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General Secretariat

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## **MEETING DOCUMENT**

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From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Aarhus Regulation amendment: Informal videoconferences of the members of WPE on 7 May 2021: 4 column table

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In view of the informal videoconference of the members of WPE of 7 May 2021, delegations will find attached the 4-column table on the abovementioned proposal drafted on the basis of the amendments adopted by the ENVI Committee.

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 <sup>1</sup>,</p> <p>Having regard to the opinion of the Committee of the Regions <sup>2</sup>,</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 <sup>1</sup>,</p> <p>Having regard to the opinion of the Committee of the Regions <sup>2</sup>,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>	

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<p><sup>1</sup> OJ C , , p. .</p> <p><sup>2</sup> OJ C , , p. .</p>		<p><sup>1</sup> OJ C , , p. .</p> <p><sup>2</sup> 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’) <sup>3</sup>, each with its own as well as shared responsibilities and obligations under that Convention.</p> <p><sup>3</sup> 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’) <sup>3</sup>, each with its own as well as shared responsibilities and obligations under that Convention.</p> <p><sup>3</sup> 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>	

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<b>Amendment 1</b> <b>Recital 2</b>			
<p>(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council<sup>4</sup> was adopted in order to contribute to the implementation of the obligations arising under the Aarhus Convention by laying down rules on its application to Union institutions and bodies.</p> <p><sup>4</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).</p>	<p>(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council<sup>4</sup> 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. <b><i>This Regulation therefore amends Regulation (EC) No 1367/2006 in order to implement Article 9(3) and 9(4) of the Convention.</i></b></p> <p><sup>4</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).</p>	<p>(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council<sup>4</sup> was adopted in order to contribute to the implementation of the obligations arising under the Aarhus Convention by laying down rules on its application to Union institutions and bodies.</p> <p><sup>4</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).</p>	

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<p align="center"><b>Amendment 2</b> <b>Recital 3</b></p>			
<p>(3) In its Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 December 2019, entitled ‘The European Green Deal’ the Commission committed itself to consider revising Regulation (EC) No 1367/2006 to improve access to administrative and judicial review at Union level for citizens and environmental non-governmental organisations who have concerns about the compatibility with environmental law of decisions with effects on the environment. The Commission also committed to take action to improve their access to justice before national courts in all Member States; to this end, it issued a Communication on ‘Improving access to justice in environmental matters in the EU and its Member States’.</p>	<p>(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</i> on <i>improving</i> access to justice in environmental matters in the EU and its Member States <i>in which it affirms that ‘access to justice in environmental matters, both via the Court of Justice of the EU (CJEU) and the national courts as Union courts, is an important support measure to help</i></p>	<p>(3) In its Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 11 December 2019, entitled ‘The European Green Deal’ the Commission committed itself to consider revising Regulation (EC) No 1367/2006 to improve access to administrative and judicial review at Union level for citizens and environmental non-governmental organisations who have concerns about the compatibility with environmental law of decisions with effects on the environment. The Commission also committed to take action to improve their access to justice before national courts in all Member States; to this end, it issued a Communication on ‘Improving access to justice in environmental matters in the EU and its Member States’.</p>	

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	<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>		
<p align="center"><b>Amendment 3</b> <b>Recital 3 a (new)</b></p>			
	<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<sup>1a</sup> 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><sup>1a</sup> 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>		

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	<i>access to justice in environmental matters in the EU and its Member States.</i>		
<b>Amendment 4 Recital 4</b>			
<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 Committee<sup>5</sup>, 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><sup>5</sup> See findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 at <a href="https://www.unece.org/env/pp/compliance/Compliancecommittee/32T ableEC.html">https://www.unece.org/env/pp/compliance/Compliancecommittee/32T ableEC.html</a>.</p>	<p>(4) Taking into account the provisions of Article 9(3) <i>and (4)</i> of the Aarhus Convention as well as <i>the advice of</i> the Aarhus Convention Compliance Committee<sup>5</sup>, 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><sup>5</sup> <i>Advice</i> of the Aarhus Convention Compliance Committee <i>ACCC/M/2017/3 and ACCC/C/2015/128 available at <a href="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">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</a>.</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 Committee<sup>5</sup>, 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><sup>5</sup> See findings of the Aarhus Convention Compliance Committee in case ACCC/C/2008/32 at <a href="https://www.unece.org/env/pp/compliance/Compliancecommittee/32T ableEC.html">https://www.unece.org/env/pp/compliance/Compliancecommittee/32T ableEC.html</a></p>	

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<p align="center"><b>Amendment 5</b> <b>Recital 4 a (new)</b></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>		



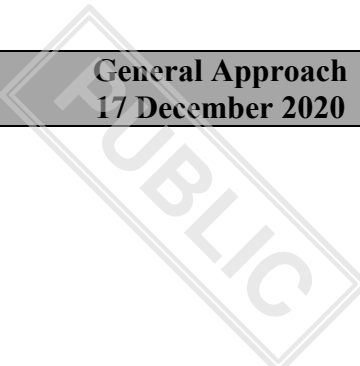
Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
		<p>(4a) <u>In this regard, a study on the Union's options for addressing the findings of the Aarhus Convention Compliance Committee was requested by Decision (EU) 2018/881<sup>6</sup> of the Council, 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 2017<sup>7</sup> and on 15 January 2020<sup>8</sup> requested an amendment of Regulation (EC) No 1367/2006.</u></p> <p><sup>6</sup> <u>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>	

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		<p><u>L 155, 19.6.2018, p. 6–7.</u>  <sup>7</sup> <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>  <sup>8</sup> <u>European Parliament</u>  <u>Resolution of 15 January 2020 on</u>  <u>the European Green Deal</u>  <u>(2019/2956(RSP)).</u></p>	
<p align="center"><b>Amendment 6</b> <b>Recital 5</b></p>			
<p>(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</p>	<p>(5) The limitation of the internal review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope <b><i>has been</i></b> the main <b><i>ground for non-admissibility</i></b> 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 <b><i>appropriate</i></b> to broaden the scope of</p>	<p>(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</p>	

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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.	
<b>Amendment 7</b> <b>Recital 6</b>			
(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 <b><i>be obtained</i></b> , 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.	
<b>Amendment 8</b> <b>Recital 7</b>			
(7) In the interest of legal certainty, in order for any	<b><i>deleted</i></b>	(7) In the interest of legal certainty, in order for any	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
provisions to be excluded from the notion of administrative act, Union law must explicitly require the adoption of implementing acts for those provisions.		provisions to be excluded from the notion of administrative act, Union law must explicitly require the adoption of implementing acts for those provisions.	
(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.	
<b>Amendment 9</b> <b>Recital 9</b>			
(9) The scope of Regulation (EC) No 1367/2006 covers acts adopted under environmental law. By contrast, Article 9(3) of the Aarhus Convention covers challenges to acts that ‘ <i>contravene</i> ’ law relating to the environment. Thus, it is necessary to clarify that internal review should be carried out in order to verify whether an administrative act contravenes environmental law.	(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 administrative act contravenes environmental law <i>within the meaning of point (f) of Article 2(1)</i> .	(9) The scope of Regulation (EC) No 1367/2006 covers acts adopted under environmental law. By contrast, Article 9(3) of the Aarhus Convention covers challenges to acts that ‘ <i>contravene</i> ’ law relating to the environment. Thus, it is necessary to clarify that internal review should be carried out in order to verify whether an administrative act contravenes environmental law.	

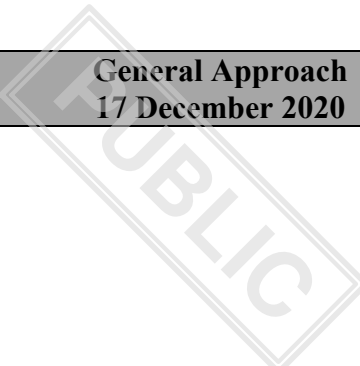
Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center"><b>Amendment 10</b> <b>Recital 10</b></p>			
<p>(10) When assessing whether an administrative act contains provisions which may, because of their effects, contravene environmental law, it is necessary to consider whether such provisions may have an adverse effect on the attainment of the objectives of Union policy on the environment set out in Article 191 TFEU. As a result, the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.</p>	<p>(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.</p>	<p>(10) When assessing whether an administrative act contains provisions which may [...] contravene environmental law, it is necessary to consider whether such provisions may have an adverse effect on the attainment of the objectives of Union policy on the environment set out in Article 191 TFEU. As a result, the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.</p>	
<p align="center"><b>Amendment 11</b> <b>Recital 10 a (new)</b></p>			
	<p><i>(10a) In view of the first paragraph of Article 263 TFEU, as interpreted by the CJEU<sup>1a</sup>, 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>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<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 Regulation (EC) No 1367/2006.</i></p> <p><i><sup>1a</sup> 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>		
		<p>(10a) <u>In line with the case law of the CJEU<sup>9</sup>, 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><sup>9</sup> <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.</u></p>	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
		<u>ECLI:EU:C:1971:32</u> , para 42; <u>Case C-325/91 France v Commission [1993] ECR I-3283</u> para 9; <u>case C-57/95 France v Commission</u> <u>ECLI:EU:C:1997:164</u> , para 22; <u>Joined Cases C 463/10 P and C 475/10 P, Deutsche Post and Germany v Commission</u> , <u>ECLI:EU:C:2011:656</u> , para 36.	
<b>Amendment 12</b> <b>Recital 10 b (new)</b>			
	<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<sup>1a</sup>. 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<sup>1b</sup>.</i></p> <p><sup>1a</sup> <i>Judgement of the Court of Justice of 29 January 2021, ClientEarth v EIB, T-9/19, ECLI:EU:T:2021:42, paragraphs</i></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>149 and 153. See also judgment in Case C-583/11 P, paragraph 56.</i></p> <p><i><sup>1b</sup> 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 42; of 16 June 1993, France v Commission, C-325/91, ECLI:EU:C:1993:245, paragraph 9; of 20 March 1997, France v Commission, C-57/95, ECLI:EU:C:1997:164, paragraph 22; and of 13 October 2011, Deutsche Post and Germany v Commission, C-463/10 P and C-475/10 P, ECLI:EU:C:2011:656, paragraph 36.</i></p>		
<p align="center"><b>Amendment 13</b> <b>Recital 10 c (new)</b></p>			
	<p><i>(10c) Any procedural deadlines for administrative and/or judicial control should apply only once the content of the administrative act relating to a major public interest protected by environmental law and that is the subject</i></p>		



Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>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 of the Court of 12 November 2019 in Case C-261/18, Commission v. Ireland<sup>1a</sup>.</i></p> <p><i><sup>1a</sup> 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"><b>Amendment 14</b> <b>Recital 10 d (new)</b></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>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
(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.		(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.	
<b>Amendment 15</b> <b>Recital 11 a (new)</b>			
	<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>		
<b>Amendment 16</b> <b>Recital 12</b>			
(12) According to the case law of the CJEU <sup>6</sup> , 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	(12) According to the case law of the CJEU <sup>6</sup> , <b>a party</b> requesting an internal review of an administrative act <b>is</b> 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. <b>That requirement should also apply</b>	(12) According to the case law of the CJEU <sup>10</sup> , 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	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
of review.  <sup>6</sup> 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.	<i>under Regulation (EC) No 1367/2006.</i>  <sup>6</sup> <b>Judgment</b> of the Court of Justice of 12 September 2019, <i>TestBioTech v Commission</i> , C-82/17 P, ECLI:EU:C:2019:719, <b>paragraph 69, and judgment in Case T-9/19.</b>	of review.  <sup>10</sup> 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.	
<b>Amendment 17</b> <b>Recital 12 a (new)</b>			
	<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>		
<b>Amendment 18</b> <b>Recital 12 b (new)</b>			
	<i>(12b) According to the case law of the CJEU<sup>1a</sup>, 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</i>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>market. The Commission should establish clear guidelines to facilitate the assessment of the compatibility of state aid with relevant provisions of Union law, including Union law relating to the environment.</i></p> <p><i><sup>1a</sup> Judgment of the Court of Justice of 22 September 2020, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742.</i></p>		
Amendment 19 Recital 12 c (new)			
	<p><i>(12c) Regulation (EC) No 1367/2006 lays down the common provisions, scope and definitions on access to information, public participation in decision-making and access to justice in environmental matters at Union level. This is appropriate and contributes to providing legal certainty and increasing the transparency of the implementation measures taken pursuant to the obligations arising under the Aarhus Convention.</i></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center"><b>Amendment 20</b> <b>Recital 12 d (new)</b></p>			
	<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<sup>1a</sup>.</i></p> <p><i><sup>1a</sup> Judgment in Case C-82/17 P, paragraph 39.</i></p>		
(13) Since the objectives of this Regulation, namely to lay down detailed rules to apply the provisions of the Aarhus		(13) Since the objectives of this Regulation, namely to lay down detailed rules to apply the provisions of the Aarhus	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p>Convention to Union institutions and bodies, cannot be achieved by the Member States, but can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.</p>		<p>Convention to Union institutions and bodies, cannot be achieved by the Member States, but can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.</p>	
<p align="center"><b>Amendment 21</b> <b>Recital 13 a (new)</b></p>			
	<p><i>(13a) Acts adopted by public authorities of the Member States, including national implementing measures adopted at Member State level required by a non-legislative act under Union law, do not fall within the scope of Regulation (EC) No 1367/2006, in line with the Treaties and the principle of the autonomy of the national courts;</i></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<b>Amendment 22</b> <b>Recital 14</b>			
(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).	
(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
<b>Article 1</b>			
Regulation (EC) No 1367/2006 is amended as follows:		Regulation (EC) No 1367/2006 is amended as follows:	
<b>Amendment 23</b> <b>Article 1 – paragraph 1 – point 1</b> <b>Article 2 – paragraph 1 – point g<sup>1</sup></b>			
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 <b>legal</b> and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1); <b>administrative acts shall not include acts adopted by public authorities of Member States;</b>	‘(g) ‘administrative act’ means any non-legislative act adopted by a Union institution or body, which has legally binding and external effects [...];’	
<b>Amendment 24</b> <b>Article 1 – paragraph 1 – point 1 a (new)</b> <b>Article 2 – paragraph 2</b>			
	<b>1a. Article 2, paragraph 2, is amended as follows:</b> ‘2. Administrative acts and		

<sup>1</sup> 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
	administrative omissions shall not include measures taken or omissions by a Community institution or body in its capacity as an administrative review body under:		
	(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);		
	(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 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</i>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>information to be submitted by Member States when they notify the Commission of state aid.'</i>		
<p style="text-align: center;"><b>Amendment 25</b>  <b>Article 1 – paragraph 1 – point 1 b (new)</b>  Article 4 – paragraph 2</p>			
	<p><b><i>1b. In Article 4, paragraph 2 is replaced by the following:</i></b>  ‘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 <b><i>following shall be included in the</i></b> databases or registers <b><i>as soon as they are consolidated:</i></b></p>		
	<p>(a) texts of international treaties, conventions or agreements, and of <b><i>Union</i></b> legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;  <b><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></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	(b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by <i>Union</i> institutions or bodies;		
	(c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 258(1) of the Treaty;		
	(d) reports on the state of the environment as referred to in paragraph 4;		
	(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;		
	(f) authorisations with a significant impact on the environment, and environmental agreements, or a reference to the place where such information can be requested or accessed;		
	(g) environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.'		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
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 following:	
<b>Amendment 26</b> <b>Article 1 – paragraph 1 – point 2 – point a</b> 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 <b><i>or members of the public that meet</i></b> the criteria set out in Article 11 <b><i>are</i></b> 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>	
		<u>Those provisions of an administrative act for which Union law explicitly requires implementing measures at Union or national level cannot be object of a request for internal review.</u>	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center"><b>Amendment 27</b>  <b>Article 1 – paragraph 1 – point 2 – point a</b>  <b>Article 10 – paragraph 1 – subparagraph 2</b></p>			
Where an administrative act is an implementing measure at Union level required by another non-legislative act, the non-governmental organisation may also request the review of the provision of the non-legislative act for which that implementing measure is required when requesting the review of that implementing measure.	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.	
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.	

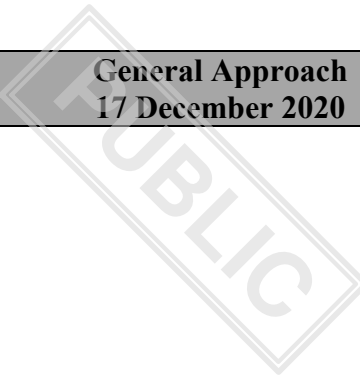
Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p style="text-align: center;"><b>Amendment 28</b>  <b>Article 1 – paragraph 1 – point 2 – point a</b>  Article 10 – paragraph 2</p>			
<p>2. The Union institution or body referred to in paragraph 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.’</p>	<p>2. The Union institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. <b><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></b> The Union institution or body shall state its reasons in a written reply as soon as possible, but no later than 16 weeks after receipt of the request.</p>	<p>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.’</p>	
(b) in paragraph 3, the second		(b) in paragraph 3, the second	

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
subparagraph is replaced by the following: 'In any event, the Union institution or body shall act within 22 weeks from receipt of the request.'		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.	
<p align="center"><b>Amendment 29</b>  <b>Article 1 – paragraph 1 – point 2 a (new)</b>  Article 11 – paragraph 1 a (new)</p>			
	<p><b>2a. In Article 11 the following paragraph is inserted:</b>  '<b>1a. A request for internal review in accordance with Article 10 may also be made by members of the public demonstrating sufficient</b></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>interest or impairment of a right subject to paragraph 2 below.'</i>		
<p align="center"><b>Amendment 30</b>  <b>Article 1 – paragraph 1 – point 2 b (new)</b>  Article 11 – paragraph 2</p>			
	<p><b>2b. Article 11, paragraph 2 is replaced by the following</b></p> <p><b>‘2. The Commission shall adopt the provisions which are necessary to ensure transparent and consistent application of the criteria mentioned in paragraphs 1 and 1a. No later than ... [18 months following the adoption of this Regulation], the Commission shall adopt a delegated act in accordance with Article 12a specifying the criteria that members of the public, as referred to in paragraph 1a of this Article, need to fulfil. The Commission shall review the application of those criteria at least every three years, and, where appropriate, amend the delegated act, to guarantee the effective exercise of the right conferred on members of the public referred to in paragraph 1a.</b></p> <p><b>The criteria established by the</b></p>		



Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>delegated act adopted pursuant to this paragraph shall:</i>		
	<i>(a) ensure that there is effective access to justice in line with the overall objectives of the Aarhus Convention;</i>		
	<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>		
	<i>(c) be such as to avoid actio popularis , including by ensuring that when demonstrating sufficient interest or impairment of a right, members of the public are required to prove that they are directly affected in comparison to the public at large;</i>		
	<i>(d) minimise the administrative burden on Union institutions and bodies.</i>		
<p align="center"><b>Amendment 31</b>  <b>Article 1 – paragraph 1 – point 2 c (new)</b>  Article 11 a (new)</p>			
	<p><b>2c. The following article is added:</b></p> <p align="center"><b>‘Article 11a</b>  <b>Public register of requests for</b></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<p><i>internal review</i></p> <p><i>Union institutions and bodies shall establish, by 31 December 2021 at the latest, a register of all requests that meet the eligibility requirements set out in Article 11 as well as of the applicants that meet those requirements and submitted the requests. That register shall be regularly updated.'</i></p>		
<p align="center"><b>Amendment 32</b></p> <p align="center"><b>Article 1 – paragraph 1 – point 2 d (new)</b></p> <p align="center">Article 12 – paragraph 1</p>			
	<p><b>2d. Article 12, paragraph 1 is amended as follows:</b></p> <p><b>‘1. Where the non-governmental organisation or <i>members of the public</i> which made the request for internal review pursuant to Article 10 consider that a decision by the Union institution or body in response to that request is insufficient to ensure compliance with environmental law, they may institute proceedings before the Court of Justice in accordance with Article 263 of the Treaty, to review the substantive and procedural legality of that decision.’</b></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p align="center"><b>Amendment 33</b>  <b>Article 1 – paragraph 1 – point 2 e (new)</b>  Article 12 – paragraph 2</p>			
	<p><b>2e. Article 12, paragraph 2 is amended as follows:</b>  ‘2. Where the <i>Union institution</i> or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation <i>or members of the public which made the request for internal review pursuant to Article 10</i> may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.’</p>		
<p align="center"><b>Amendment 34</b>  <b>Article 1 – paragraph 1 – point 2 f (new)</b>  Article 12 – paragraph 2 a (new)</p>			
	<p><b>2f. The following paragraph is inserted:</b>  ‘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.’</p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
<p style="text-align: center;"><b>Amendment 35</b>  <b>Article 1 – paragraph 1 – point 2 g (new)</b>  <b>Article 12 a (new)</b></p>			
	<p><b>2g. The following Article is inserted:</b></p> <p style="padding-left: 40px;"><b>‘Article 12a</b>  <b>Exercise of the delegation</b></p> <p><b>1. The power to adopt delegated acts referred to in Article 11(2) is conferred on the Commission subject to the conditions laid down in this Article.</b></p>		
	<p><b>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].</b></p>		
	<p><b>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</b></p>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>specified therein. It shall not affect the validity of any delegated acts already in force.</i>		
	<i>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State and the public in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.</i>		
	<i>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</i>		
	<i>6. A delegated act adopted pursuant to Article 11(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two</i>		

Commission proposal	ENVI amendments 23 April 2021	General Approach 17 December 2020	Comments/suggestions
	<i>months at the initiative of the European Parliament or of the Council.</i>		
<b>Article 2</b>			
<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>	