



Plenary sitting

A9-0152/2021

4.5.2021

*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council 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
(COM(2020)0642 – C9-0321/2020 – 2020/0289(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Christian Doleschal

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	4
EXPLANATORY STATEMENT	26
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS	30
PROCEDURE – COMMITTEE RESPONSIBLE	40
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE	41

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council 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 (COM(2020)0642 – C9-0321/2020 – 2020/0289(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0642),
 - having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0321/2020),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 27 January 2021¹,
 - having consulted the Committee of the Regions,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Legal Affairs,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A9-0152/2021),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 123, 9.4.2021, p. 66

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council⁴ 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.

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).

Amendment 2

Proposal for a regulation

Recital 3

Text proposed by the Commission

(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

Amendment

(2) Regulation (EC) No 1367/2006 of the European Parliament and of the Council⁴ 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. ***This Regulation therefore amends Regulation (EC) No 1367/2006 in order to implement Article 9(3) and 9(4) of the Convention.***

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).

Amendment

(3) In its ***communication*** of 11 December 2019 ***on 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 ***specific*** concerns about the compatibility with environmental law of ***administrative acts*** with effects on the environment. The Commission also committed to take action

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’*.

to improve their access to justice before national courts in all Member States; to this end, it issued *the communication of 14 October 2020* on *improving* access to justice in environmental matters in the EU and its Member States *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 deliver the European Green Deal transition and a way to strengthen the role which civil society can play as watchdog in the democratic space’*.

Amendment 3

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(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.

^{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 access to justice in environmental matters in the EU and its Member States.

Amendment 4

Proposal for a regulation Recital 4

Text proposed by the Commission

(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.

⁵ See findings of the Aarhus Convention Compliance Committee *in case ACCC/C/2008/32* at <https://www.unece.org/env/pp/compliance/Compliancecommittee/32TableEC.html>.

Amendment

(4) Taking into account the provisions of Article 9(3) **and (4)** of the Aarhus Convention as well as **the advice 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, **including its treaties, and** with its system of judicial review. **Regulation (EC) No 1367/2006 should be amended accordingly.**

⁵ Advice of the Aarhus Convention Compliance Committee *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](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).

Amendment 5

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 6

Proposal for a regulation

Recital 5

Text proposed by the Commission

(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 down in that Regulation to include non-legislative acts of a general scope.

Amendment

(5) The limitation of the internal review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope **has been** the main **ground for non-admissibility** 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 **appropriate** to broaden the scope of the internal review procedure laid down in that Regulation to include non-legislative acts of a general scope.

Amendment 7

Proposal for a regulation

Recital 6

Text proposed by the Commission

(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

Amendment

(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.*

level against which judicial protection can *be obtained*, including before the Court of Justice of the European Union (CJEU) through a procedure for preliminary ruling under Article 267 TFEU.

Amendment 8

Proposal for a regulation

Recital 7

Text proposed by the Commission

(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.

Amendment

deleted

Amendment 9

Proposal for a regulation

Recital 9

Text proposed by the Commission

(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 ‘contravene’ 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.

Amendment

(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 *or omissions* that ‘contravene’ law relating to the environment. Thus, it is necessary to clarify, *in line with the case law of the CJEU*, that internal review should be carried out in order to verify whether an administrative act contravenes environmental law *within the meaning of point (f) of Article 2(1)*.

Amendment 10

Proposal for a regulation Recital 10

Text proposed by the Commission

(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.

Amendment

(10) When assessing whether an administrative act contains provisions which may contravene law ***relating to the environment within the meaning of point (f) of Article 2(1)***, it is necessary to consider ***in accordance with the case law of the CJEU*** 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. ***Where this is the case***, the internal review mechanism should also cover acts that have been adopted in the implementation of policies other than Union policy on the environment.

Amendment 11

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(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. 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.

^{1a} 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.

Amendment 12

Proposal for a regulation Recital 10 b (new)

Text proposed by the Commission

Amendment

(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}.

^{1a} 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.

^{1b} 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.

Amendment 13

Proposal for a regulation Recital 10 c (new)

Text proposed by the Commission

Amendment

(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 of the Court of 12 November 2019 in Case C-261/18, Commission v. Ireland^{1a}.

^{1a} Judgment of the Court of Justice of 12 November 2019, C-261/18, Commission v. Ireland, ECLI:EU:C:2019:955.

Amendment 14

Proposal for a regulation Recital 10 d (new)

Text proposed by the Commission

Amendment

(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.

Amendment 15

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 16

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) According to the case law of the CJEU⁶, 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 CJEU⁶, **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. **That requirement should also apply under Regulation (EC) No 1367/2006.**

⁶ Judgment of the Court of Justice of 12 September 2019 in Case C-82/17 P, TestBioTech v Commission, ECLI:EU:C:2019:719, **at para 69.**

⁶ **Judgment** of the Court of Justice of 12 September 2019, TestBioTech v Commission, C-82/17 P, ECLI:EU:C:2019:719, **paragraph 69, and judgment in Case T-9/19.**

Amendment 17

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(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.

Amendment 18

Proposal for a regulation Recital 12 b (new)

Text proposed by the Commission

Amendment

(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.

^{1a} *Judgment of the Court of Justice of 22 September 2020, Austria v Commission, C-594/18 P, ECLI:EU:C:2020:742.*

Amendment 19

Proposal for a regulation Recital 12 c (new)

Text proposed by the Commission

Amendment

(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.

Amendment 20

Proposal for a regulation Recital 12 d (new)

Text proposed by the Commission

Amendment

(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}.

^{1a} Judgment in Case C-82/17 P, paragraph 39.

Amendment 21

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(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;

Amendment 22

Proposal for a regulation

Recital 14

Text proposed by the Commission

(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).

Amendment

(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 principle of environmental protection (Article 37)***, 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 ***in environmental matters***, 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).

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation 1367/2006/EC

Article 2 – paragraph 1 – point g

Text proposed by the Commission

(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***

Amendment

(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;***

national level;

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EC) No 1367/2006

Article 2 – paragraph 2

Present text

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, *such as* under:

- (a) Articles 81, 82, **86 and 87** of the Treaty (*competition* rules);
- (b) Articles 226 and 228 of the Treaty (infringement proceedings);
- (c) Article 195 of the Treaty (Ombudsman proceedings);
- (d) Article 280 of the Treaty (OLAF proceedings).

Amendment

1a. Article 2, paragraph 2, is amended as follows:

‘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:

- (a) Articles 81 *and* 82 of the Treaty [**Articles 101 and 102 TFEU**] (*including merger* rules);
- (b) Articles 226 and 228 of the Treaty [**Articles 258 and 260 TFEU**] (infringement proceedings);
- (c) Article 195 of the Treaty [**Article 228 TFEU**] (Ombudsman proceedings);
- (d) Article 280 of the Treaty [**Article 325 TFEU**] (OLAF proceedings).

(da) Articles 86 and 87 [Articles 106 and 107 TFEU] (competition rules) until ... [18 months after the adoption of this Regulation].

(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 information to be submitted by Member States when they notify the Commission of state aid.’

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 1 b (new)

Regulation (EC) No 1367/2006

Article 4 – paragraph 2

Present text

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 databases or registers **shall include the following**:

(a) texts of international treaties, conventions or agreements, and of **Community** legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;

(b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by **Community** institutions or bodies;

(c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 226(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

Amendment

1b. In Article 4, paragraph 2 is replaced by the following:

‘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 **following shall be included in the** databases or registers **as soon as they are consolidated**:

(a) texts of international treaties, conventions or agreements, and of **Union** legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;

(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;

(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 and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.’

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.’

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a
Regulation 1367/2006/EC
Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Any non-governmental organisation **or members of the public that meet** the criteria set out in Article 11 **are** 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.

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a
Regulation 1367/2006/EC
Article 10 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

Where an administrative act is an implementing measure at Union level required by another non-legislative act, the non-governmental organisation **or members of the public that meet the criteria set out in Article 11** may also request the review of the provision of the

requesting the review of that implementing measure.

non-legislative act for which that implementing measure is required when requesting the review of that implementing measure.

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a

Regulation/1367/2006/EC

Article 10 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The Union institution or body referred to in paragraph 1 shall consider any such request, unless it is clearly unsubstantiated. ***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.*** 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.

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 2 a (new)

Regulation/1367/2006/EC

Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

2a. In Article 11 the following

paragraph is inserted:

'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.'

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 2 b (new)

Regulation/1367/2006/EC

Article 11 – paragraph 2

Present text

2. The Commission shall adopt the provisions which are necessary to ensure transparent and consistent application of the criteria mentioned in *paragraph 1*.

Amendment

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 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.

The criteria established by the delegated act adopted pursuant to this paragraph shall:

- (a) ensure that there is effective access to justice in line with the overall objectives of the Aarhus Convention;*
- (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;
(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;
(d) minimise the administrative burden on Union institutions and bodies.

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 2 c (new)

Regulation (EC) No 1367/2006/EC

Article 11 a (new)

Text proposed by the Commission

Amendment

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.’

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 2 d (new)

Regulation (EC) No 1367/2006

Article 12 – paragraph 1

Present text

Amendment

2d. Article 12, paragraph 1 is amended as follows:

1. *The* non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the Court of Justice in accordance with *the relevant provisions* of the Treaty.

‘1. *Where the* non-governmental organisation *or members of the public* 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.*’

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 2 e (new)

Regulation (EC) No 1367/2006

Article 12 – paragraph 2

Present text

2. Where the *Community* institution or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

Amendment

2e. Article 12, paragraph 2 is amended as follows:

‘2. Where the *Union institution* or body fails to act in accordance with Article 10(2) or (3) the non-governmental organisation *or members of the public which made the request for internal review pursuant to Article 10* may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.’

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 2 f (new)

Regulation (EC) No 1367/2006

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2f. The following paragraph is inserted:

‘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.’

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 2 g (new)

Regulation (EC) No 1367/2006

Article 12 a (new)

Text proposed by the Commission

Amendment

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 in this Article.

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].

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.

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.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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.

EXPLANATORY STATEMENT

Revision of the Aarhus Regulation

I. Introduction

The Union as well as the 27 Member States are Parties to the 1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters. Regulation (EC) No 1367/2006 (Aarhus Regulation) transposes the Convention into Union law.

The Aarhus Regulation has made an important contribution to providing access to justice in environmental matters. Nevertheless, the Aarhus Convention Compliance Committee (ACCC) expressed concerns that the European Union may not fully comply with all requirements of the Convention. In view of these concerns, the Union declared at the last Meeting of the Parties of the Aarhus Convention its intention to “continue to explore ways and means to comply with the Aarhus Convention in a way that is compatible with the fundamental principles of the Union legal order and with its system of judicial review, taking into account concerns expressed within the Convention.” (Budva Declaration) and Council and Parliament requested the Commission to submit a proposal for amending the Aarhus Regulation. The present proposal by the European Commission for a revision of the Aarhus Regulation aims to improve the implementation of the Aarhus Convention.

II. Recommendations of the Rapporteur

The Rapporteur believes that it is important to ensure the Union’s compliance with its international obligations while fully respecting the Union Treaties, the division of competences and the overall Union system for review set out therein, and guaranteeing legal certainty for all actors involved, including third parties such as companies and public authorities.

Finally, the Rapporteur would like to remind Parliament of the ambitious timeframe to conclude the revision of the Regulation and recall that only the decision of the Meeting of the Parties, to be held in October 2021 to discuss the findings, will be final.

a. Ensuring compliance with international obligations

1. Administrative acts of a general scope

The ACCC has reviewed the Union’s compliance with the Convention and published its findings on 17 March 2017. It is the view of the ACCC that potential applicants should be granted the possibility to request an internal review not just for administrative acts of individual scope, but also for acts of general application.

The Rapporteur acknowledges this proposal as the crucial element to ensure the Union’s compliance with its international obligations. Given that decisions on environmental matters aim to protect public interest and are typically of general scope, the Rapporteur would like to underline that this revision of the Regulation will ensure a very significant extension of the

access to justice for non-governmental organisations. This is confirmed by an analysis of the existing requests for internal review, where 25 of the 43 requests submitted to the Commission were considered inadmissible for not complying with the requirement of individual scope.

2. Non-prohibitive costs

As identified in the communication accompanying the revision proposal, effective legal standing requires a removal of barriers on the ground, in particular by guaranteeing non-prohibitive costs throughout the system, including at the level of the national legal systems because the administrative review procedure provided by the Aarhus Regulation is but one part of the overall Union's system of administrative and judicial review.

b. Ensuring legal certainty

1. Clarifying the relation to “environmental law”

The ACCC has recommended that the Aarhus Regulation should be amended to include the possibility of challenging any administrative act “relating” to the environment rather than only acts that “fall under” environmental law.

The Rapporteur acknowledges first and foremost the need to clarify the concept of ‘environmental law’ under which requests for review can be submitted. The Rapporteur finds that, in line with the case law of the Court of Justice, the review procedure should focus precisely on those aspects of acts directly aimed to produce significant impacts on achieving the objectives of European environmental policy.

2. Clarifying the meaning of “legally binding effects”

The ACCC has expressed the opinion that it “is not convinced that generally excluding all acts that do not have legally binding and external effects is compatible with [the Aarhus Convention]”. Here, the Rapporteur believes it is necessary to provide clarification. In order to ensure legal certainty about those administrative acts which may be subject to a request for review, the Rapporteur also considers it important to state that acts may have “legally binding effects” regardless of the form of the act (e.g. some guidelines, adopted in the form of a communication, may be considered legally binding considering their effects, objective and content).

3. Third parties and the right to be heard

Finally, legal certainty also requires that any third parties affected by a request for review, such as the companies or public authorities who are the subject of such an act, are heard during the procedure and are able to defend their interests, in order to ensure a level playing field and fairness of treatment.

c. Ensuring adherence to the Treaties

1. Review possibilities for members of the public other than NGOs

The ACCC has recommended that the Aarhus Regulation should enable members of the public other than NGOs to request an internal review.

The Rapporteur is, however, convinced that expanding the range of potential applicants is neither necessary in order to ensure the Union's compliance with the Aarhus Convention, nor would doing so lead to a more certain and efficient administrative review.

The Aarhus Convention provides a framework for access to justice but leaves some aspects of its implementation to the Parties to decide upon individually. The Aarhus Convention does, in a number of its provisions, indicate that not all members of the public must have access to the review procedure under its framework. Significantly, in Article 9, the Aarhus Convention makes reference to limiting the range of potential applicants to those that have "a sufficient interest" and remarks that "the public concerned" shall be given wide access to justice. To argue that the Aarhus Convention obliges its parties to grant every member of the public unconditional access to the review procedure means to attribute a meaning to the Convention that was not intended by its drafters.

In addition, expanding the range of potential applicants to individuals is not necessary in order to ensure an effective access to the administrative review procedure. Individuals have the possibility to request a review of acts and omissions of EU institutions and bodies through the national courts and the preliminary reference procedure under Article 267 of the TFEU, and directly under Article 263 (4) TFEU to bring an action for annulment which allows natural or legal persons to institute proceedings directly before the CJEU. The Aarhus Regulation supplements the overall framework that already provides substantial judicial review possibilities to individuals via national courts and the CJEU.

At the same time, the General Court as the top-level court should not be overburdened by having to assess a disproportionate number of challenges to one and the same administrative act that would be generated by allowing individuals to submit requests for review. This would not add any value while constituting an inefficient and cost-intensive use of the resources of the General Court.

2. State aid decisions and national implementing acts

While this has not been part of its 2017 findings, the ACCC has, in its draft advice dating from January 2021, expressed the position that, by failing to provide for a possibility to review decisions on state aid measures taken by Commission, the Union is in violation of the Aarhus Convention.

In this context, the Rapporteur wishes to stress that compliance with the Convention must not come at the expense of the fundamental principles of the Union legal order and its system of judicial review. As the CJEU also recalled, judicial and administrative procedures concerning access to justice in environmental law fall primarily within the scope of Member State law (*Council and Commission v Vereniging Milieudefensie a.o.*). Therefore, measures at national level, including national state aid decisions and national implementing acts resulting from Union acts, are challengeable via the national legal system in the Member States, who are themselves also signatories to the Aarhus Convention. Any extension to the Union level would represent an intrusion by the Union into the domains of the other institutions and would upset the inter-institutional balance. For any measures at national level, the overall

Union framework of administrative and judicial redress is balanced and fit for this purpose.

III. Conclusion

This report aims to ensure the Union's clear compliance with its international obligations under the Aarhus Convention. While the ACCC has provided useful guidance in the revision process, it is important to amend the Aarhus Regulation in line with the Treaties and taking into consideration the Union's supranational character as well as its existing body of rules and legal remedies. This report duly takes into account present concerns with regard to the Union's compliance with the Aarhus Convention and aims to secure a united position on behalf of the Union institutions. It is the objective of this report to ensure that a formal examination of the Aarhus Regulation by the meeting of the parties in October 2021 will not hold the Union in violation of its obligations under international law.

23.3.2021

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on the Environment, Public Health and Food Safety

on the 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 (COM(2020)0642 – C9-0321/2020 – 2020/0289(COD))

Rapporteur for opinion: Jiří Pospíšil

SHORT JUSTIFICATION

The proposal for a regulation of the European Parliament and of the Council 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, which is supported by a Report¹ and an accompanying study², seeks to revise the administrative review mechanism created in 2006 with regard to administrative acts and omissions of EU institutions and bodies. The comprehensive study and the Commission Report analysing the functioning of the provisions on access to justice in environmental matters at the EU level provide a strong factual evidence-base for the present initiative. Although the proposed changes are rather extensive, the Commission deemed an impact assessment unnecessary. That is especially vexing as one of the main aims are to change the references to environmental law so that any administrative act that contravenes EU environmental law may be subject to review, irrespective of its policy objectives which will have a considerable impact on the administration; and furthermore vexing as one other main aim is to extend the time frames for requests and replies of the administrative review process which will delay procedure enormously and will have negative effects on communal and private procedure and raise costs. Thus, without such an Impact assessment, the balance of the interests and the consequences are rather unclear.

The rapporteur recognizes that across Europe, environmental non-governmental organisations (NGOs) play an important role for the environment. This implies that, under clear and certain conditions, they should have the right to seek the review of decisions taken by public

¹ Commission Staff Working Document, Report on European Union implementation of the Aarhus Convention in the area of access to justice in environmental matters, SWD (2019)378 final.

² Study on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters, Final report, September 2019, 07.0203/2018/786407/SER/ENV.E.4.

authorities on the grounds that these contravene environmental laws.

The EU adopted the Regulation in order to contribute to the implementation of the obligations arising from the Convention. The EU formally became a Party to the Convention in 2005³. Article 9(3) of the Convention states that each Party to the Convention must ensure that 'where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.'

Your rapporteur generally supports the proposal of the Commission, albeit with a number of amendments aiming at adapting the definition of (administrative) act to the one set in Article 263 of the TEU as the rapporteur agrees with the will of the Commission to extend the possibility to seek administrative review not only for acts having an individual scope but also for acts of general scope. Indeed, when it comes to the protection of the environment, the public interest is concerned and not individual interests. Moreover, the rapporteur agrees with the argumentation of the Commission according to which the effects of an administrative act contravening environmental law and not the policy objectives of EU environmental law should be taken into account for the purpose of seeking administrative review.

Furthermore, the rapporteur proposes to talk about administrative acts which are “intended to produce legally binding and external effects” since not only the acts which are by nature legally binding and having external effects but also the acts for which the author had the intention to make them producing such effects should be able to be reviewed.

When it comes to the time limits the Commission proposed, the rapporteur proposes to slightly shorten them in order to prevent making administrative proceedings too lengthy and burdensome. A too long time-limit for the purpose of seeking administrative review could represent a burden for the institution. Conversely, a shorter time-limit for the introduction of requests for administrative review can prevent a flood of administrative and opportunist requests. The difference of time-limit between the administrative acts and the omission to adopt such acts is related to the nature of the omission itself. At the same time, a shorter time limit for the institutions to answer a request ensure a faster and more effective protection of the citizens but also limits the procedure time which is important for the executors of the projects in question. There is a strong need to reduce the period of legal uncertainty for the public concerned. It also takes into account the fact that if an administrative act is likely to have a negative impact on environment, the damage can be irreversible, which justifies the need to act promptly. A short time-limit also constitutes an incentive for the institution to react rapidly and enables to ensure the respect of the good administration principle. Finally, since administrative review's procedures can be seen as simpler than judicial procedures (e.g. no need to have legal advice) there is no need to extend the time-limit too much, if at all.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Environment, Public Health

³ 2005/370/EC: Council Decision 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. 1–3.

and Food Safety, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Article 9(3) and (4) of the Aarhus Convention provides for access to administrative or judicial procedures for members of the public, where they meet the criteria, if any, laid down in national or Union law, to challenge acts or omissions which contravene provisions of national or Union law relating to the environment. Providing access to administrative and judicial procedures is necessary for the Union to be able to comply with the requirements of those provisions.

Amendment 2

Proposal for a regulation Recital 5

Text proposed by the Commission

Amendment

(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 down in that Regulation to include non-legislative acts of a general scope.

(5) The limitation of the internal review provided for in Regulation (EC) No 1367/2006 to administrative acts of individual scope is ***an*** obstacle for environmental non-governmental organisations seeking to have ***justified*** recourse to internal review under Article 10 of that Regulation also as regards administrative acts that have a wider scope. It is therefore appropriate to broaden the scope of the internal review procedure laid down in that Regulation to include non-legislative acts of a general scope ***that contravene law relating to the***

environment.

Amendment 3

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Article 9(4) of the Aarhus Convention provides that court proceedings under the scope of Article 9(3) of the Aarhus Convention are not to be prohibitively expensive. In order to ensure that judicial proceedings under Article 12 of Regulation (EC) No 1367/2006 are not prohibitively expensive and that costs are foreseeable for the applicant, when Union institutions and bodies are successful in litigation, they should strive to make requests for reimbursement of costs that are reasonable.

Amendment 4

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) According to the case law of the CJEU⁶, 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 CJEU⁶, ***those*** 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. ***That requirement should also apply under Regulation (EC) No 1367/2006.***

⁶ Judgment *of the Court of Justice of 12 September 2019* in Case C-82/17 P, *TestBioTech v Commission*,

⁶ Judgment in Case C-82/17 P, *paragraph 69*.

ECLI:EU:C:2019:719, at para 69.

Amendment 5

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EC) No 1367/2006

Article 2 – paragraph 1 – point g

Text proposed by the Commission

(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;’

Amendment

(g) ‘administrative act’ means any non-legislative act adopted by a Union institution or body, which has, ***or is intended to have***, legally binding and external effects and contains provisions that may 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;’

Justification

The rapporteur agrees with the will of the Commission to extend the possibility to seek administrative review not only for acts having an individual scope but also for acts of general scope. Furthermore, the rapporteur proposes to talk about administrative acts that are “intended to produce legally binding and external effects” since not only the acts which are by nature legally binding and having external effects but also the acts for which the author had the intention to make them producing such effects should be able to be reviewed.

Amendment 6

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EC) No 1367/2006

Article 4 – paragraph 2

Present text

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

Amendment

1a. In Article 4, paragraph 2 is replaced by the following:

‘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 databases or registers *shall include the following*:

- (a) texts of international treaties, conventions or agreements, and of **Community** legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;
- (b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by **Community** institutions or bodies;
- (c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to Article 226(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.’

Regulation (EC) No 1049/2001, the *following shall be included in the* databases or registers *as soon as they are consolidated*:

- (a) texts of international treaties, conventions or agreements, and of **Union** legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;
(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;
- (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 and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.’

Amendment 7

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a

Regulation (EC) No 1367/2006

Article 10 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.

Amendment

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, ***provided that that non-legislative act relates to the environment.***

Amendment 8

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a

Regulation (EC) No 1367/2006

Article 10 – paragraph 2

Text proposed by the Commission

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.’

Amendment

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 **14** weeks after receipt of the request.’

Justification

A shorter time limit for the institutions to answer a request ensures a faster and more effective protection of the citizens but also limits the procedure time, which is important for the executors of the projects in question. There is a strong need to reduce the period of legal uncertainty for the public concerned. It also takes into account the fact that if an administrative act is likely to have a negative impact on environment, the damage can be irreversible, which justifies the need to act promptly.

Amendment 9

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EC) No 1367/2006

Article 10 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In any event, the Union institution or body shall act within **22** weeks from receipt of the request.

Amendment

In any event, the Union institution or body shall act within **20** weeks from receipt of the request.

Amendment 10

Proposal for a regulation

Article 1 – paragraph 1 – point 2 a (new)

Regulation (EC) No 1367/2006

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In Article 12, the following paragraph is added:

2a. Without prejudice to the Court's prerogative to apportion costs, court proceedings initiated under this provision shall not be prohibitively expensive. When Union institutions and bodies referred to in Article 10(1) are successful in litigation they shall strive to make requests for reimbursement of costs that are reasonable.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	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	
References	COM(2020)0642 – C9-0321/2020 – 2020/0289(COD)	
Committee responsible Date announced in plenary	ENVI 19.10.2020	
Opinion by Date announced in plenary	JURI 19.10.2020	
Rapporteur Date appointed	Jiří Pospíšil 16.11.2020	
Discussed in committee	7.12.2020	22.2.2021
Date adopted	18.3.2021	
Result of final vote	+: 11 –: 8 0: 6	
Members present for the final vote	Manon Aubry, Gunnar Beck, Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Ibán García Del Blanco, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos	
Substitutes present for the final vote	Patrick Breyer, Andrzej Halicki, Heidi Hautala, Ilhan Kyuchyuk, Antonius Manders, Sabrina Pignedoli, Jérôme Rivière, Nacho Sánchez Amor	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

11	+
PPE	Geoffroy Didier, Esteban González Pons, Antonius Manders, Jiří Pospíšil, Axel Voss, Marion Walsmann, Javier Zarzalejos
ID	Gilles Lebreton, Jérôme Rivière
ECR	Angel Dzhambazki, Raffaele Stancanelli

8	-
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters
Verts/ALE	Patrick Breyer, Marie Toussaint
The Left	Manon Aubry

6	0
Renew	Pascal Durand, Karen Melchior, Stéphane Séjourné, Adrián Vázquez Lázara
ID	Gunnar Beck
NI	Mislav Kolakušić

Key to symbols:

+ : in favour

- : against

0 : abstention

PROCEDURE – COMMITTEE RESPONSIBLE

Title	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	
References	COM(2020)0642 – C9-0321/2020 – 2020/0289(COD)	
Date submitted to Parliament	14.10.2020	
Committee responsible Date announced in plenary	ENVI 19.10.2020	
Committees asked for opinions Date announced in plenary	JURI 19.10.2020	LIBE 19.10.2020
Not delivering opinions Date of decision	LIBE 26.10.2020	
Rapporteurs Date appointed	Christian Doleschal 1.12.2020	
Discussed in committee	24.2.2021	22.4.2021
Date adopted	23.4.2021	
Result of final vote	+: –: 0:	61 7 10
Members present for the final vote	Nikos Androulakis, Bartosz Arłukowicz, Margrete Auken, Simona Baldassarre, Marek Paweł Balt, Traian Băsescu, Aurélie Beigneux, Monika Beňová, Sergio Berlato, Alexander Bernhuber, Malin Björk, Simona Bonafè, Delara Burkhardt, Pascal Canfin, Sara Cerdas, Mohammed Chahim, Tudor Ciuhodaru, Nathalie Colin-Oesterlé, Esther de Lange, Christian Doleschal, Marco Dreosto, Bas Eickhout, Cyrus Engerer, Eleonora Evi, Agnès Evren, Pietro Fiocchi, Catherine Griset, Jytte Guteland, Teuvo Hakkarainen, Anja Hazekamp, Martin Hojsík, Pär Holmgren, Jan Huitema, Yannick Jadot, Petros Kokkalis, Athanasios Konstantinou, Ewa Kopacz, Joanna Kopcińska, Ryszard Antoni Legutko, Peter Liese, Sylvia Limmer, Javi López, César Luena, Fulvio Martusciello, Liudas Mažylis, Joëlle Mélin, Tilly Metz, Silvia Modig, Dolors Montserrat, Alessandra Moretti, Dan-Ștefan Motreanu, Ville Niinistö, Ljudmila Novak, Grace O’Sullivan, Jutta Paulus, Stanislav Polčák, Jessica Polfjärd, Frédérique Ries, Sándor Rónai, Rob Rooken, Silvia Sardone, Christine Schneider, Günther Sidl, Linea Sjøgaard-Lidell, Maria Spyrali, Nicolae Ștefănuță, Nils Torvalds, Véronique Trillet-Lenoir, Petar Vitanov, Alexandr Vondra, Mick Wallace, Pernille Weiss, Emma Wiesner, Tiemo Wölken, Anna Zalewska	
Substitutes present for the final vote	Asger Christensen, Danilo Oscar Lancini, Sirpa Pietikäinen	
Date tabled	4.5.2021	

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

61	+
PPE	Bartosz Arłukowicz, Traian Băsescu, Alexander Bernhuber, Nathalie Colin-Oesterlé, Christian Doleschal, Agnès Evren, Ewa Kopacz, Esther de Lange, Peter Liese, Fulvio Martusciello, Liudas Mažylis, Dolors Montserrat, Dan-Ștefan Motreanu, Ljudmila Novak, Sirpa Pietikäinen, Stanislav Polčák, Jessica Polfjärd, Christine Schneider, Maria Spyrali, Pernille Weiss
Renew	Pascal Canfin, Asger Christensen, Martin Hojsik, Jan Huitema, Frédérique Ries, Nicolae Ștefănuță, Linea Sogaard-Lidell, Nils Torvalds, Véronique Trillet-Lenoir, Emma Wiesner
S&D	Nikos Androulakis, Marek Paweł Balt, Monika Beňová, Simona Bonafè, Delara Burkhardt, Sara Cerdas, Mohammed Chahim, Tudor Ciuhodaru, Cyrus Engerer, Jytte Guteland, Javi López, César Luena, Alessandra Moretti, Sándor Rónai, Günther Sidl, Petar Vitanov, Tiemo Wölken
The Left	Malin Björk, Anja Hazekamp, Petros Kokkalis, Silvia Modig, Mick Wallace
Verts/ALE	Margrete Auken, Bas Eickhout, Eleonora Evi, Pär Holmgren, Yannick Jadot, Tilly Metz, Ville Niinistö, Grace O'Sullivan, Jutta Paulus

7	-
ECR	Rob Rooken
ID	Simona Baldassarre, Marco Dreosto, Teuvo Hakkarainen, Danilo Oscar Lancini, Sylvia Limmer, Silvia Sardone

10	0
ECR	Sergio Berlato, Pietro Fiocchi, Joanna Kopcińska, Ryszard Antoni Legutko, Alexandr Vondra, Anna Zalewska
ID	Aurélia Beigneux, Catherine Griset, Joëlle Mélin
NI	Athanasios Konstantinou

Key to symbols:

+ : in favour

- : against

0 : abstention