

EU ambassadors endorse update to legislation on access to justice in environmental matters (Aarhus Regulation)

Today, EU ambassadors approved a provisional political agreement reached with the European Parliament on 12 July on a proposal to revise the Aarhus Regulation, in order to bring it fully in line with the Aarhus Convention. The Aarhus Regulation sets out how the EU and its member states implement the international Aarhus Convention, which aims to guarantee access to information, public participation in decision-making and access to justice in environmental matters. The provisional agreement is subject to approval by both institutions, after which it will be formally adopted through the ordinary legislative procedure.

The EU and its member states are highly committed to the principles of the Aarhus Convention. The agreement reached responds to the concerns laid down by the Aarhus Convention Compliance Committee in the case concerned and provides us with a strong basis to present our unified position at the Meeting of Parties of the Aarhus Convention in October 2021.

Tamara Weingerl Požar, Deputy Permanent Representative of Slovenia to the EU

The aim of the proposal is to ensure that the EU fully complies with the Convention concerning the right of the public to review administrative acts. These are non-legislative acts adopted by an EU institution or body, which have legal and external effects and contain provisions that may, because of their effects, contravene environmental law.

The Council and Parliament negotiators agreed among other things to:

- broaden the legal standing beyond NGOs, thus allowing other members of the public to request internal reviews of administrative acts under certain conditions. The members of the public shall either demonstrate an impairment of their rights caused by the alleged contravention of environmental law and that they are directly affected by such impairment in comparison with the public at large; or they shall demonstrate a sufficient public interest and that the request is supported by at least 4000 members of the public residing or established in at least 5 member states, with at least 250 members of the public residing or established in each of those member states. In both cases, the members of the public shall be represented by an NGO or a lawyer;
- include provisions of administrative acts requiring implementing measures at national level or at Union level into the scope of administrative acts;
- not to delete the exemption of administrative acts concerning state aid from the regulation (a compliance issue covered by another case of the Aarhus Convention Compliance Committee);
- make it mandatory for the EU institutions and bodies to publish review requests and decisions on them.

Background and next steps

The EU implements the Aarhus Convention through Regulation (EC) No 1367/2006. This regulation allows individuals and non-governmental organisations (NGOs) to launch proceedings before the European Courts against the decisions of EU institutions and bodies.

In follow-up to a complaint of an NGO in 2008, alleging a failure of the EU to comply with the Aarhus Convention on access to information, public participation in decision-making and access to justice in environment matters, the Aarhus Convention Compliance Committee concluded, in case C-32 of 2017, that the EU was in non-compliance with Article 9, paragraphs 3 and 4 of the Convention concerning access to justice by members of the public.

As a follow-up, the Council adopted in 2018 a decision requesting the Commission to submit a study on the Union's options for addressing the findings of the Compliance Committee and, if appropriate in view of the outcomes of the study, a proposal to amend the Aarhus Regulation.

On 14 October 2020, the European Commission adopted a legislative proposal amending the Aarhus Regulation No. 1367/2006 to allow for better public scrutiny of EU acts affecting the environment. The proposed amendments aim to make it easier to request

that the EU institutions review such acts to better ensure environmental protection.

The Council reached a general approach on the proposal on 17 December 2020, allowing the Council Presidency to start trilogue negotiations with the European Parliament.

The text of the provisional agreement, approved by the member states' ambassadors, will now be submitted for endorsement to the Parliament Environment Committee. If approved, the European Parliament and then the Council will adopt the text at first reading without amendments, in the months to come.

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