and environmental non-governmental organisations who have concerns about the compatibility with environmental law of decisions with effects on the environment. The Commission also committed to take action to improve their access to justice before national courts in all Member States; to this end, it issued a Communication on ‘Improving access to justice in environmental matters in the EU and its Member States’.</p>	<p><i>Provisionally agreed at technical level as amended by the EP.</i></p> <p>(3) In its Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 December 2019, entitled ‘T <u>on the European Green Deal</u>’, the Commission committed itself to consider revising Regulation (EC) No 1367/2006 to improve access to administrative and judicial review at Union level for citizens and environmental non-governmental organisations who have <u>specific</u> concerns about the compatibility with environmental law of <u>administrative acts</u> decisions with effects on the environment. The Commission also committed to take action to improve their access to justice before national courts in all Member States; to this end, it issued a the <u>Communication of 14 October 2020</u> on ‘improving access to justice in environmental</p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
	<i>deliver the European Green Deal transition and a way to strengthen the role which civil society can play as watchdog in the democratic space’.</i>		matters in the EU and its Member States <u>in which it affirms that ‘access to justice in environmental matters, both via the Court of Justice of the EU (CJEU) and the national courts as Union courts, is an important support measure to help deliver the European Green Deal transition and a way to strengthen the role which civil society can play as watchdog in the democratic space’.</u>
Amendment 3 Recital 3 a (new)			
	<i>(3a) Article 9(4) of the Aarhus Convention states that court proceedings under the scope of Article 9(3) of that Convention should not be prohibitively expensive. In order to ensure that judicial proceedings under Article 12 of Regulation (EC) 1367/2006 are not prohibitively expensive^{1a} and foreseeable for the applicant, the Union’s institutions or bodies should make reasonable reimbursement cost requests when</i>		<i>Presidency suggestion as part of final compromise package subject to the EP dropping another AM rejected by Council (such as AM 25 on access to information), and subject to the EP dropping AM 34 related to costs in exchange for a recital</i> <u>Without prejudice to the Court’s prerogative to apportion costs, court proceedings under Regulation (EC) No 1367/2006</u>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>they are successful in litigation.</i></p> <hr/> <p><i>^{1a} Communication of the Commission of 4 April 2019 on Environmental Implementation Review 2019: A Europe that protects its citizens and enhances their quality of life and communication of the Commission of 14 October 2020 on improving access to justice in environmental matters in the EU and its Member States.</i></p>		<p><u>are not to be prohibitively expensive, in line with Article 9(4) of the Aarhus Convention. Accordingly, the Union’s institutions and bodies will endeavour only to incur reasonable costs and to make reasonable requests for the reimbursement of costs.</u></p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 4 Recital 4			
<p>(4) Taking into account the provisions of Article 9(3) of the Aarhus Convention, as well as concerns expressed by the Aarhus Convention Compliance Committee⁵, Union law should be brought into compliance with the provisions of the Aarhus Convention on access to justice in environmental matters in a way that is compatible with the fundamental principles of Union law and with its system of judicial review.</p> <p>⁵ See findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 at https://www.unece.org/env/pp/compliance/Compliancecommittee/32T ableEC.html.</p>	<p>(4) Taking into account the provisions of Article 9(3) and (4) of the Aarhus Convention as well as the advice of the Aarhus Convention Compliance Committee⁵, Union law should be brought into compliance with the provisions of the Aarhus Convention on access to justice in environmental matters in a way that is compatible with the fundamental principles of Union law, including its treaties, and with its system of judicial review. Regulation (EC) No 1367/2006 should be amended accordingly.</p> <p>⁵ Advice of the Aarhus Convention Compliance Committee ACCC/M/2017/3 and ACCC/C/2015/128 available at https://unece.org/env/pp/cc/accc.m.2017.3_european-union and https://unece.org/env/pp/cc/accc.c.2015.128_european-union.</p>	<p>(4) Taking into account the provisions of Article 9(3) of the Aarhus Convention, as well as concerns expressed by the Aarhus Convention Compliance Committee⁵, Union law should be brought into compliance with the provisions of the Aarhus Convention on access to justice in environmental matters in a way that is compatible with the fundamental principles of Union law and with its system of judicial review.</p> <p>⁵ See findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 at https://www.unece.org/env/pp/compliance/Compliancecommittee/32T ableEC.html</p>	<p><i>Presidency suggestion corresponding to a compromise proposal acceptable to EP and Commission at technical level</i></p> <p>(4) Taking into account the provisions of Article 9(3) and 9(4) of the Aarhus Convention, as well as concerns expressed by and the findings and advice of the Aarhus Convention Compliance Committee⁵, Union law should be brought into compliance with the provisions of the Aarhus Convention on access to justice in environmental matters in a way that is compatible with the fundamental principles of Union law and with its system of judicial review.</p> <p>⁵ See findings and advice of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 at https://www.unece.org/env/pp/compliance/Compliancecommittee/32T ableEC.html and https://unece.org/env/pp/cc/accc.</p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
			m.2017.3 european-union
Amendment 5 Recital 4 a (new)			
	<p><i>(4a) Article 9(3) of the Aarhus Convention provides that, within the framework of its national legislation, each Party is to ensure that members of the public concerned where they meet the criteria laid down in its national law, have access to judicial or other review procedures to challenge the substantive and procedural legality of any decision, act or omission which contravenes provisions of its national law relating to the environment. The administrative review procedure under the Aarhus Regulation complements the overall Union system of administrative and judicial review that enables members of the public to have administrative acts reviewed via direct judicial challenges at Union level, namely under Article 263(4) TFEU, and, in accordance with Article 267 TFEU, via national courts, which form an integral part</i></p>		<p><i>Presidency suggestion in line with a Commission compromise proposal subject to the EP dropping AM 32</i></p> <p><u>(4a) The Aarhus Convention requires each Party to ensure that members of the public concerned where they meet the criteria laid down by law, have access to judicial or other review procedures to challenge the substantive and procedural legality of any decision, act or omission which contravenes provisions of the law of the Contracting Party relating to the environment. The administrative review procedure under Regulation (EC) No 1367/2006 complements the overall Union system of administrative and judicial review that enables members of the public to have administrative acts reviewed via direct judicial challenges at Union level, namely under Article</u></p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
	<i>of the Union system under the Treaties.</i>		<u>263(4) TFEU, and, in accordance with Article 267 TFEU, via national courts, which form an integral part of the Union system under the Treaties.</u>
		<p><u>(4a) In this regard, a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee was requested by Decision (EU) 2018/881⁶ of the Council, to be followed, if appropriate, by a proposal for amending Regulation (EC) No 1367/2006. Further, the European Parliament in its resolutions of 15 and 16 November 2017⁷ and on 15 January 2020⁸ requested an amendment of Regulation (EC) No 1367/2006.</u></p> <p><u>⁶ Council Decision (EU) 2018/881 of 18 June 2018 requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes</u></p>	<p><i>Provisionally agreed at technical level as amended by the Council</i></p> <p><u>(4a) In this regard, a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee was requested by Decision (EU) 2018/881⁶ of the Council, to be followed, if appropriate, by a proposal for amending Regulation (EC) No 1367/2006. Further, the European Parliament in its resolutions of 15 and 16 November 2017⁷ and on 15 January 2020⁸ requested an amendment of Regulation (EC) No 1367/2006.</u></p> <p><u>⁶ Council Decision (EU) 2018/881 of 18 June 2018 requesting the Commission to submit a study on the Union's options for addressing the findings of the Aarhus Convention</u></p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
		<p>of the study, a proposal for a <u>Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006, ST/9422/2018/INIT, OJ L 155, 19.6.2018, p. 6–7.</u> ⁷ <u>European Parliament Resolution of 15 November 2017 on an Action Plan for nature, people and the economy adopted on 15 November 2017 (2017/2819(RSP)) and European Parliament Resolution of 16 November 2017 on the EU Environmental Implementation Review (EIR) (2017/2705(RSP)).</u> ⁸ <u>European Parliament Resolution of 15 January 2020 on the European Green Deal (2019/2956(RSP)).</u></p>	<p><u>Compliance Committee in case ACCC/C/2008/32 and, if appropriate in view of the outcomes of the study, a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1367/2006, ST/9422/2018/INIT, OJ L 155, 19.6.2018, p. 6–7.</u> ⁷ <u>European Parliament Resolution of 15 November 2017 on an Action Plan for nature, people and the economy adopted on 15 November 2017 (2017/2819(RSP)) and European Parliament Resolution of 16 November 2017 on the EU Environmental Implementation Review (EIR) (2017/2705(RSP)).</u> ⁸ <u>European Parliament Resolution of 15 January 2020 on the European Green Deal (2019/2956(RSP)).</u></p>
Amendment 6 Recital 5			
(5) The limitation of the internal review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope is the main obstacle for	(5) The limitation of the internal review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope has been the main ground	(5) The limitation of the internal review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope is the main obstacle for	<p><i>Provisionally agreed at technical level with the amendment of the EP in the first sentence.</i></p> <p>(5) The limitation of the internal</p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
<p>environmental non-governmental organisations seeking to have recourse to internal review under Article 10 of that Regulation also as regards administrative acts that have a wider scope. It is therefore necessary to broaden the scope of the internal review procedure laid down in that Regulation to include non-legislative acts of a general scope.</p>	<p><i>for non-admissibility</i> for environmental non-governmental organisations seeking to have recourse to internal review under Article 10 of that Regulation also as regards administrative acts that have a wider scope. It is therefore <i>appropriate</i> to broaden the scope of the internal review procedure laid down in that Regulation to include non-legislative acts of a general scope.</p>	<p>environmental non-governmental organisations seeking to have recourse to internal review under Article 10 of that Regulation also as regards administrative acts that have a wider scope. It is therefore necessary to broaden the scope of the internal review procedure laid down in that Regulation to include non-legislative acts of a general scope.</p>	<p>review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope is has been the main obstacle ground for non-admissibility for environmental non-governmental organisations seeking to have recourse to internal review under Article 10 of that Regulation also as regards administrative acts that have a wider scope. It is therefore necessary to broaden the scope of the internal review procedure laid down in that Regulation to include non-legislative acts of a general scope.</p>
<p>Amendment 7 Recital 6</p>			
<p>(6) The definition of an administrative act for the purposes of Regulation (EC) No 1367/2006 should include non-legislative acts. However, a non legislative act might entail implementing measures at national level against which environmental non-governmental organisations can obtain judicial protection, including before the Court of Justice of the European Union (CJEU) through a</p>	<p>(6) The definition of an administrative act for the purposes of Regulation (EC) No 1367/2006 should include non-legislative acts. However, a non legislative act might entail implementing measures at national level against which judicial protection can <i>be obtained</i>, including before the Court of Justice of the European Union (CJEU) through a procedure for preliminary ruling under Article</p>	<p>(6) The definition of an administrative act for the purposes of Regulation (EC) No 1367/2006 should include non-legislative acts. However, a non legislative act might entail implementing measures at national level against which environmental non-governmental organisations can obtain judicial protection, including before the Court of Justice of the European Union (CJEU) through a</p>	<p><i>Presidency suggestion: Acceptable as part of a final compromise package subject to the EP dropping in particular AM 24 and 18 (state aid)</i></p> <p>(6) The definition of an administrative act for the purposes of Regulation (EC) No 1367/2006 should include non-legislative acts. However, a non legislative act might entail implementing</p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
<p>procedure for preliminary ruling under Article 267 TFEU. Therefore, it is appropriate to exclude from the scope of the internal review those provisions of such non-legislative acts for which Union law requires implementing measures at national level.</p>	<p>267 TFEU.</p>	<p>procedure for preliminary ruling under Article 267 TFEU. Therefore, it is appropriate to exclude from the scope of the internal review those provisions of such non-legislative acts for which Union law requires implementing measures at national level.</p>	<p>measures at national level against which environmental non-governmental organisations can obtain judicial protection <u>can be obtained</u>, including before the Court of Justice of the European Union (CJEU) through a procedure for preliminary ruling under Article 267 TFEU. Therefore, it is appropriate to exclude from the scope of the internal review those provisions of such non-legislative acts for which Union law requires implementing measures at national level.</p>
<p>Amendment 8 Recital 7</p>			
<p>(7) In the interest of legal certainty, in order for any provisions to be excluded from the notion of administrative act, Union law must explicitly require the adoption of implementing acts for those provisions.</p>	<p><i>deleted</i></p>	<p>(7) In the interest of legal certainty, in order for any provisions to be excluded from the notion of administrative act, Union law must explicitly require the adoption of implementing acts for those provisions.</p>	<p><i>Recital 7 to be finalised in light of final agreement on implementing measures</i></p>
<p>(8) In order to ensure effectiveness, the review of those provisions of an administrative act for which Union law explicitly requires implementing measures at Union level may also be sought</p>		<p>(8) In order to ensure effectiveness, the review of those provisions of an administrative act for which Union law explicitly requires implementing measures at Union level may also be sought</p>	<p><i>Recital 8 to be finalised in light of final agreement on implementing measures</i></p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
when the review of the Union-level implementing measure is requested.		when the review of the Union-level implementing measure is requested.	
Amendment 9 Recital 9			
<p>(9) The scope of Regulation (EC) No 1367/2006 covers acts adopted under environmental law. By contrast, Article 9(3) of the Aarhus Convention covers challenges to acts that ‘<i>contravene</i>’ law relating to the environment. Thus, it is necessary to clarify that internal review should be carried out in order to verify whether an administrative act contravenes environmental law.</p>	<p>(9) The scope of Regulation (EC) No 1367/2006 covers acts adopted under environmental law. Article 9(3) of the Aarhus Convention covers challenges to acts <i>or omissions</i> that ‘<i>contravene</i>’ law relating to the environment. Thus, it is necessary to clarify, <i>in line with the case law of the CJEU</i>, that internal review should be carried out in order to verify whether an administrative act contravenes environmental law <i>within the meaning of point (f) of Article 2(1)</i>.</p>	<p>(9) The scope of Regulation (EC) No 1367/2006 covers acts adopted under environmental law. By contrast, Article 9(3) of the Aarhus Convention covers challenges to acts that ‘<i>contravene</i>’ law relating to the environment. Thus, it is necessary to clarify that internal review should be carried out in order to verify whether an administrative act contravenes environmental law.</p>	<p><i>Provisionally agreed at technical level with addition of "or omissions" in the first sentence, as proposed by the EP.</i></p> <p>(9) The scope of Regulation (EC) No 1367/2006 covers acts adopted under environmental law. By contrast, Article 9(3) of the Aarhus Convention covers challenges to acts or omissions that ‘<i>contravene</i>’ law relating to the environment. Thus, it is necessary to clarify that internal review should be carried out in order to verify whether an administrative act contravenes environmental law.</p>
Amendment 10 Recital 10			
<p>(10) When assessing whether an administrative act contains provisions which may, because of their effects, contravene environmental law, it is necessary to consider whether such provisions</p>	<p>(10) When assessing whether an administrative act contains provisions which may contravene law <i>relating to the environment within the meaning of point (f) of Article 2(1)</i>, it is necessary to</p>	<p>(10) When assessing whether an administrative act contains provisions which may [...] contravene environmental law, it is necessary to consider whether such provisions may have an adverse</p>	<p><i>Provisionally agreed at technical level with the amendment of the EP in the second sentence.</i></p> <p>(10) When assessing whether an administrative act contains</p>

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<p>may have an adverse effect on the attainment of the objectives of Union policy on the environment set out in Article 191 TFEU. As a result, the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.</p>	<p>consider <i>in accordance with the case law of the CJEU</i> whether such provisions may have an adverse effect on the attainment of the objectives of Union policy on the environment set out in Article 191 TFEU. Where this is the case, the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.</p>	<p>effect on the attainment of the objectives of Union policy on the environment set out in Article 191 TFEU. As a result, the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.</p>	<p>provisions which may [...] contravene environmental law, it is necessary to consider whether such provisions may have an adverse effect on the attainment of the objectives of Union policy on the environment set out in Article 191 TFEU. As a result Where this is the case, the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.</p>
<p>Amendment 11 Recital 10 a (new)</p>			
	<p><i>(10a) In view of the first paragraph of Article 263 TFEU, as interpreted by the CJEU^{1a}, an act is to be considered to have external effects, and thus capable of being subject to a request for review, if it is intended to produce legal effects vis-à-vis third parties.</i> <i>Administrative acts, such as appointments or preparatory acts, that do not produce legal effects vis-à-vis third parties and cannot be considered to have external</i></p>		<p><i>Provisionally agreed at technical level in line with a Commission compromise proposal</i></p> <p><u>‘In view of Article 263 TFEU, as interpreted by the CJEU^{1a}, an act is to be considered to have external effects, and thus can be subject to a request for review, if it is intended to produce legal effects vis-à-vis third parties. Preparatory acts, recommendations, opinions and</u></p>

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	<p><i>effects, in line with the case law of the CJEU, should, therefore, not constitute administrative acts</i> <i>Regulation (EC) No 1367/2006.</i></p> <hr/> <p><i>^{1a} Judgment of the Court of Justice of 3 October 2013, <i>Inuit Tapiriit Kanatami and Others v Parliament and Council</i>, C-583/11 P, ECLI:EU:C:2013:625, paragraph 56.</i></p>		<p><u>similar non-binding acts that do not produce legal effects vis-à-vis third parties and cannot be considered to have external effects, in line with the case law of the CJEU^{1b}, should, therefore, not constitute administrative acts under Regulation (EC) No 1367/2006.</u></p> <hr/> <p><u>^{1a} Judgment of the Court of Justice of 3 October 2013, <i>Inuit Tapiriit Kanatami and Others v Parliament and Council</i>, C-583/11 P, ECLI:EU:C:2013:625, paragraph 56.</u></p> <p><u>^{1b}Idem.</u></p>

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		<p>(10a) <u>In line with the case law of the CJEU⁹, an act is considered legally binding, and thus can be subject to a request of review, regardless of its form, as its nature as legally binding is considered with regard to its effects, objective and content.</u></p> <p>⁹ <u>Joined Cases 1/57 and 14/57 Usines à tubes de la Sarre v High Authority [1957] ECR 105, p. 114; Case 22/70 Commission v Council [1971] ECR 263, ECLI:EU:C:1971:32, para 42; Case C-325/91 France v Commission [1993] ECR I-3283 para 9; case C-57/95 France v Commission ECLI:EU:C:1997:164, para 22; Joined Cases C 463/10 P and C 475/10 P, Deutsche Post and Germany v Commission, ECLI:EU:C:2011:656, para 36.</u></p>	<p><i>Provisional agreement at technical level to delete (10a) as a consequence of the acceptance of the 1st part of AM 23.</i></p>

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Amendment 12 Recital 10 b (new)			
	<p><i>(10b) In order to ensure legal consistency, an act is considered to have legal effects, and thus capable of being subject to a request for review, in accordance with the first paragraph of Article 263 TFEU, as interpreted by the CJEU^{1a}. Considering an act to have legal effects implies that an act can be subject to a request for review, regardless of its form, as its nature is considered with regard to its effects, objective and content^{1b}.</i></p> <p>^{1a} <i>Judgement of the Court of Justice of 29 January 2021, ClientEarth v EIB, T-9/19, ECLI:EU:T:2021:42, paragraphs 149 and 153. See also judgment in Case C-583/11 P, paragraph 56.</i></p> <p>^{1b} <i>The judgments of the Court of Justice of 10 December 1957, Usines à tubes de la Sarre v High Authority, 1/57 and 14/57, ECLI:EU:C:1957:13, p. 114; of 31 March 1971, Commission v Council, 22/70, ECLI:EU:C:1971:32, paragraph</i></p>		<p><i>Provisional agreement at technical level in line with a Commission compromise proposal.</i></p> <p><u>10b) In order to ensure legal consistency, an act is considered to have legal effects, and thus can be subject to a request for review, in accordance with Article 263 TFEU, as interpreted by the CJEU¹. Considering an act to have legal effects implies that an act can be subject to a request for review, regardless of its form, as its nature is considered with regard to its effects, objective and its content².</u></p> <p>¹ <u>Judgment of the Court of Justice of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council, Case C-583/11 P, ECLI:EU:C:2013:625, paragraph 56.</u></p> <p>² <u>The judgments of the Court of Justice of 10 December 1957, Usines à tubes de la Sarre v High Authority, 1/57 and 14/57,</u></p>

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	<p><i>42; of 16 June 1993, France v Commission, C-325/91, ECLI:EU:C:1993:245, paragraph 9; of 20 March 1997, France v Commission, C-57/95, ECLI:EU:C:1997:164, paragraph 22; and of 13 October 2011, Deutsche Post and Germany v Commission, C-463/10 P and C-475/10 P, ECLI:EU:C:2011:656, paragraph 36.</i></p>		<p><u>ECLI:EU:C:1957:13, p. 114; of 31 March 1971, Commission v Council, 22/70, ECLI:EU:C:1971:32, paragraph 42; of 16 June 1993, France v Commission, C-325/91, ECLI:EU:C:1993:245, paragraph 9; of 20 March 1997, France v Commission, C-57/95, ECLI:EU:C:1997:164, paragraph 22; and of 13 October 2011, Deutsche Post and Germany v Commission, C-463/10 P and C-475/10 P, ECLI:EU:C:2011:656, paragraph 36.</u></p>
<p>Amendment 13 Recital 10 c (new)</p>			
	<p><i>(10c) Any procedural deadlines for administrative and/or judicial control should apply only once the content of the administrative act relating to a major public interest protected by environmental law and that is the subject subsequently of a challenge is actually known by the persons having an interest, especially in cases in which the individual administrative act concerned is</i></p>		<p><i>Presidency suggestion in line with a Commission compromise proposal as part of final compromise</i></p> <p><u>(10c) Any procedural deadlines for the administrative review should apply only once the administrative act has been adopted, notified or published, whichever is the latest.</u></p>

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	<p><i>obsolete. This is necessary in order to avoid practices that could go against Article 9 of the Aarhus Convention and the case law of the CJEU, in particular the judgment of the Court of 12 November 2019 in Case C-261/18, Commission v. Ireland^{1a}.</i></p> <hr/> <p><i>^{1a} Judgment of the Court of Justice of 12 November 2019, C-261/18, Commission v. Ireland, ECLI:EU:C:2019:955.</i></p>		
Amendment 14 Recital 10 d (new)			
	<p><i>(10d) Early and effective means of public participation in the creation and adoption of Union legislative and non-legislative acts are important in order to be able to address concerns at an early stage and to assess whether there is a need for a further proposal to improve public participation horizontally.</i></p>		<p><i>Presidency suggestion in line with a Commission compromise proposal as part of final compromise</i></p> <p><u>(10d) Early and effective means of public participation in the preparation, modification and review of Union acts concerning environmental matters are important in order to be able to address concerns at an early stage.</u></p>
<p>(11) In order to allow enough time to carry out a proper review process, it is appropriate to extend</p>		<p>(11) In order to allow enough time to carry out a proper review process, it is appropriate to extend</p>	

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time limits laid down in Regulation (EC) No 1367/2006 for requesting an administrative review and those applicable to the Union institutions and bodies to respond to such a request.		time limits laid down in Regulation (EC) No 1367/2006 for requesting an administrative review and those applicable to the Union institutions and bodies to respond to such a request.	
Amendment 15 Recital 11 a (new)			
	<i>(11a) Given the key role of environmental non-governmental organisations in raising awareness and taking legal action, the Union's institutions or bodies should ensure that there is adequate access to information, participation and justice.</i>		<i>Presidency suggestion in line with a Commission compromise proposal as part of final compromise</i> <u>(11a) Given the key role of environmental non-governmental organisations in raising awareness and taking legal action, and the important role of the public in general in this regard, the Union's institutions and bodies should ensure that there is adequate access to information, participation and justice.</u>
Amendment 16 Recital 12			
(12) According to the case law of the CJEU ⁶ , environmental non-governmental organisations requesting an internal review of an administrative act are required to	(12) According to the case law of the CJEU ⁶ , <i>a party</i> requesting an internal review of an administrative act <i>is</i> required to put forward facts or legal arguments of sufficient	(12) According to the case law of the CJEU ¹⁰ , environmental non-governmental organisations requesting an internal review of an administrative act are required to	<i>Provisionally agreed at technical level.</i> (12) According to the case law of the CJEU ¹⁰ , environmental non-

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
<p>put forward facts or legal arguments of sufficient substance to give rise to serious doubts when stating the grounds for their request of review.</p> <p>⁶ Judgment of the Court of Justice of 12 September 2019 in Case C-82/17 P, <i>TestBioTech v Commission</i>, ECLI:EU:C:2019:719, at para 69.</p>	<p>substance to give rise to serious doubts when stating the grounds for their request of review. <i>That requirement should also apply under Regulation (EC) No 1367/2006.</i></p> <p>⁶ <i>Judgment</i> of the Court of Justice of 12 September 2019, <i>TestBioTech v Commission</i>, C-82/17 P, ECLI:EU:C:2019:719, <i>paragraph 69, and judgment in Case T-9/19.</i></p>	<p>put forward facts or legal arguments of sufficient substance to give rise to serious doubts when stating the grounds for their request of review.</p> <p>¹⁰ Judgment of the Court of Justice of 12 September 2019 in Case C-82/17 P, <i>TestBioTech v Commission</i>, ECLI:EU:C:2019:719, at para 69.</p>	<p>governmental organisations <u>la party</u> requesting an internal review of an administrative act are <u>is</u> required to put forward facts or legal arguments of sufficient substance to give rise to serious doubts when stating the grounds for their request of review.</p> <p>¹⁰ Judgment of the Court of Justice of 12 September 2019, <i>TestBioTech v Commission</i>, in Case C-82/17 P, <i>TestBioTech v Commission</i>, ECLI:EU:C:2019:719, at <u>paragraph 69.</u></p>
Amendment 17 Recital 12 a (new)			
	<p><i>(12a) During the consideration of a request for internal review, other parties directly affected by the request in question, such as companies or public authorities, should be able to submit comments to the Union institution or body concerned within the deadlines set out in Regulation (EC) No 1367/2006.</i></p>		<p><i>Council:</i> Not acceptable (linked to AM 28)</p>

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Amendment 18 Recital 12 b (new)			
	<p><i>(12b) According to the case law of the CJEU^{1a}, if a state aid measure under Article 107 TFEU entails a violation of Union law on the environment, that state aid measure cannot be declared compatible with the internal market. The Commission should establish clear guidelines to facilitate the assessment of the compatibility of state aid with relevant provisions of Union law, including Union law relating to the environment.</i></p> <p>^{1a} <i>Judgment of the Court of Justice of 22 September 2020, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742.</i></p>		<p><i>Council: Not acceptable</i></p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 19 Recital 12 c (new)			
	<p><i>(12c) Regulation (EC) No 1367/2006 lays down the common provisions, scope and definitions on access to information, public participation in decision-making and access to justice in environmental matters at Union level. This is appropriate and contributes to providing legal certainty and increasing the transparency of the implementation measures taken pursuant to the obligations arising under the Aarhus Convention.</i></p>		<p><i>Presidency suggestion in line with a Commission compromise proposal as part of final compromise</i></p> <p><u>12c) Regulation (EC) No 1367/2006 lays down the common provisions, scope and definitions on access to information, public participation in decision-making and access to justice in environmental matters at Union level. This is appropriate and contributes to providing legal certainty and increasing the accountability of the Union's institutions and bodies.</u></p>
Amendment 20 Recital 12 d (new)			
	<p><i>(12d) The scope of review proceedings under Regulation (EC) No 1367/2006 should cover both the substantive and procedural legality of the act challenged. In line with the case law of the CJEU, proceedings under Article 263(4) TFEU and Article 12 of Regulation (EC) No 1367/2006 cannot be founded on</i></p>		<p><i>Presidency suggestion: Acceptable in line with a Commission compromise proposal subject to the EP dropping AM 32.</i></p> <p><u>(12d) The scope of review proceedings under Regulation (EC) No 1367/2006 should cover both the substantive and procedural legality of the act</u></p>

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	<p><i>grounds or on evidence not appearing in the request for review, since otherwise the purpose for the requirement, in Article 10(1) of Regulation (EC) No 1367/2006, relating to the statement of grounds of review for such a request, would be made redundant and the object of the procedure initiated by the request would be altered^{1a}.</i></p> <p>^{1a} <i>Judgment in Case C-82/17 P, paragraph 39.</i></p>		<p><u>challenged. In line with the case law of the CJEU, proceedings under Article 263(4) TFEU and Article 12 of Regulation (EC) No 1367/2006 cannot be founded on grounds or on evidence not appearing in the request for review, since otherwise the purpose for the requirement, in Article 10(1) of Regulation (EC) No 1367/2006, relating to the statement of grounds of review for such a request, would be made redundant and the object of the procedure initiated by the request would be altered^{1a}.</u></p> <p><u>^{1a} Judgment in Case C-82/17 P, paragraph 39.</u></p>

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<p>(13) Since the objectives of this Regulation, namely to lay down detailed rules to apply the provisions of the Aarhus Convention to Union institutions and bodies, cannot be achieved by the Member States, but can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.</p>		<p>(13) Since the objectives of this Regulation, namely to lay down detailed rules to apply the provisions of the Aarhus Convention to Union institutions and bodies, cannot be achieved by the Member States, but can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.</p>	
<p>Amendment 21 Recital 13 a (new)</p>			
	<p><i>(13a) Acts adopted by public authorities of the Member States, including national implementing measures adopted at Member State level required by a non-legislative act under Union law, do not fall within the scope of Regulation (EC) No 1367/2006, in line with the Treaties and the principle of the autonomy of the national courts;</i></p>		<p><i>Presidency suggestion: Acceptable as part of a final compromise package subject to the EP dropping in particular AM 24 and 18 (state aid).</i></p>

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Amendment 22 Recital 14			
<p>(14) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the Charter), in particular the right to good administration (Article 41) and the right to an effective remedy and to a fair trial (Article 47). This Regulation contributes to the effectiveness of the Union system of administrative and judicial review, and as a result, strengthens the application of Articles 41 and 47 of the Charter and thereby contributes to the rule of law, enshrined in Article 2 of the Treaty on European Union (TEU).</p>	<p>(14) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the Charter), in particular <i>the principle of environmental protection (Article 37)</i>, the right to good administration (Article 41) and the right to an effective remedy and to a fair trial (Article 47). This Regulation contributes to the effectiveness of the Union system of administrative and judicial review <i>in environmental matters</i>, and as a result, strengthens the application of Articles 37, 41 and 47 of the Charter and thereby contributes to the rule of law, enshrined in Article 2 of the Treaty on European Union (TEU).</p>	<p>(14) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the Charter), in particular the right to good administration (Article 41) and the right to an effective remedy and to a fair trial (Article 47). This Regulation contributes to the effectiveness of the Union system of administrative and judicial review, and as a result, strengthens the application of Articles 41 and 47 of the Charter and thereby contributes to the rule of law, enshrined in Article 2 of the Treaty on European Union (TEU).</p>	<p><i>Provisionally agreed at technical level in line with a Commission compromise proposal.</i></p> <p>(14) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union (the Charter) in particular <u>the need to integrate a high level of environmental protection into the policies of the Union (Article 37)</u>, the right to good administration (Article 41) and the right to an effective remedy and to a fair trial (Article 47). This Regulation contributes to the effectiveness of the Union system of administrative and judicial review in environmental matters, and as a result, strengthens the application of Articles 37, 41 and 47 of the Charter and thereby contributes to the rule of law, enshrined in Article 2 of the Treaty on European Union (TEU).</p>
			<i>Presidency suggestions for new</i>

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			<p><i>recitals explaining new criteria for standing under AM 29 in line with Commission compromise proposals</i></p> <p><u>A) Environmental non-government organisations and other members of the public have the right to request internal review of administrative acts and omissions by Union's institutions and bodies under the conditions set out by Regulation (EC) No 1367/2006, as amended by this Regulation.</u></p> <p><u>B) When demonstrating impairment of their rights, members of the public should demonstrate a violation of their rights. This may include an unjustified restriction or obstacle to the exercise of such rights.</u></p> <p><u>Ba) Members of the public are not required to demonstrate that they are directly and individually concerned under Article 263, fourth paragraph, TFEU, as interpreted by the CJEU¹. However, in order to avoid that</u></p>

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			<p><u>any member of the public has an unqualified right to request internal review ('actio popularis'), which is not required under the Aarhus Convention, they should demonstrate that they are directly affected in comparison with the public at large such as in case . This may be the case of an imminent threat to their own health and safety or of a prejudice to a right to which they are entitled pursuant to Union legislation resulting from the alleged contravention of environmental law, in line with the case law of the CJEU².</u></p> <p><u>1 Case 25/62 Plaumann v Commission [1963] ECR 95, 107.</u></p> <p><u>2 Case C-197/18; Case-529/15 (Folk) and Case-237/07 (Janecek).</u></p> <p><u>C) When demonstrating sufficient public interest, members of the public should demonstrate both the existence of a public interest in preserving, protecting and improving the quality of the environment,</u></p>

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			<p><u>protecting human health, prudent and rational utilisation of natural resources, or combatting climate change and that their review request is supported by a sufficient number of natural or legal persons across the Union.</u></p> <p><u>D) In order to ensure effective internal review procedures, and notably that the review requests meet, where applicable, the criteria set out by Regulation (EC) No 1367/2006 and put forward facts or legal arguments of sufficient substance to give rise to serious doubts as to the assessment made by the Union institution or body, members of the public should be represented either by an environmental non-governmental organisation meeting the criteria set out in this Regulation or by a lawyer authorised to practise before the court of a Member State.</u></p> <p><u>E) In the event that a Union institution or body receives multiple requests for review of</u></p>

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
			<p><u>the same act or omission and it combines such requests to assess them in a single procedure, the Union institution or body should consider each request on its own merits in its reply. In particular, if any such request is considered inadmissible on procedural grounds or if it is rejected on substance, this should not prejudice the consideration of the other review requests assessed in the same procedure.</u></p>
			<p><i>Presidency suggestion for a new recital, in line with a Commission compromise proposal, to be read in conjunction with AM 31 (public register)</i></p> <p><u>For the sake of transparency and effective case handling, Union institutions and bodies may establish on-line systems for receipt of internal review requests.</u></p>
(15) Regulation (EC) No 1367/2006 should therefore be amended accordingly.		(15) Regulation (EC) No 1367/2006 should therefore be amended accordingly.	
HAVE ADOPTED THIS REGULATION:		HAVE ADOPTED THIS REGULATION:	

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
Article 1			
Regulation (EC) No 1367/2006 is amended as follows:		Regulation (EC) No 1367/2006 is amended as follows:	
Amendment 23			
Article 1 – paragraph 1 – point 1			
Article 2 – paragraph 1 – point g ⁸			
1. Article 2(1)(g) is replaced by the following:		1. Article 2(1)(g) is replaced by the following:	
‘(g) ‘administrative act’ means any non-legislative act adopted by a Union institution or body, which has legally binding and external effects and contains provisions that may, because of their effects, contravene environmental law within the meaning of point (f) of Article 2(1), excepting those provisions of this act for which Union law explicitly requires implementing measures at Union or national level;’	(g) ‘administrative act’ means any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1); administrative acts shall not include acts adopted by public authorities of Member States;	‘(g) ‘administrative act’ means any non-legislative act adopted by a Union institution or body, which has legally binding and external effects [...]’	Presidency suggestion: ‘(g) ‘administrative act’ means any non-legislative act adopted by a Union institution or body, which has legally binding and external effects [...]’

⁸ Article numbers in normal script in the subheadings refer to the Articles of Regulation (EC) No 1367/2006.

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 24 Article 1 – paragraph 1 – point 1 a (new) Article 2 – paragraph 2			
	<p><i>1a. Article 2, paragraph 2, is amended as follows:</i></p> <p>‘2. Administrative acts and administrative omissions shall not include measures taken or omissions by a Community institution or body in its capacity as an administrative review body under:</p>		<p><i>Council:</i> Not acceptable</p>
	<p>(a) Articles 81 <i>and</i> 82 of the Treaty [<i>Articles 101 and 102 TFEU</i>] (<i>including merger</i> rules);</p> <p>(b) Articles 226 and 228 of the Treaty [<i>Articles 258 and 260 TFEU</i>] (infringement proceedings);</p> <p>(c) Article 195 of the Treaty [<i>Article 228 TFEU</i>] (Ombudsman proceedings);</p>		
	<p>(d) Article 280 of the Treaty [<i>Article 325 TFEU</i>] (OLAF proceedings).</p> <p><i>(da) Articles 86 and 87 [Articles 106 and 107 TFEU] (competition rules) until ... [18 months after the adoption of this Regulation].</i></p> <p><i>(db) No later than ... [18 months after the date of adoption of this</i></p>		

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>Regulation], the Commission shall adopt guidelines to facilitate the assessment of the compatibility of state aid with relevant provisions of Union law relating to the environment, including on the information to be submitted by Member States when they notify the Commission of state aid.'</i></p>		
<p>Amendment 25 Article 1 – paragraph 1 – point 1 b (new) Article 4 – paragraph 2</p>			
	<p><i>1b. In Article 4, paragraph 2 is replaced by the following:</i> ‘2. The environmental information to be made available and disseminated shall be updated as appropriate. In addition to the documents listed in Article 12(2) and (3) and in Article 13(1) and (2) of Regulation (EC) No 1049/2001, the <i>following shall be included in the</i> databases or registers <i>as soon as they are consolidated:</i></p>		<p><i>Council: Not acceptable (inter alia because it goes beyond the ACCC findings/advice)</i></p>
	<p>(a) texts of international treaties, conventions or agreements, and of <i>Union</i> legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;</p>		

Commission proposal	EP amendments 20 May 2021	General Approach 17 December 2020	Comments/suggestions
	<i>(aa) the positions of Member States as expressed in decision-making procedures leading to the adoption of Union legislation or administrative acts on or relating to the environment;</i>		
	(b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by <i>Union</i> institutions or bodies;		
	(c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 258(1) of the Treaty;		
	(d) reports on the state of the environment as referred to in paragraph 4;		
	(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;		
	(f) authorisations with a significant impact on the environment, and environmental agreements, or a reference to the place where such information can be requested or accessed;		
	(g) environmental impact studies		

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	and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.’		
Article 10			
2. Article 10 is amended as follows:		2. Article 10 is amended as follows:	
(a) paragraphs 1 and 2 are replaced by the following:		(a) paragraphs 1 and 2 are replaced by the wing:	
Amendment 26 Article 1 – paragraph 1 – point 2 – point a Article 10 – paragraph 1 – subparagraph 1			
‘1. Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Union institution or body that has adopted an administrative act or, in case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law.	Any non-governmental organisation <i>or members of the public that meet</i> the criteria set out in Article 11 <i>are</i> entitled to make a request for internal review to the Union institution or body that has adopted an administrative act or, in case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law.	‘1. Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Union institution or body that has adopted an administrative act or, in case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law <u>within the meaning of point (f) of Article 2(1).</u>	<i>Provisionally agreed at technical level</i> 1. Any non-governmental organisation <i>or members of the public which meet</i> the criteria set out in Article 11 <i>is are</i> entitled to make a request for internal review to the Union institution or body that has adopted an administrative act or, in case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law within the

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			meaning of point (f) of Article 2(1).
		<p><u>Those provisions of an administrative act for which Union law explicitly requires implementing measures at Union or national level cannot be object of a request for internal review.</u></p>	<p><i>Acceptable as part of a final compromise package subject to the EP dropping in particular AM 24 and 18 (state aid)</i></p> <p>Those provisions of an administrative act for which Union law explicitly requires implementing measures at Union or national level cannot be the object of a request for internal review.</p>
<p>Amendment 27 Article 1 – paragraph 1 – point 2 – point a Article 10 – paragraph 1 – subparagraph 2</p>			
<p>Where an administrative act is an implementing measure at Union level required by another non-legislative act, the non-governmental organisation may also request the review of the provision of the non-legislative act for which that implementing measure is required when requesting the review of that implementing measure.</p>	<p>Where an administrative act is an implementing measure at Union level required by another non-legislative act, the non-governmental organisation <i>or members of the public that meet the criteria set out in Article 11</i> may also request the review of the provision of the non-legislative act for which that implementing measure is required when requesting the review of that implementing measure.</p>	<p>Where an administrative act is an implementing measure at Union level required by another non-legislative act, the non-governmental organisation may, <u>however</u>, also request the review of the provision of the non-legislative act for which that implementing measure is required when requesting the review of that implementing measure.</p>	<p><i>Provisionally agreed at technical level</i></p> <p>Where an administrative act is an implementing measure at Union level required by another non-legislative act, the non-governmental organisation <u>or members of the public that meet the criteria set out in Article 11</u> may, however, also request the review of the provision of the non-legislative act for which that implementing measure is required when requesting the review of that</p>

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			implementing measure.
Such a request must be made in writing and within a time limit not exceeding eight weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged omission, eight weeks after the date when the administrative act was required. The request shall state the grounds for the review.		Such a request must be made in writing and within a time limit not exceeding eight weeks after the administrative act was adopted, notified or published, whichever is the latest, or, in the case of an alleged omission, eight weeks after the date when the administrative act was required. The request shall state the grounds for the review.	
Amendment 28 Article 1 – paragraph 1 – point 2 – point a Article 10 – paragraph 2			
2. The Union institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. The Union institution or body shall state its reasons in a written reply as soon as possible, but no later than 16 weeks after receipt of the request.’	2. The Union institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. <i>In the event that a Union institution or body receives multiple requests for review of the same act or omission citing the same grounds, the institution or body may decide to combine the requests and treat them as one. In such a case, the Union institution or body shall as soon as possible notify that decision to all those who have made a request for internal review</i>	2. The Union institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. The Union institution or body shall state its reasons in a written reply as soon as possible, but no later than 16 weeks after receipt of the request.’	<i>Presidency suggestion in line with a Commission compromise proposal.</i> 2. The Union institution or body referred to in paragraph 1 shall consider any such request, unless it is <u>manifestly unfounded or</u> clearly unsubstantiated. <u>In the event that a Union institution or body receives multiple requests for review of the same act or omission, the institution or body may combine the requests and treat them as one.</u> The Union institution or body shall state its reasons in a written

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	<p><i>of that same act or omission. Within four weeks of submission of such a request, third parties directly affected by the request may submit comments to that Union institution or body.</i> The Union institution or body shall state its reasons in a written reply as soon as possible, but no later than 16 weeks after receipt of the request.</p>		<p>reply as soon as possible, but no later than 16 weeks after receipt of the request <u>the expiry of the eight weeks deadline set forth in paragraph 1, subparagraph 2 above.</u></p>
<p>(b) in paragraph 3, the second subparagraph is replaced by the following: 'In any event, the Union institution or body shall act within 22 weeks from receipt of the request.'</p>		<p>(b) in paragraph 3, the second subparagraph is replaced by the following: 'In any event, the Union institution or body shall act within 22 weeks from receipt of the request.'</p>	
<p>3. Throughout the text of the Regulation, references to provisions of the Treaty establishing the European Community (EC Treaty) are replaced by references to the corresponding provisions of the Treaty on the Functioning of the European Union (TFEU) and any necessary grammatical changes are made.</p>		<p>3. Throughout the text of the Regulation, references to provisions of the Treaty establishing the European Community (EC Treaty) are replaced by references to the corresponding provisions of the Treaty on the Functioning of the European Union (TFEU) and any necessary grammatical changes are made.</p>	
<p>4. Throughout the text of the Regulation, including in the title, the word 'Community' is replaced</p>		<p>4. Throughout the text of the Regulation, including in the title, the word 'Community' is replaced</p>	

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by the word ‘Union’ and any necessary grammatical changes are made.		by the word ‘Union’ and any necessary grammatical changes are made.	
Amendment 29 Article 1 – paragraph 1 – point 2 a (new) Article 11 – paragraph 1 a (new)			
	<p>2a. In Article 11 the following paragraph is inserted:</p> <p><i>'1a. A request for internal review in accordance with Article 10 may also be made by members of the public demonstrating sufficient interest or impairment of a right subject to paragraph 2 below.'</i></p>		<p><u>1a. A request for internal review may also be made by other members of the public, subject to the following conditions:</u></p> <p><u>(a) they shall demonstrate impairment of their rights caused by the alleged contravention of environmental law and that they are directly affected by such impairment in comparison with the public at large; or</u></p> <p><u>(b) they shall demonstrate a sufficient public interest and that the request is supported by at least [xxx] members of the public residing or established in at least [xxx] Member States, with at least [xxx] members of the public residing or established in each of those Member States.</u></p> <p><u>(c) In both cases, the members</u></p>

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			<p><u>of the public shall be represented by a non-governmental organisation which meets the criteria set forth in the first paragraph above or by a lawyer authorised to practise before the courts of a Member State. That lawyer or non-governmental organisation shall confirm compliance with the quantitative conditions in paragraph 1a(b) above where applicable and shall provide evidence thereof upon request.</u></p>
			<p><i>Presidency suggestion:</i></p> <p><i>A text for implementing provisions ("paragraph 2" of COM proposal) will be distributed separately once agreed by the legal services of the three institutions.</i></p>
<p>Amendment 30 Article 1 – paragraph 1 – point 2 b (new) Article 11 – paragraph 2</p>			
	<p><i>2b. Article 11, paragraph 2 is replaced by the following</i> ‘2. The Commission shall adopt the provisions which are necessary to ensure transparent and consistent</p>		<p><i>Council:</i> Not acceptable to adopt criteria by Delegated Act</p>

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	<p>application of the criteria mentioned in <i>paragraphs 1 and 1a. No later than ... [18 months following the adoption of this Regulation], the Commission shall adopt a delegated act in accordance with Article 12a specifying the criteria that members of the public, as referred to in paragraph 1a of this Article, need to fulfil. The Commission shall review the application of those criteria at least every three years, and, where appropriate, amend the delegated act, to guarantee the effective exercise of the right conferred on members of the public referred to in paragraph 1a.</i></p> <p><i>The criteria established by the delegated act adopted pursuant to this paragraph shall:</i></p>		
	<p><i>(a) ensure that there is effective access to justice in line with the overall objectives of the Aarhus Convention;</i></p>		
	<p><i>(b) require a request to be made by members of the public from different Member States when it concerns a Union act or omission</i></p>		

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	<i>affecting the public in more than one Member State;</i>		
	<i>(c) be such as to avoid actio popularis , including by ensuring that when demonstrating sufficient interest or impairment of a right, members of the public are required to prove that they are directly affected in comparison to the public at large;</i>		
	<i>(d) minimise the administrative burden on Union institutions and bodies.</i>		
Amendment 31 Article 1 – paragraph 1 – point 2 c (new) Article 11 a (new)			
	<p><i>2c. The following article is added:</i></p> <p style="text-align: center;"><i>‘Article 11a</i> <i>Public register of requests for internal review</i></p> <p><i>Union institutions and bodies shall establish, by 31 December 2021 at the latest, a register of all requests that meet the eligibility requirements set out in Article 11 as well as of the applicants that meet those requirements and submitted the requests. That register shall be regularly</i></p>		<p><i>Presidency suggestion in line with Commission compromise proposal: Acceptable as part of final compromise package, subject to the EP dropping another request rejected by the Council, such as the request to allow third parties to comment (AM 28)</i></p> <p><u>‘Union institutions and bodies shall publish all internal review requests as soon as possible after their receipt, as well as all final decisions on those requests as</u></p>

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	<i>updated.'</i>		<u>soon as possible after their adoption. Union institutions and bodies may establish on-line systems for receipt of internal review requests and may require that all internal review requests shall be submitted via their online systems.'</u>
Amendment 32 Article 1 – paragraph 1 – point 2 d (new) Article 12 – paragraph 1			
	<p><i>2d. Article 12, paragraph 1 is amended as follows:</i></p> <p><i>‘1. Where the non-governmental organisation or members of the public which made the request for internal review pursuant to Article 10 consider that a decision by the Union institution or body in response to that request is insufficient to ensure compliance with environmental law, they may institute proceedings before the Court of Justice in accordance with Article 263 of the Treaty, to review the substantive and procedural legality of that decision.’</i></p>		<i>Presidency suggestion: To be deleted, see AM 5 and 20</i>

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Amendment 33 Article 1 – paragraph 1 – point 2 e (new) Article 12 – paragraph 2			
	<p>2e. Article 12, paragraph 2 is amended as follows:</p> <p>‘2. Where the <i>Union institution</i> or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation <i>or members of the public which made the request for internal review pursuant to Article 10</i> may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.’</p>		<p><i>Presidency suggestion: Accept EP amendment</i></p> <p><u>2e. Article 12, paragraph 2 is amended as follows:</u> <u>‘2. Where the Union institution or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation or members of the public which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.’</u></p>
Amendment 34 Article 1 – paragraph 1 – point 2 f (new) Article 12 – paragraph 2 a (new)			
	<p>2f. The following paragraph is inserted:</p> <p>‘2a. <i>Without prejudice to the Court’s prerogative to apportion costs, it shall be ensured that court proceedings initiated under this Article are not prohibitively expensive. Union institutions and</i></p>		<p><i>Presidency suggestion: To be deleted, see AM 3</i></p>

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	<i>bodies referred to in Article 10(1) shall only make reasonable cost reimbursement requests.'</i>		
Amendment 35 Article 1 – paragraph 1 – point 2 g (new) Article 12 a (new)			
	<p>2g. The following Article is inserted:</p> <p style="text-align: center;">'Article 12a</p> <p style="text-align: center;">Exercise of the delegation</p> <p>1. The power to adopt delegated acts referred to in Article 11(2) is conferred on the Commission subject to the conditions laid down in this Article.</p>		<p><i>Not acceptable for the Council. Provisional agreement at political level on 22 June to include criteria for standing in the operative part of the Regulation.</i></p>
	<p>2. The power to adopt delegated acts referred to in Article 11(2) shall be conferred on the Commission for an indeterminate period of time from ... [date of entry into force of this Regulation].</p>		
	<p>3. The delegation of power referred to in Article 11(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following</p>		

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	<i>the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</i>		
	<i>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State and the public in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.</i>		
	<i>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</i>		
	<i>6. A delegated act adopted pursuant to Article 11(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have</i>		

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	<p><i>both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.</i></p>		
			<p><i>Presidency suggestion: Final provisions related to the new criteria for standing in line with a Commission compromise proposal</i></p> <p><u>Final provisions</u></p> <p><u>Article 11(1a) shall apply two years after the date of entry into force of this Regulation.</u></p>

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Article 2			
<p>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States</p>		<p>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States</p>	
<p>Done at Brussels,</p> <p><i>For the European Parliament</i> <i>For the Council</i> <i>The President</i> <i>The President</i></p>		<p>Done at Brussels,</p> <p><i>For the European Parliament</i> <i>For the Council</i> <i>The President</i> <i>The President</i></p>	