



Council of the
European Union

Brussels, 28 May 2021
(OR. en)

9041/21

LIMITE

ENV 332
JUR 299
JUSTCIV 91
INF 153
ONU 51
CODEC 743

Interinstitutional File:
2020/0289(COD)

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	13937/20
No. Cion doc.:	11853/20 - COM(2020) 642 final
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. As at the 6th Meeting of the Parties to the Aarhus Convention (MOP 6) in 2017, a decision on EU non-compliance in case C-32 was postponed after long discussions to the next Meeting of the Parties (MOP 7, Geneva, 18-21 October 2021), it is key for the co-legislators to agree without delay on solutions which will ensure the full compliance of the EU at MOP 7.
4. Against this background, the Council adopted on 17 December 2020 a General Approach for negotiations with the European Parliament⁴.
5. The Parliament appointed Mr Christian Doleschal (EPP, DE) as rapporteur for the proposal. On 23 April 2021, the ENVI Committee adopted a report including 35 amendments to the proposal of the Commission. On 20 May 2021, the Parliament adopted in plenary all of the 35 amendments adopted by the ENVI Committee. It did not adopt further amendments.
6. On 7, 12, 17 and 25 May, the Working Party on the Environment (WPE) examined the amendments voted in the ENVI Committee and in plenary, against the background of an Advice of the ACCC of 12 February 2021 on the Commission proposal⁵ and an opinion of the Council Legal Service⁶. In the discussions, many delegations expressed the need to aim for EU compliance with the Aarhus Convention taking into account the Advice of the ACCC, which had not been available when the Council adopted its General Approach in December 2020.

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.

II. THE PARLIAMENT'S AMENDMENTS

7. The Parliament's amendments can be categorized in three blocks of issues:

a) Issues related to ACCC case C-32

The amendments mainly concern:

- The definition of "administrative acts" which can be subject to administrative review (AM 23). The amendments aim at further broadening the scope of "administrative acts" which can be subject to administrative review, in particular by including provisions of non-legislative acts adopted by a Union institution or body requiring implementing acts at Union or national level;
- The broadening of the standing (AM 26, 27, 29 and 30). The Parliament wishes to extend the possibility to request an administrative review to members of the public beyond NGOs, according to criteria to be defined in a Delegated Act.

b) Issues related to ACCC case C-128

Case C-128 of the ACCC is another ongoing compliance case against the EU, which still is at an earlier stage than case C-32 (the ACCC's findings in this case will be submitted to the MOP 7 only in October 2021 for adoption). However, the Parliament has pre-emptively integrated the findings into its amendments, with AM 24 providing for the extension of administrative review to measures or omissions under Art. 106 and 107 TFEU (competition rules).

c) Other amendments

This category includes amendments going beyond the ongoing compliance cases.

They concern *i.a.*:

- the filing and processing of review requests (AM 28 and AM 31), a topic on which the Parliament proposes a number of measures, such as the possibility for EU institutions or bodies to combine similar requests and treat them as one, the possibility for affected third parties to comment on the requests and the introduction of a public register for the requests;

- the costs of administrative and judicial review procedures (AM 34);
- the recourse before the European Court of Justice (AM 32 and 33); and
- the scope of information to be shared with the public (AM 25), including the disclosure of positions of MS expressed in decision-making procedures, an amendment on which a number of MS has expressed a rather negative view).

III. PRESIDENCY SUGGESTIONS IN VIEW OF THE TRILOGUE

8. The Presidency's suggestions for Council positions on the amendments of the Parliament are set out in the fourth column of the four column table annexed to this note⁷.

The overall approach of the Presidency aims at focusing in negotiations with the Parliament on the issues raised by the ACCC in its findings/advice in case C-32 and reject amendments going beyond the ACCC requests, while showing openness on a number of amendments which might help to ensure, by MOP 7, the compliance of the EU with the Convention in accordance with the ACCC findings/advice.

In particular, the Presidency suggests:

- to accept most amendments aimed at broadening the definition of "administrative acts". The Presidency considers that the option of deleting the exception regarding provisions requiring implementing measures at national level needs further discussion. Notwithstanding, the Presidency proposes to reject the deletion of the exception of those provisions requiring implementing measures at Union level, as it was not identified by the ACCC as a shortcoming regarding the Union's compliance with the Aarhus Convention;
- to accept in principle to provide access to administrative review to members of the public beyond NGOs, while holding that the criteria for access are essential elements of the amended Regulation and therefore need to be included in its operative part and not in a Delegated Act;

⁷ In the third column of the table (Council Position) changes to the Commission proposal are underlined. Deletions are marked by [...].

- to reject the amendments regarding the extension of the administrative review to measures or omissions in the area of state aid, arguing that these amendments concern a different ACCC case, which has not yet been submitted to the Meeting of the Parties to the Aarhus Convention. It is to be noted that many delegations expressed the need to further examine this issue.
- to reject other amendments, such as the introduction of a public register of review requests (AM 31) or the disclosure of MS positions during the decision-making process (AM 25), on the grounds that they are going beyond the scope of the ACCC findings/advice or are redundant, apart from a few amendments or parts thereof that are deemed useful or harmless such as accepting at least in principle some amendments concerning the filing and processing of review requests.

IV. CONCLUSION

The Permanent Representatives Committee is invited to examine the Presidency's suggestions as set out in the four column table annexed to this note in view of agreeing on a Council position for the upcoming trilogue. As mentioned above in relation to the definition of "administrative acts", the Presidency also invites delegations to express their views concerning the option to accept the deletion of the exception regarding provisions requiring implementing measures at national level.

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	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee ¹,</p> <p>Having regard to the opinion of the Committee of the Regions ²,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>		<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee ¹,</p> <p>Having regard to the opinion of the Committee of the Regions ²,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p>¹ OJ C , , p. .</p> <p>² OJ C , , p. .</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	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 1 Recital 2			
(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council ⁴ 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.	(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council ⁴ 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>	(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council ⁴ 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.	Not acceptable
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).	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).	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).	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 2 Recital 3			
(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’.	(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>	(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’.	Acceptable in principle

Commission proposal	ENVI amendments 23 April 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>		
Amendment 3 Recital 3 a (new)			
	<p><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 they are successful in litigation.</i></p> <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</i></p>		Not acceptable (recital corresponding to AM 34 concerning Art. 12(2a) (new)); AM goes beyond ACCC findings/advice

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>access to justice in environmental matters in the EU and its Member States.</i>		
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 <i>the advice</i> 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, <i>including its treaties, and</i> with its system of judicial review. <i>Regulation (EC) No 1367/2006 should be amended accordingly.</i></p> <p>⁵ <i>Advice</i> of the Aarhus Convention Compliance Committee <i>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.</i></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>	Maintain General Approach

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center">Amendment 5 Recital 4 a (new)</p>			
	<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 of the Union system under the Treaties.</i></p>		Not acceptable (redundant)

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
		<p>(4a) <u>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 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</u></p>	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
		<u>L 155, 19.6.2018, p. 6–7.</u> ⁷ <u>European Parliament</u> <u>Resolution of 15 November 2017</u> <u>on an Action Plan for nature,</u> <u>people and the economy adopted on</u> <u>15 November 2017</u> <u>(2017/2819(RSP)) and European</u> <u>Parliament Resolution of 16</u> <u>November 2017 on the EU</u> <u>Environmental Implementation</u> <u>Review (EIR) (2017/2705(RSP)).</u> ⁸ <u>European Parliament</u> <u>Resolution of 15 January 2020 on</u> <u>the European Green Deal</u> <u>(2019/2956(RSP)).</u>	
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 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	(5) The limitation of the internal review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope <i>has been</i> the main <i>ground 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	(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 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	1st part: Acceptable 2nd part: Not acceptable

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
down in that Regulation to include non-legislative acts of a general scope.	the internal review procedure laid down in that Regulation to include non-legislative acts of a general scope.	down in that Regulation to include non-legislative acts of a general scope.	
Amendment 7 Recital 6			
(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 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.	(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 267 TFEU.	(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 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.	1st part: On standing, providing access beyond NGOs acceptable in principle 2nd part: Deletion of last sentence to be further discussed in conjunction with AM 23 – the part on implementing measures needs further discussions

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 8			
Recital 7			
(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.	<i>deleted</i>	(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.	Needs further discussion
(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 when the review of the Union-level implementing measure is requested.		(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 when the review of the Union-level implementing measure is requested.	
Amendment 9			
Recital 9			
(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	(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 ‘contravene’ 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	(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	Further clarification from EP needed

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
environmental law.	administrative act contravenes environmental law <i>within the meaning of point (f) of Article 2(1)</i> .	environmental law.	
Amendment 10 Recital 10			
(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 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.	(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 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. <i>Where this is the case</i> , the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.	(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 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.	Further clarification from EP needed

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center">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></p> <p><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 effects, in line with the case law of the CJEU, should, therefore, not constitute administrative acts</i></p> <p><i>Regulation (EC) No 1367/2006.</i></p> <p>^{1a} <i>Judgment of the Court of Justice of 3 October 2013, Inuit Tapiriit Kanatami and Others v Parliament and Council, C-583/11 P, ECLI:EU:C:2013:625, paragraph 56.</i></p>		Acceptable in principle subject to clarification and re-drafting

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
		<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>	To be deleted as a consequence of the acceptance of the 1st part of AM 23

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
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>		Acceptable in principle

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<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>		
Amendment 13 Recital 10 c (new)			
	<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 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</i>		Not acceptable

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>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>		
<p align="center">Amendment 14 Recital 10 d (new)</p>			
	<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>		Not acceptable (linked to AM 25)
<p>(11) In order to allow enough time to carry out a proper review process, it is appropriate to extend 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.</p>		<p>(11) In order to allow enough time to carry out a proper review process, it is appropriate to extend 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.</p>	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
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>		Not acceptable
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 put forward facts or legal arguments of sufficient substance to give rise to serious doubts when stating the grounds for their request of review.	(12) According to the case law of the CJEU ⁶ , a party requesting an internal review of an administrative act is 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. <i>That requirement should also apply under Regulation (EC) No 1367/2006.</i>	(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 put forward facts or legal arguments of sufficient substance to give rise to serious doubts when stating the grounds for their request of review.	1st part: Acceptable (subject to rewording) 2nd part: Not acceptable
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.	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>	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.	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 17 Recital 12 a (new)			
	<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>		Not acceptable (linked to AM 28)
Amendment 18 Recital 12 b (new)			
	<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> ^{1a} <i>Judgment of the Court of Justice</i>		Not acceptable

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>of 22 September 2020, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742.</i>		
Amendment 19 Recital 12 c (new)			
	<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>		Not acceptable

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
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 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>		Not acceptable

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
(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.		(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.	
Amendment 21 Recital 13 a (new)			
	<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>		Not acceptable (linked to AM 23)

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 22 Recital 14			
(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).	(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).	(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).	Acceptable
(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	ENVI amendments 23 April 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 g⁸			
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 [...]’	1st part: Deletion of "binding" acceptable 2nd part: Deletion of "because of their effect" acceptable 3rd part: Needs further discussion 4th part (new last part sentence starting with "administrative acts": Not acceptable

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

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center">Amendment 24 Article 1 – paragraph 1 – point 1 a (new) Article 2 – paragraph 2</p>			
	<p><i>1a. Article 2, paragraph 2, is amended as follows:</i> ‘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>		Not acceptable
	<p>(a) Articles 81 <i>and</i> 82 of the Treaty <i>[Articles 101 and 102 TFEU] (including merger rules)</i>; (b) Articles 226 and 228 of the Treaty <i>[Articles 258 and 260 TFEU]</i> (infringement proceedings); (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). <i>(da) Articles 86 and 87 [Articles 106 and 107 TFEU] (competition rules) until ... [18 months after the adoption of this Regulation].</i> <i>(db) No later than ... [18 months after the date of adoption of this</i></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<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 align="center">Amendment 25 Article 1 – paragraph 1 – point 1 b (new) Article 4 – paragraph 2</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>		Not acceptable (<i>inter alia</i> because it goes beyond the ACCC findings/advice)
	(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;		

Commission proposal	ENVI amendments 23 April 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 Union 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		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	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>	Providing access beyond NGOs acceptable in principle
		<u>Those provisions of an administrative act for which Union law explicitly requires</u>	Needs further discussion

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
		<u>implementing measures at Union or national level cannot be object of a request for internal review.</u>	
Amendment 27 Article 1 – paragraph 1 – point 2 – point a Article 10 – paragraph 1 – subparagraph 2			
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.	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.	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.	Providing access beyond NGOs acceptable in principle
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.	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center">Amendment 28 Article 1 – paragraph 1 – point 2 – point a Article 10 – paragraph 2</p>			
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 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.	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.'	1st part: Providing access beyond NGOs acceptable in principle (see AM 26) 2nd part, starting with " <i>Within four weeks...</i> ": Not acceptable

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
(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.'		(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.'	
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.		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.	
4. Throughout the text of the Regulation, including in the title, the word 'Community' is replaced by the word 'Union' and any necessary grammatical changes are made.		4. Throughout the text of the Regulation, including in the title, the word 'Community' is replaced by the word 'Union' and any necessary grammatical changes are made.	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 29 Article 1 – paragraph 1 – point 2 a (new) Article 11 – paragraph 1 a (new)			
	2a. In Article 11 the following paragraph is inserted: <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>		Providing access beyond NGOs acceptable in principle (see AM 26)
Amendment 30 Article 1 – paragraph 1 – point 2 b (new) Article 11 – paragraph 2			
	2b. Article 11, paragraph 2 is replaced by the following ‘2. The Commission shall adopt the provisions which are necessary to ensure transparent and consistent 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</i>		Not acceptable to adopt criteria by Delegated Act

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>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 affecting the public in more than one Member State;</i></p>		
	<p><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></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<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)			
	2c. The following article is added: ‘Article 11a Public register of requests for internal review 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 updated.’		Not acceptable (goes beyond ACCC findings/advice)

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
Amendment 32 Article 1 – paragraph 1 – point 2 d (new) Article 12 – paragraph 1			
	2d. Article 12, paragraph 1 is amended as follows: ‘1. <i>Where the non-governmental organisation or members of the public</i> which made the request for internal review pursuant to Article 10 <i>consider that a decision by the Union institution or body in response to that request is insufficient to ensure compliance with environmental law, they</i> may institute proceedings before the Court of Justice in accordance with <i>Article 263 of the Treaty, to review the substantive and procedural legality of that decision.</i> ’		1st part: Providing access beyond NGOs acceptable in principle (see AM 26) The other proposals are not acceptable
Amendment 33 Article 1 – paragraph 1 – point 2 e (new) Article 12 – paragraph 2			
	2e. Article 12, paragraph 2 is amended as follows: ‘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</i>		Providing access beyond NGOs acceptable in principle (see AM 26)

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.'</i>		
Amendment 34 Article 1 – paragraph 1 – point 2 f (new) Article 12 – paragraph 2 a (new)			
	2f. The following paragraph is inserted: <i>'2a. 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 bodies referred to in Article 10(1) shall only make reasonable cost reimbursement requests.'</i>		Not acceptable
Amendment 35 Article 1 – paragraph 1 – point 2 g (new) Article 12 a (new)			
	2g. The following Article is inserted: 'Article 12a Exercise of the delegation 1. The power to adopt delegated acts referred to in Article 11(2) is conferred on the Commission subject to the conditions laid down		Not acceptable

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>in this Article.</i>		
	<i>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].</i>		
	<i>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 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>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<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 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>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
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>	