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**NOTE**

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10689/23 + ADD 1 + ADD 2 + ADD 3; 12544/23 + ADD 1
Subject:	Asociația pentru Energie Curată și Combaterea Schimbărilor Climatice ("ACUE") Request for internal review under Title IV of the Aarhus Regulation - Draft reply to the request for internal review under Article 10 of Regulation (EC) 1367/2006 on the application of the provisions of the Aarhus Convention of the outcome of the Justice and Home affairs Council meeting of 8 and 9 December and notably the alleged non-adoption of the draft Council decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania.

Delegations will find in annex the draft reply to the above-mentioned request.

The Council's reply to the request for internal review under Article 10 of Regulation (EC) 1367/2006 on the application of the provisions of the Aarhus Convention of the outcome of the Justice and Home affairs Council meeting of 8 and 9 December and notably the alleged non-adoption of the draft Council decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania

This reply sets out the Council's decision with regard to the request submitted by Asociația pentru Energie Curată și Combaterea Schimbărilor Climatice (here after "AECCSC") represented by STOICA & Asociații, a civil law firm, of 17 May 2023 for "*internal review of the decision taken at the JHA Council meeting of 8 and 9 December 2022 not to adopt the draft Council decision on the full application of the provisions of the Schengen acquis in the Republic of Bulgaria and Romania*" (the "Request").

It explains why, after careful consideration of your arguments, the Council considers that your request for review is inadmissible. The present reply will only address the question of inadmissibility, divided in 3 parts.

## **1. Context**

The conditions for the participation of Bulgaria and Romania in the Schengen acquis are set out in Article 4 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania of 2005<sup>1</sup> (the "Act of Accession").

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<sup>1</sup> Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, JO L 157 du 21.6.2005, p. 203–375.

Article 4(1) of the Act of Accession provides that the provisions of the Schengen acquis as integrated into the framework of the European Union by the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community (the ‘Schengen Protocol’), and the acts building upon it or otherwise related to it, listed in Annex II, as well as any further such acts adopted before the date of accession, shall be binding on and applicable in Bulgaria and Romania from the date of accession.

Article 4(2) of the 2005 Act of Accession of the Republic of Bulgaria and Romania provides that the provisions of the Schengen acquis not referred to in Article 4(1) of that Act are to only apply in each of those States pursuant to a Council decision to that effect, after verification in accordance with the applicable Schengen evaluation procedures that the necessary conditions for the application of all parts of the Schengen acquis concerned have been met in those Member States.

Article 4(2) specifies that the Council shall take its decision, after consulting the European Parliament, acting with the unanimity of its members representing the Governments of the Member States in respect of which the provisions referred to in this paragraph have already been put into effect and of the representative of the Government of the Member State in respect of which those provisions are to be put into effect.

Such a decision will permit the lifting of controls at internal borders with Bulgaria and Romania and the list of the remaining provisions of the Schengen acquis within the meaning of Article 4(2) of the 2005 Act of Accession which are inextricably linked to the lifting of controls at internal borders to be rendered applicable to Bulgaria and Romania amongst themselves and in their relations with the Member States applying the Schengen acquis in full as well as Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation.

Having regard to the 2005 Act of Accession of the Republic of Bulgaria and Romania, and in particular Article 4(2) thereof, a draft Council decision on the full application of the Schengen acquis in Bulgaria and Romania (“the draft Council decision”) has been examined and put to the vote at the Justice and Home Affairs Council of December 8 and 9 December 2022. The draft Council decision did not receive the unanimous support required by the Act of Accession within the Council. Therefore, the draft Council decision could not be adopted by the Council.

Negotiations on the full application of the Schengen acquis to Bulgaria and Romania are being pursued within the Council in order to achieve the unanimity required by the Act of Accession for the adoption of a decision on the full application of the Schengen acquis in Bulgaria and Romania.

## **2. Examination of the request**

In its application submitted on 17 May 2023, AECCSC asked the “*Council to review its decision taken at the meeting of the JHA configuration on 8-9 December 2022 with a view to ensuring its compliance with environmental law*” (paragraph 86 of the Request), on the basis of Article 10 of Regulation (EC) 1367/2006 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 European Union institutions and bodies<sup>2</sup> (“the Aarhus Regulation”).

In the light of the following, the Council considers that the request is inadmissible in several respects: (i) the object of the request of review by AECCSC is neither an 'administrative act' nor an 'administrative omission' within the meaning of the Aarhus Regulation; (ii) AECCSC did not make the request to review within the time-limits under Article 10 of the Aarhus Regulation; (iii) AECCSC does not meet the criteria for making a request for internal review under Article 11 of the Aarhus Regulation.

**(i) The non-adoption of the draft decision on the full application of the Schengen acquis to Bulgaria and Romania at the JHA Council of 8-9 December 2022 cannot be qualified as an ‘administrative act’ or an ‘administrative omission’ within the meaning of Article 2 paragraph 1, letter g) of Regulation (EC) 1367/2006**

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<sup>2</sup> [EUR-Lex - 32006R1367 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/ui.do?uri=REG%2F%2F32006R1367%2F%2FEN).

- a. *The non adoption of the draft Council decision cannot be qualified as an ‘administrative act’ within the meaning of the Aarhus Regulation*

According to Article 2 paragraph 1 g) of Regulation (EC) 1367/2006, “an ‘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)”.

In the Request, you refer to the “*Council’s decision not to adopt the draft decision*” (paragraph 20, emphasis added) and to the “*Council’s decision to reject the adoption of the draft decision through a vote*” (paragraph 24 - emphasis added).

In accordance with the case law of the CJEU, the interpretation on the notion of “administrative act” pursuant to the Aarhus Regulation has to be done in light of the definition of an act subject to judicial review for the purpose of Article 263 TFEU.<sup>3</sup>

The Council does not dispute your assessment that the Council decision on the full application of the Schengen acquis in Bulgaria and Romania is not a legislative act.

The Council considers that the vote it exercised in accordance with the voting rule laid down in the Act of Accession is the legal means which leads to the adoption or not of the draft Council decision. However, in the light of the definition given by Regulation (EC) 1367/2006, the Council considers that the fact it could not reach the required unanimity by article 4(2) of the Act of Accession in order to adopt the decision is not an ‘administrative act’ within the meaning of the Aarhus Regulation.

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<sup>3</sup> Case T-9/19, *ClientEarth, v European Investment Bank (EIB)*, EU:T:2021:42, confirmed by Joined Cases C-212/21 P and C-223/21 P, *EIB v ClientEarth*, EU:C:2023:546.

Furthermore, the notion of “legal and external effects” of administrative act needs also to be interpreted in view of the notion of act reviewable under Article 263 TFEU. This means that this concept needs to be interpreted in accordance with the concept of acts intended to produce legal effects vis-à-vis third parties, referred to in the first paragraph of Article 263 TFEU, which excludes, in principle, acts which produce effects only within the internal sphere of the EU institution, body, office or agency which adopted them, without creating any rights or obligations vis-à-vis third parties.

Furthermore, the Council points out that it did not deliberate on a proposal to “reject” the draft decision nor adopted a decision to "reject" the adoption; the non-adoption is merely the result of the lack of unanimity within the Council. Such a “*decision to reject the adoption*” (paragraph 24 of the Request) does not exist and the Council has never taken a position on the matter.

The non-adoption of the draft Council decision at stake was the result of not achieving the unanimity required for such adoption during the vote taken in the Council on 8-9 December 2022. Not achieving the required unanimity merely indicates that no decision has been adopted.

**Following that vote, the Council has not taken any measures or decision that could be subject to a challenge pursuant to Article 263 TFEU, and, thus, reviewed under the Aarhus Regulation.**

Similarly, the statement or explanation of vote provided by the Council that the vote did not result in the unanimity required for the adoption of the decision **cannot be regarded as an act that can be a challengeable or reviewable act within the meaning of the Aarhus Regulation, as it is only a record of the expression and the result of the votes of the members of the Council.**

The vote of the Justice and Home Affairs Council of December 8-9 2022 **did not conclude the process bringing to the full application of the Schengen acquis to Bulgaria and Romania**, and it may again be put to the Council for a vote. Negotiations on the full application of the Schengen acquis to Bulgaria and Romania are continuing within the Council in order to find the unanimity required for the adoption of a decision on the full application of the Schengen acquis in these two Member States.

In view of the above, the Council maintains that the Request is inadmissible on the grounds that neither the non-adoption of the draft Council decision nor the statement issued by the GSC recording the lack of unanimity as a result of the vote qualify as an ‘administrative act’ within the meaning of the Aarhus Regulation.

- b. *The non-adoption of the Council decision cannot be qualified as an ‘administrative omission’ under the meaning of the Aarhus Regulation*

According to Article 2 paragraph 1 g) of Regulation (EC) 1367/2006, an ‘administrative omission’ means “*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 within the meaning of point (f) of Article 2(1)*”.

**First**, the Council underlines that there is no provision in the Act of Accession defining a deadline for the adoption of the Council decision on full application of the Schengen *acquis* in Bulgaria and Romania.

In its Council conclusions of 9 June 2011<sup>4</sup> - which were approved by the Council in line with the procedure referred to in Article 4(2) of the Act of Accession, the Council concluded that the necessary conditions for the application of all parts of the Schengen *acquis* had been fulfilled by Bulgaria and Romania. However, under the abovementioned Article 4(2), this were to be considered only as a provisional step of the procedure bringing to the full implementation, which needs to be confirmed by a legally binding act adopted by unanimity.

**Second**, the Council notes that while it has to place any proposal referred to it on the agenda for its meetings in line with its Rules of procedure, such insertion does not oblige the Council in any way to adopt that proposal. It is a sovereign right of the Members of the Council to express the position on behalf of their respective Member State through the voting on draft legal acts to be adopted by the Council.

Hence, the Council considers that the Request is inadmissible on the grounds that the non-adoption of the draft Council decision does not constitute an ‘administrative omission’ within the meaning of the Aarhus Regulation.

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<sup>4</sup> See ST 9167/4/11 for Bulgaria and ST 9166/4/11 for Romania.

- c. *In any case, the Council argues that the non-adoption of the decision does not contravene in anyway environmental law within the meaning of point (f) of Article 2(1) of the Aarhus Regulation.*

Article 1 of the Aarhus Regulation sets out its objective in its paragraph 1 as follows:

*“The objective of this Regulation is to contribute to the implementation of the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, hereinafter referred to as ‘the Aarhus Convention’, by laying down rules to apply the provisions of the Convention to Union institutions and bodies, in particular by: (...)*

*(d) granting access to justice in environmental matters at Union level under the conditions laid down by this Regulation (emphasis added).*

In this context, Article 2(1)(f) of the Aarhus Regulation gives a definition of ‘environmental law’ as:

*“Union legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union policy on the environment as set out in TFEU : preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems”.*

From the combined reading of those provisions, it is clear that the aim of the Aarhus Regulation is the one to provide access to justice to members of the public to review whether certain acts – or the omission thereof – are violating provisions of EU law aiming to protect the environment.

This is the reason why members of the public are entitled to make a request of review only if they comply with the criteria under Article 11 of the Aarhus Regulation.

As it will also be developed further below, the right to make a request to review is limited to actors which have a statutory interest in preserving and protecting the environment, such as NGOs, or individuals which are subject to a violation of their rights, or members of the public which can demonstrate the existence of a public interest in preserving, protecting and improving the quality of the environment, provided that they comply with the quantitative threshold set out in the legislation, which ensure that the claims are put forward by a sufficient representative sample of public interest.



This limitation of the personal scope of application of the right to make a request to review is consistent with the aim of the Aarhus Regulation to ensure that the review of the act or the omission is specifically limited to the environmental field, in light of the United Nations Economic Commission for Europe (UNECE) Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the “Aarhus Convention”), which does not provide for an “*actio popularis*”.

In the request, AECCSC refers in paragraphs 39 to 42 to the negative effects on the environment linked to the incomplete application of the Schengen acquis to Bulgaria and Romania.

The Council considers that any Union act in any field may have an environmental footprint. The Council believes that such a broad view of the potential effects on the environment as a consequence of non-adoption of the draft Council decision in the JHA Council on 8-9 December 2022 would be tantamount to extrapolating the letter and the spirit of the internal review procedure provided for in Article 10 of Aarhus Regulation, if any such acts could be submitted to it with the pretext of contravening environmental law.

The draft Council decision put to the vote relates to the full application of the Schengen acquis to Bulgaria and Romania pursuant to Article 4(2) of the Act of Accession and is not related whatsoever to any provisions relating to environmental law pursuant to the Aarhus Regulation. There is no direct link between the lack of full implementation of the Schengen acquis to Bulgaria and Romania and the alleged consequences on the environment.

Therefore, the Council considers the Request is inadmissible on the grounds that the non-adoption of the draft Council decision is not liable to contravene environmental law within the meaning of the Aarhus Regulation.

**(ii) The request was not made within the required time limit prescribed by Article 10 of the Aarhus Regulation**

Article 10 paragraph 1 of Regulation (EC) 1367/2006 provides that: *“such a request [for internal review] 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 administrative omission, eight weeks after the date when the administrative act was required. The request shall state the grounds for the review”*.

As a preliminary point, the Council recalls that the non-adoption of the draft Council decision at the JHA Council on 8 and 9 December 2022 does not constitute an “administrative act” or an “administrative omission” within the meaning of the Aarhus Regulation. Therefore, the Request is already inadmissible on this account. For the sake of completeness, the Council considers that the Request is also inadmissible because of the non-respect of the Article 10 of Aarhus Regulation provided deadline.

**First**, the Council observes that AECCSC claims that it *“knew the Council’s decision not to adopt the draft decision on 22 March 2023”* (paragraph 20 of the Request). In reality, the date of 22 March 2023 corresponds to the date when the Council, further to a request for access to a document based on Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>5</sup> – which corresponds to a very specific procedure completely independent of any legal effects supposedly arising from the non-adoption of the decision – submitted to AECCSC a copy of the addendum to the minutes of the Council meeting<sup>6</sup>, in reply to its request.

The access to the documents requested, therefore, is a completely separate procedure, by which the Council complied to its obligation pursuant to Regulation 1049/2001. It has no value of publication or notification within the meaning of the Aarhus Regulation.

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<sup>5</sup> [EUR-Lex - 32001R1049 - EN - EUR-Lex \(europa.eu\)](#), Official Journal L 145 , 31/05/2001 P. 0043 – 0048.

<sup>6</sup> Document 15877/1/22/ADD REV 1.

**Second**, and in line with the consideration made above, the Council was under no obligation to publish or notify the non-adoption of the draft Council decision at the JHA Council of 8-9 December 2022 in the same way as if the decision would have been adopted. The Council underlines that the results of the vote were public at the end of the JHA Council of 8-9 December 2022. It is from that date that the non-adoption of the draft Council decision must be considered to have been brought to the attention of the public, it being understood that the result of the vote were publicly available and relayed by a press release, in addition to publication of press conferences on the Council's website on the same day<sup>7</sup>.

Moreover, the interpretation put forward by AECCSC would run counter to the spirit of the Aarhus Regulation, interpreted in light of the Aarhus Convention, which aims to provide effective protective guarantees for civil society and members of the public in access to justice in environmental matters within defined time-limits.

To conclude, the Council reiterates that the information about the non-adoption of the Council decision was in the public domain as of 9 December 2022. Therefore, the Council is of the opinion that, if an act had been adopted at that date - quod non -, the time limit set out in Article 10 began to run from that date. Consequently, the time limit for the request for the review expired on 3 February 2023. By introducing the request on 17 May 2023 the time limit required under Article 10 of the Aarhus Regulation has expired.

Hence, the Request must be declared inadmissible also on this ground.

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<sup>7</sup> [Press conference \(Home Affairs\) - Part 2 \(europa.eu\)](#): Press conference by Vít RAKUŠAN, First Deputy Prime Minister and Minister of the Interior of the Czech Republic, during the press conference following the Justice and Home Affairs Council (Home Affairs) on 8 December 2022 in Brussels.

[Press conference \(Home Affairs\) - Part 3 \(europa.eu\)](#): Press conference by Ylva JOHANSSON European Commissioner for Home Affairs, during the press conference following the Justice and Home Affairs Council (Home Affairs) on 8 December 2022 in Brussels.

[Justice and Home Affairs Council - Consilium \(europa.eu\)](#): publication on the Council's website following the Justice and Home Affairs Council (Home Affairs) on 8 December 2022 in Brussels.

**(iii) AECCSC does not fulfil requirements set out in Article 11(1) (b), (c) and (d) of the Aarhus Regulation**

Article 11(1) of the Aarhus Regulation provides that:

*“A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that:*

- (a) it is an independent non-profit-making legal person in accordance with a Member State’s national law or practice;*
- (b) it has the primary stated objective of promoting environmental protection in the context of environmental law;*
- (c) it has existed for more than two years and is actively pursuing the objective referred to under (b);*
- (d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities. [...]”*

The Council does not dispute the fact that AECCSC is an independent non-profit-making legal person in accordance with a Member State’s national law or practice. However, the Council considers that AECCSC does not meet the criteria set out in points b), c) and d) of Article 11 for the reasons set out in the following points.

**First**, AECCSC does not fulfil the requirement in Article 11(1) b) that requires that the non-governmental organisation shall have *“primary stated objective of promoting environmental protection in the context of environmental law”*.

Article 4 of the Statute of the Association for Clean Energy and Climate Change<sup>8</sup>, Chapter II, entitled *“the aim and objectives of the association”*, stresses that the *“association aims to support, develop innovative technological solutions and activities in the field of environment, energy and infrastructure in Romania/Europe, promote innovation and cooperation, and provide expertise in the field of clean energy, environment and climate change. It also supports and promotes any relevant investments at local, regional and national level in compliance with environmental legislation, elaborates relevant studies and reports”*.

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<sup>8</sup> Document 10689/23, Annex 2 of the Request.

According to article 5 of the Statute of the Association for Clean Energy and Climate Change:

*“The objectives of the Association and the main ways to achieve them are the following:*

- a. To promote **innovative solutions and clean technologies in all economic fields in Romania and the European Union**;*
  - b. Increase **competitiveness and economic development** based on research, knowledge and innovation;*
  - c. Promote the efficient and sustainable use of resources;*
  - d. Promote sustainable economic growth by moving decisively towards a low carbon economy and competitive industry;*
  - e. Improving energy efficiency and harnessing renewable and unconventional energy resources;*
- [...]” (emphasis added).

The Council observes that the association's primary objective is merely economic and commercial, aimed at supporting initiatives to promote new sources of energy that are more respectful of environmental law. As clearly detailed in the Statutes of association, the association's objectives are based on growth, competitiveness and commercial interests in a growing sector. Although the association's articles of Statutes do have the merit of mentioning environmental objectives, they are only incidental and secondary. Consequently, it cannot be maintained that *'the association has the primary stated objective of promoting environmental protection in the context of environmental law'*. All the documents and annexes provided by AECCSC only demonstrate the objective of 'promoting new sources of energy' rather than genuine initiatives and activities aimed at protecting the environment.

Furthermore, the partnerships developed by AECCSC seem to corroborate the Council's view that the association primarily pursues objectives with an economic and commercial dimension. Indeed, the association clearly displays its proximity to an organisation that can be described as a 'lobby' - the *Federația Asociațiilor Companiilor de Utilități din Energie* (the 'Federation of associations of energy utility companies') ("ACUE"), which describes itself as *"an active dialogue partner for authorities and the business environment, that contributes with proposals and solutions to improving legislation and developing the optimal framework for the development and modernization of the energy sector, including labor relations and working conditions. ACUE members represent over 22,500 energy specialists, employees whose activity translates into the comfort of every home and company in Romania"*<sup>9</sup>.

On 31 May 2023, the AECCSC's Facebook page refers to the article published by the ACUE, together with the following publication: *"AECCSC and ACUE are implementing, in partnership, a project that aims to educate a wide audience to adopt the best solutions that ensure energy comfort but with less consumption of resources"*<sup>10</sup>.

The plan being implemented jointly by the two organisations is described as follows: *"the project plan includes 10 events dedicated to household consumers, public institutions and those interested in producing energy from renewable sources, which can be efficiently integrated into distribution networks, supported by information campaigns focused on energy waste awareness, on handy solutions to reduce consumption without reducing energy comfort."*<sup>11</sup>

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<sup>9</sup> [About us - Acue.](#)

<sup>10</sup> See <https://www.facebook.com/AECCSC/> and [https://www.acue.ro/acue-lanseaza-proiectul-eficienta-energetica-pentru-case-cladiri-si-retele-inteligente-cu-finantare-de-la-innovation-norway/?fbclid=IwAR1KmpJfgm0zMysz5iMGnQk9gnL\\_HPiR8JZGFtin8Sq80bcut-yl49TOdDg\\_aem\\_AfaF12r0XNpTpCzp47PPfqXDQdGyDZaf3d47DVFg6JPmNwmQDUUpGnd3Hyg97VqS\\_V1M](https://www.acue.ro/acue-lanseaza-proiectul-eficienta-energetica-pentru-case-cladiri-si-retele-inteligente-cu-finantare-de-la-innovation-norway/?fbclid=IwAR1KmpJfgm0zMysz5iMGnQk9gnL_HPiR8JZGFtin8Sq80bcut-yl49TOdDg_aem_AfaF12r0XNpTpCzp47PPfqXDQdGyDZaf3d47DVFg6JPmNwmQDUUpGnd3Hyg97VqS_V1M) and also Annex B.1.

<sup>11</sup> [ACUE lansează proiectul Eficiență energetică pentru case, clădiri și rețele inteligente, cu finanțare de la Innovation Norway - Acue.](#)

The article also states that “*ACUE is a representative employers' **federation in the electricity, oil, gas and energy mining sector**, representing the interests of important companies in the field of production, distribution, supply of electricity and natural gas and services related to these activities. ACUE represents 23 companies in the energy sector, which totals a total number of 22,500 employees and an annual turnover of over 5.5 billion euros. The total value of investments made by ACUE members during 2018-2022 amounted to over 13.5 billion lei*”.

Regarding AECCSC, the article mentions it in these terms: “*the Association for Clean Energy and Climate Change is an organization that aims to help a smart regional transition to a sustainable and environmentally friendly economy. The partnership will help promote new technologies and innovative solutions that ensure a sustainable transition to a climate-neutral economy and raise public awareness*”.

The majority of ACUE's members, as listed on its website<sup>12</sup>, are Romanian companies specialising in the energy industry, specialising exclusively in gas and electricity (in full: E.ON ENERGIE ROMÂNIA SA, ENEL ENERGIE MUNTENIA SA, CEZ ROMANIA SA, E.ON ROUMANIE SRL, CEZ VANZARE SA, ENGIE ROMANIA SA, ENEL ROUMANIE SRL, GAZ EST SA VASLUI, ENEL ENERGIE SA, ELECTRICA FURNIZARE SA).

**Second**, AECCSC does not meet the criterion in Article 11(1)(c) that the organisation has existed for more than two years and is actively pursuing the objective referred to under (b). Based on the Request and the annexes thereto, AECCSC stresses that it was granted legal personality and registered on 26 February 2021 (paragraph 14 of the Request). The Council has already explained that the deadline for requesting the internal review was 3 February 2023. Had AECCSC acted within the time limit, AECCSC would have been unable to show that it fulfilled the criterion in Article 11(1)(c) of the Aarhus Regulation, since the organisation had not existed for more than two years on that date.

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<sup>12</sup> [ACUE FSC - Acue.](#)

Moreover, the Council notes that, on the basis of the information submitted by AECCSC, it is not possible to assess when exactly the organisation started to operate.

**Third**, AECCSC does not satisfy the requirement in Article 11(1)(d) that *'the subject-matter of the request for internal review is covered by its objective and activities'*. As indicated above, the AECCSC's objective and activities relate to the promotion of innovative energy solutions, revealing an economic and commercial nature. Consequently, it is clear that its objectives and activities do not cover the subject matter of the application.

Hence, based on the documents provided by AECCSC and in accordance with Aarhus Regulation, the Council concludes that AECCSC has not demonstrated that it has the primary stated objective of promoting environmental protection in the context of environmental law, that it has existed for more than two years and is actively pursuing this objective, and that the subject matter in respect of which the request for internal review is made is covered by the objectives and activities of the organization.

### **3. Conclusion**

In the light of the above, the Council concludes that:

- (i) the non-adoption of the Council decision is not an 'administrative act' or an 'administrative omission' within the meaning of the Aarhus Regulation;
- (ii) the request was submitted beyond the deadline provided under Article 10 of the Aarhus Regulation;
- (iii) AECCSC does not comply with the requirements provided under Article 11, paragraph 1, letters b), c), and d). of the Aarhus Regulation.

The Council considers that the Request is inadmissible.

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## LIST OF ANNEXES

ANNEX	DESCRIPTION	REFERENCE STATEMENT
B.1	<p>Screenshot of the AECCSC's Facebook page that refers to the article published by the ACUE, together with the following publication: "<i>AECCSC and ACUE are implementing, in partnership, a project that aims to educate a wide audience to adopt the best solutions that ensure energy comfort but with less consumption of resources</i>".</p> <p><a href="#">Asociația pentru Energie Curată și Combaterea Schimbărilor Climatice   Facebook</a></p> <p><a href="https://www.acue.ro/acue-lanseaza-proiectul-eficienta-energetica-pentru-case-cladiri-si-retele-inteligente-cu-finantare-de-la-innovation-norway/?fbclid=IwAR1KmPjfgm0zMysz5iMGnQk9gnL_HPiR8JZGFtin8Sq80bcut-yl49TOdDg_aem_AfaF12r0XNpTpCzp47PPfqXDQdGyDZaf3d47DVFg6JPmNwmQDUUpGnd3Hyg97VqS_V1M">https://www.acue.ro/acue-lanseaza-proiectul-eficienta-energetica-pentru-case-cladiri-si-retele-inteligente-cu-finantare-de-la-innovation-norway/?fbclid=IwAR1KmPjfgm0zMysz5iMGnQk9gnL_HPiR8JZGFtin8Sq80bcut-yl49TOdDg_aem_AfaF12r0XNpTpCzp47PPfqXDQdGyDZaf3d47DVFg6JPmNwmQDUUpGnd3Hyg97VqS_V1M</a></p>	p. 11, footnote 10