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WK 11561/2020 INIT

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REQUEST FOR CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° prev. doc.:	ST 11853/20
Subject:	Aarhus Regulation amendment: Follow-up to WPE on 21 October 2020: Presentation by the Commission and CALL FOR COMMENTS

Delegations will find attached the presentation made by the Commission in the informal videoconference of WPE members of 21 October on the above-mentioned topic.

As announced by the Presidency in the meeting, delegations are kindly invited to send comments and questions (including of a legal nature) on the proposed amending Regulation (ST 11853/20) and the attached presentation in writing by **Wednesday, 28 October 2020, cob**. The comments should be addressed to the Presidency (thomas.ebben@diplo.de; heide.bergschmidt@diplo.de; Matthias.Sauer@bmu.bund.de; Teresa.Hartung@bmu.bund.de), with copy to the Council Secretariat (baerbel.duerhager@consilium.europa.eu; Pia.Sellerup@consilium.europa.eu; Desislava.Karaivanova@consilium.europa.eu; environment@consilium.europa.eu).

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Access to justice in environmental matters

The Aarhus package

European Commission
Directorate General for Environment
Unit E.4 – Compliance & Better Regulation

The Aarhus package

PUBLIC

TRIGGERS



Compliance Committee findings



Lisbon treaty changes

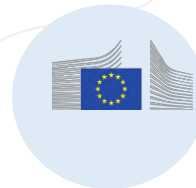


Developing case-law

RESPONSES



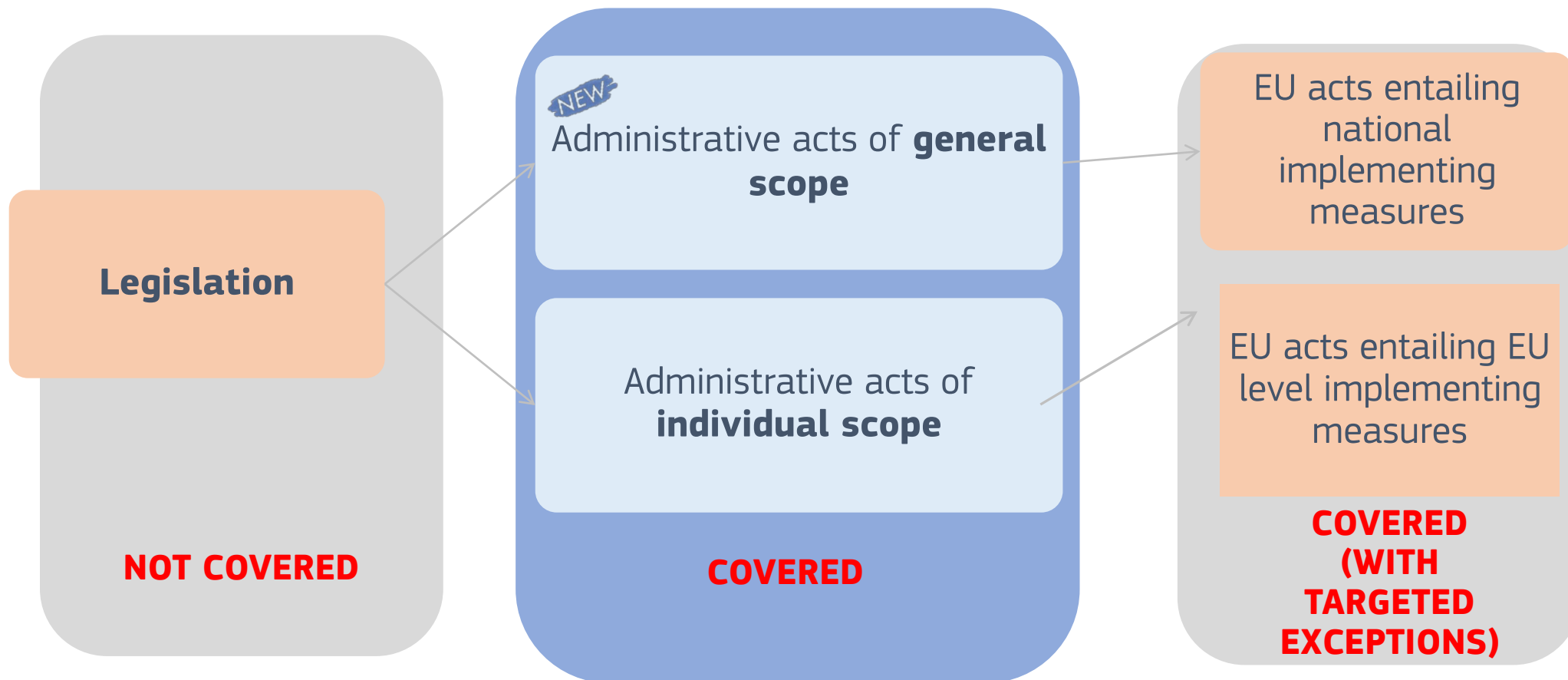
Council and Parliament calling on the Commission to amend the Aarhus Regulation



Commission:

- Green Deal
- Revision of the Aarhus Regulation
- Communication to Member States on A2J

Amending the Aarhus Regulation (1) – The full range of non-legislative acts are brought under scrutiny



Amending the Aarhus Regulation (2) – ... acts from all areas which matter for environmental protection

Current provision:

- ‘administrative act’ = any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects

Proposed provision:

- ‘administrative act’ = 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**

Amending the Aarhus Regulation (3) – Reviewing national and EU-level implementing measures mandated by non-legislative acts

- **Article 2 (1) g):** ‘...excepting those provisions of this act for which Union law explicitly **requires implementing measures at Union or national level;**’
- **Article 10 (1), second subparagraph:** ‘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.**’
- **TFEU Article 263 paragraph 4:** ‘Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, **and against a regulatory act which is of direct concern to them and does not entail implementing measures.**’ (*Sugars et Sidul Açucares v. Commission*)

Amending the Aarhus Regulation 4 – More time to improve quality of review

	Previous deadline	New deadline
Time to introduce a request	6 weeks	8 weeks
Time to respond to the request	12 weeks	16 weeks
Overall time to respond in complex cases	18 weeks	22 weeks

Complying with the Convention in a way compatible with the Treaties (I)

Compliance Committee findings

1. The review should encompass general acts and not only acts of individual scope.
2. The review should include all acts which contravene environmental law and not only acts 'under environmental law'.
3. Recommendations and purely internal acts should also come under the scope.
4. Individuals: the review mechanism should be opened up beyond NGOs to other members of the public.

Complying with the Convention in a way compatible with the Treaties (II)

Why does the scope not cover acts without legally binding and external effects?

1. Article 263 TFEU provides that non-binding acts cannot be challenged before the Court of Justice of the EU: *The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, **other than recommendations and opinions**, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties.*
2. Compliance with the Aarhus Convention must be ensured in a way that is compatible with the EU Treaties.

Complying with the Convention in a way compatible with the Treaties (III)

Why does the proposal not provide standing for individuals?

1. Individuals already have **other means of redress** under the **Treaties and in national courts**.
2. The Convention requires **administrative OR judicial review**, but not both.
3. The rules of EU environmental law, for the most part, protect the public interest and not merely the interests of individuals. The Convention itself gives **NGOs, representing the public interest, a preeminent role** compared to individuals.
4. **The EU judicial review system must remain functional and effective.**

Priority areas for EU action under the Communication



1. Member States to secure **correct transposition** of EU secondary law
2. Co-legislators **to include provisions on access to justice in draft EU legislation** for new or revised EU law concerning environmental matters
3. **Review** by Member States **of their own national legislative and regulatory provisions** to remove barriers
4. The **obligation of** national courts **to guarantee the right of individuals and NGOs** to an effective remedy under EU law.

