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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: Preparation of the trilogue of 12 July in Coreper of 7 July: Commission proposal on standing with numbers

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In view of discussions in Coreper tomorrow, delegations will find attached a Commission proposal on standing including numbers.

Text: Original Regulation

*Text: Compromise proposal*

*Rev after 1 July technical meeting*

## Compromise

### Article 11 – paragraph 1 a (new) EP AMs 29 and 30

#### Article 11

[...]

*1a. A request for internal review may also be made by other members of the public, subject to the following conditions:*

- (a) they shall demonstrate impairment of their rights caused by the alleged contravention of Union environmental law and that they are directly affected by such impairment in comparison with the public at large; or*
- (b) they shall demonstrate a sufficient public interest and that the request is supported by at least [5000] members of the public residing or established in at least [7] Member States, with at least [400] members of the public coming from each of those Member States.*
- (c) In both cases, the members of the public shall be represented by a non-governmental organisation which meets the criteria set forth in the first paragraph above or by a lawyer authorised to practice before a court of a Member State. That lawyer or non-governmental organisation shall confirm compliance with the quantitative conditions in paragraph 1a(b) above when applicable and shall provide evidence thereof upon request.*

[...]

#### Explanations regarding the quantitative criteria in Article 11(1a)(b)

##### General considerations

Article 11(1a)(a) and (b) set forth alternative conditions. The second provision enables members of the public to submit internal review requests even if they cannot demonstrate an impairment of their rights under the first provision.

Members of the public must satisfy two conditions under Article 11(1a)(b):

- First, they must show the existence of a public interest in preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, or combatting climate change.

- Second, they must show that their review request is supported by a sufficient number of people across the Union.

When determining the numbers indicated in square brackets in Article 11(1a)(b), the following considerations should be kept in mind:

- First, the letter (a) in itself should already be sufficient to satisfy the requirements of the Convention. Therefore, letter (b) simply provides an additional opportunity for members of the public, going beyond what the Convention requires. Any numbers, therefore, should be understood not to have to meet a specific threshold to satisfy the Convention's requirements, considering that letter (a) alone already satisfies those requirements.
- Second, it should be borne in mind that case ACCC/C/2008/32 was brought under Article 9(3) of the Aarhus Convention, which gives a broad margin to each Party to establish criteria and conditions to specify which members of the public under what conditions are entitled to request review.
- Consequently, the EU has a large discretion to establish the numbers by striking a fair balance between recognising a right beyond the requirements of the Convention (see above, first point) and the administrative burden on EU institutions and bodies.
- The range of numbers in square brackets are proposed with a view to strike such a balance. In particular, in order to ensure that the groups indeed represent the public interest, it should be ensured that they include a sufficiently large and sufficiently diverse group of people from across the EU, in order to minimise the risk of misuse by sectoral, national, local, or commercial interests. Hence the requirements for a reasonable number of people from a minimum number of Member States.

#### Specific numbers used

As to the specific numbers used, it is proposed that the total number of supporters of a review request should be set at 5000 members of the public. This is a reasonably low figure, what may be well within the reach of even a single individual's social circles in today's increasingly connected social media landscape, and thus allows a broad access to justice.

The requirements for supporters to come from at least 7 Member States is justified by the need to ensure that the request has a genuine EU dimension and it does not only serve the national interest of one or a very limited number of Member States or the interests of a single local group.

The requirement that at least 400 members of the public should come from each of those Member States is complementing the requirement to ensure an EU dimension. If there were no minimum requirements in this regard, the requirements regarding the minimum number of Member States could easily be abused, for example, by the organisers of a request simply asking one or two individuals from several Member States to sign off on a request which otherwise only enjoys public support in a single Member State or region.

As explained, these provisions are in addition to the possibility for any individual or other member of the public to request an internal review in case they can demonstrate impairment of their rights. They are also in addition to the possibilities for environmental NGOs to file requests, and other possibilities that individuals and other members of the public have under Union law to protect their rights.