Council of the European Union

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LIMITE

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Request for internal review under Article 10 of Regulation (EC) 1367/2006 on Directive (EU) 2025/1237 of the European Parliament and of the Council of 17.6.2025 amending Council Directive 92/43/EEC as regards the protection status of wolves - Draft Council reply

With a view to the meeting of the Working Party on Environment on 26 November 2025, delegations will find attached the draft reply of the Council to the request for internal review under Article 10 of Regulation (EC) 1367/2006 on the Directive (EU) 2025/1237 of the European Parliament and of the Council, of 17 June 2025, amending Council Directive 92/43/EEC as regards the protection status of wolves, submitted by Gesellschaft zur Schutz der Wölfe e.V (ST 15686/25).

ANNEX

The Council's reply to the request for internal review under Article 10 of Regulation (EC) 1367/2006 on Directive (EU) 2025/1237 of the European Parliament and of the Council of 17.6.2025 amending Council Directive 92/43/EEC as regards the protection status of wolves[1]

1. This reply sets out the Council's decision with regard to the request submitted by Gesellschaft zur Schutz der Wölfe e.V (here after "GSWV"), represented by a lawyer, received by the Council on 13 August 2025 for "internal review under Article 10 of Regulation (EC) 1367/2006 on Directive (EU) 2025/1237 of the European Parliament and of the Council of 17.6.2025 amending Council Directive 92/43/EEC as regards the protection status of wolves" (the "Request").

2. It explains why, after careful consideration of your arguments, the Council considers that your Request is inadmissible. The present reply will only address the question of inadmissibility.

I. CONTEXT

3. On 7 March 2025, the Commission adopted a proposal for a Directive of the European Parliament and the Council amending Council Directive 92/43/EEC as regards the protection status of the wolf (Canis lupus)[2]. Following interinstitutional negotiations between the European Parliament and the Council, Directive (EU) 2025/1237 (the "contested Directive") was adopted on 17 June 2025.

4. In the Request received on 13 August 2025, GSWV asked the "*Council to review Directive (EU) 2025/1237 (..) and(…) conclude that this act is unlawful*" and requested the act to be withdrawn or to initiate the necessary procedure for its withdrawal, on the basis of Article 10 of Regulation (EC) 1367/2006[3] on the application of the provisions of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 (the "Aarhus Regulation").

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1 OJ L, 2025/1237, 24.6.2025

2 COM/2025/106 final.

3 OJ L 264, 25.9.2006, pp. 13–19

II. EXAMINATION OF THE REQUEST

5. For the reasons set out below, the Council considers that the Request is inadmissible as the object of the request for internal review by GSWV is not an 'administrative act' within the meaning of the Aarhus Regulation.

6. Article 2, paragraph 1) litera g) of the Aarhus Regulation clearly defines an "administrative act" as "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)" (emphasis added).

7. The Court has already clarified that the 2021 amendment of the definition of "administrative act" under the Aarhus Regulation sought to abolish the limitation to individual administrative acts but did not seek to include acts that under the Aarhus Convention are to be regarded as "legislative acts"[4] , as also expressly written in recital 8 of Regulation (EU) 2021/1767[5]. Moreover, it has also clarified that "*a legislative act within the meaning of Article 289 TFEU does not constitute an administrative act within the meaning and for the application of the Aarhus Regulation*".[6]

8. The contested Directive is, in light of the case law[7], and also uncontested by GSWV, a legislative act adopted on a legal basis, Article 192(1) TFEU providing for the act to be

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4 Judgment of the General Court of 12 November 2025 in case T – 534/23, Föreningen Svenskt Landskapsskydd v Council, ECLI:EU:T:2025:1020, paragraph 41 and judgment of the General Court of 12 November 2025 in case T – 535/23, CEE Bankwatch Network and Ökobüro v Council, ECLI:EU:T:2025:1021, paragraph 33.

5 Regulation (EU) 2021/1767of the European Parliament and the Council of 6 October 2021 amending Regulation (EC) No 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 Community institutions and bodies. OJ L 356, 8.10.2021, pp. 1–7 .

6 Judgment of the General Court of 12 November 2025 in case T – 534/23*, Föreningen Svenskt Landskapsskydd v Council*, ECLI:EU:T:2025:1020, paragraph 45 and judgment of the General Court of 12 November 2025 in case T – 535/23*, CEE Bankwatch Network and Ökobüro v Council*, ECLI:EU:T:2025:1021, paragraph 37.

7 Judgment of the Court (Grand Chamber) in Joined Cases C-643/15 and C-647/15, *Slovak Republic and Hungary v Council*, ECLI:EU:C:2017:631, paragraph 62.

adopted by the European Parliament and the Council according to the ordinary legislative procedure. Therefore, it is clearly not an administrative act within the meaning and for the application of the Aarhus Regulation and is not subject to internal review under that Regulation.

9. GSWV argues that Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora[8] (the "Habitats Directive") in its Article 19 provides for a specific procedure which could have been used to adopt the amendment in question instead of adopting, together with the European Parliament, a legislative act based on Article 192(1) TFEU. According to GSWV, the act adopted pursuant to Article 19 of the Habitats Directive would have been a non-legislative act, that would have fallen within the scope of Article 10 of the Aarhus Regulation. In GSWV's view, the Council cannot deprive GSWV from the possibility to request such an internal review by choosing to adopt the amendment via a legislative procedure. GSWV does not claim that the use of the legislative procedure was unlawful but seems to imply that the legislator should have motivated its choice to use the legislative procedure and argues that, if that choice was motivated by the fact that the Habitats Directive has not yet been amended to adjust it to the Lisbon Treaty, the latter cannot be to the detriment of the rights of non-governmental organisations such as GSWV.

10. The Council does not agree with those arguments. First, even where a directive provides for the possibility to amend it though an empowerment, it always remains possible for that act to be amended though the procedure used for its initial adoption (or that provided for in its successor provision). It is entirely legitimate to have recourse to the latter procedure, all the more so where an intervening Treaty change has changed that procedure, as is the case here (notably altering both the role of the European Parliament and the voting rule in the Council).

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8 OJ L 206, 22.7.1992, pp. 7–50.

11. Second, the Council is of the view that the procedure under Article 19 of the Habitats Directive can no longer be relied upon since it provides for the Habitats Directive to be modified through a procedure which differs from the one provided for in the relevant Treaty provision, namely Article 192 TFEU and the Court of Justice has ruled that the institutions cannot create secondary legal bases[9]. It would have been impossible, therefore, for the Council to adopt an act pursuant Article 19 of the Habitats Directive. GSWV argues in this regard that the Court did not question the continued validity of that provision in Case C-601/22. However, the legality of that provision had not been challenged in that case and the Court did not examine it, finding that Austria's argument was in essence that the EU legislature should have had recourse to Article 19(2) of the Habitats Directive for the purpose of removing the wolf population in Austria from the system of strict protection under Article 12 of that Directive and that this amounted to challenging an inaction which should have been raised through an action for failure to act.[10]

12. Third, even if the procedure under Article 19 of the Habitats Directive could still be used, the Council could only have adopted an act under that provision on the basis of a proposal from the Commission and there never was such a proposal. The only proposal which the Commission presented was a proposal to amend the Habitat Directive through the ordinary legislative procedure under Article 192 TFEU,[11] and the Council and the European Parliament correctly adopted that proposal.

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9 Ex multis. judgment of the Court (Grand Chamber) of 1 March 2022 in Case C-275/20, *Commission v Council*, EU:C:2022:142, paragraphs 32 and 49 (holding more specifically that the Council was not entitled to change the qualified majority voting rule which resulted from the applicable Treaty legal basis into unanimity).

10 Judgment of 11 July 2024 in Case C-601/22, *Umweltverband WWF Österreich and others*, ECLI:EU:C:2024:595, paragraphs 39-41.

11 COM(2025) 106 final.

13. Fourth, the Council notes that the Court recently ruled that the concept of 'administrative act' set out in Article 2(1)(g) of the Aarhus Regulation does not refer only to legislative acts adopted under an ordinary or special legislative procedure in accordance with Article 289(1) and (2) TFEU. The Court decided to follow a functional approach to the concept of 'legislative capacity', examining in particular whether the institution or body has traditionally acted in a legislative capacity, the functions actually performed and the actual substance of the act adopted[12]. Given that an act adopted pursuant to Article 19 of the Habitats Directive would have been an act of the Council amending that Directive, it is not excluded that such an act would be a legislative act within the meaning of the Aarhus Regulation.

III. CONCLUSIONS

14. In the light of the above, the Council concludes that Directive (EU) 2025/1237 of the European Parliament and of the Council of 17.6.2025 amending Council Directive 92/43/EEC as regards the protection status of wolves is not an 'administrative act' within the meaning of the Aarhus Regulation and therefore considers that the Request is inadmissible.

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[12] Judgment of the General Court of 12 November 2025 in case T – 534/23, *Föreningen Svenskt Landskapsskydd v Council*, ECLI:EU:T:2025:1020, paragraph 63 ("*the concept of 'administrative act' set out in Article 2(1)(g) of the Aarhus Regulation refers to any act which has not been adopted by an EU institution acting in a legislative capacity, and does not […] refer only to legislative acts adopted under an ordinary or special legislative procedure in accordance with Article 289(1) and (2) TFEU*"); judgment of the General Court of 12 November 2025 in case T – 535/23, *CEE Bankwatch Network and Ökobüro v Council*, ECLI:EU:T:2025:1021, paragraphs 35-55.