










# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2020/0289(COD) Procedure completed
Environment: access to information and justice, public participation, application of the Aarhus Convention	
Amending Regulation 2006/1367	<a href="#">2003/0242(COD)</a>
Subject	
3.70.16 Law and environment, liability	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 <a href="#">Environment, Public Health and Food Safety</a>	 <a href="#">DOLESCHAL Christian</a>	01/12/2020
		Shadow rapporteur	
		 <a href="#">BRGLEZ Milan</a>	
		 <a href="#">HOJSÍK Martin</a>	
		 <a href="#">TOUSSAINT Marie</a>	
		 <a href="#">ZALEWSKA Anna</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	 <a href="#">Legal Affairs</a>	 <a href="#">POSPÍŠIL Jiří</a>	16/11/2020
	 <a href="#">Civil Liberties, Justice and Home Affairs</a>	The committee decided not to give an opinion.	
Council of the European Union	Commission DG	Commissioner	
European Commission	<a href="#">Environment</a>	SINKEVIČIUS Virginijus	
European Economic and Social Committee			
European Committee of the Regions			

Key events			
	Legislative proposal published		Summary

14/10/2020		<a href="#">COM(2020)0642</a>	
19/10/2020	Committee referral announced in Parliament, 1st reading		
23/04/2021	Vote in committee, 1st reading		
04/05/2021	Committee report tabled for plenary, 1st reading	<a href="#">A9-0152/2021</a>	
19/05/2021	Debate in Parliament		
20/05/2021	Results of vote in Parliament		
20/05/2021	Decision by Parliament, 1st reading	<a href="#">T9-0254/2021</a>	Summary
20/05/2021	Matter referred back to the committee responsible		
01/09/2021	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	<a href="#">PE696.418</a> <a href="#">GEDA/A/(2021)003840</a>	
05/10/2021	Decision by Parliament, 1st reading	<a href="#">T9-0397/2021</a>	Summary
06/10/2021	Act adopted by Council after Parliament's 1st reading		
06/10/2021	Act adopted by Council after Parliament's 1st reading		
06/10/2021	Final act signed		
08/10/2021	Final act published in Official Journal		

### Technical information

Procedure reference	2020/0289(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation 2006/1367 <a href="#">2003/0242(COD)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 192-p1
Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	<a href="#">European Economic and Social Committee</a> <a href="#">European Committee of the Regions</a>
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/9/04375

### Documentation gateway

Legislative proposal		<a href="#">COM(2020)0642</a>	14/10/2020	EC	Summary
Document attached to the procedure		<a href="#">COM(2020)0643</a>	14/10/2020	EC	
Committee draft report		<a href="#">PE662.051</a>	04/02/2021	EP	
Amendments tabled in committee		<a href="#">PE689.651</a>	11/03/2021	EP	
Committee opinion		<a href="#">PE661.912</a>	23/03/2021	EP	

Committee report tabled for plenary, 1st reading/single reading		<a href="#">A9-0152/2021</a>	04/05/2021	EP	
Text adopted by Parliament, partial vote at 1st reading/single reading		<a href="#">T9-0254/2021</a>	20/05/2021	EP	Summary
Coreper letter confirming interinstitutional agreement		<a href="#">GEDA/A/(2021)003840</a>	23/07/2021	CSL	
Text agreed during interinstitutional negotiations		<a href="#">PE696.418</a>	23/07/2021	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T9-0397/2021</a>	05/10/2021	EP	Summary
Draft final act		00063/2021/LEX	06/10/2021	CSL	
Commission response to text adopted in plenary		<a href="#">SP(2021)677</a>	08/11/2021	EC	

#### Additional information

Research document	<a href="#">Briefing</a>	03/02/2021
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#### Final act

[Regulation 2021/1767](#)  
[OJ L 356 08.10.2021, p. 0001](#)

## Environment: access to information and justice, public participation, application of the Aarhus Convention

**PURPOSE:** to lay down detailed provisions to apply 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.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** 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). [Regulation \(EC\) No 1367/2006](#) of the European Parliament and of the Council (the Aarhus Regulation) established provisions to apply the provisions of the Convention to EU institutions and bodies.

For the European Green Deal to be successful and bring about lasting change, the public - individuals but also civil society - should remain a driving force in the transition and be given the means to participate actively in the development and implementation of new policies.

In its Communication on the [European Green Deal](#), the Commission committed itself to revise the Aarhus Regulation to improve access to administrative and judicial review at EU level for citizens and NGOs who have concerns about the legality of decisions affecting the environment and to take measures to improve their access to justice before the national courts in all Member States.

In its [resolution](#) of 15 January 2020, the European Parliament reaffirmed that it is essential to ensure that EU citizens have genuine access to justice and documents as enshrined in the Aarhus Convention.

**CONTENT:** the proposal aims to revise the administrative review created established in 2006 by the Aarhus Regulation for the benefit of NGOs with regard to acts and omissions of an administrative nature by EU institutions and bodies.

In concrete terms, the amending proposal:

- extends the current possibilities for NGOs to request administrative review: whereas administrative review can currently only be requested for acts of 'individual scope' (which directly concern a person), in future NGOs may also request review of any non-legislative administrative act of 'general scope'; however, the proposal excludes provisions of such acts for which EU law explicitly requires implementing measures at EU or national level;
- amends the references to environmental law by providing that, in future, any administrative act which contravenes EU environmental law may be subject to review, irrespective of its policy objectives; however, the proposal does not envisage granting standing for individuals;
- extends the deadlines for the internal review procedure to allow for an appropriate quality of submissions, including a two-week extension for NGOs and a four-week extension for EU institutions.

## Budgetary implications

The report and the external study on the functioning of access to justice in environmental matters accompanying the proposal assessed the impact of the different options on the internal resources of the EU institutions, in particular the Commission and the Court of Justice of the European Union (CJEU). They concluded that this impact shall be limited if the options introduced by the proposal are followed.

The proposed amendments shall not create a new system and shall not lead to an increase in the number of potential applicants for review. Although the expanding of the eligibility requirements may lead to an increase in the current workload, this could be partially compensated by clearer eligibility criteria.

## Environment: access to information and justice, public participation, application of the Aarhus Convention

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The European Parliament adopted by 553 votes to 62, with 78 abstentions, amendments to 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 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.

The matter was referred back to the competent committee for inter-institutional negotiations.

The Commission's proposal to revise the Aarhus Regulation aims to improve the implementation of the Aarhus Convention. The EU and its 27 Member States are parties to the 1998 Aarhus Convention, which gives members of the public the right of access to information and participation in environmental decision-making, as well as the right to seek redress if these rights are not respected.

The main amendments adopted by the plenary are as follows

### Clarification of the definition of administrative acts

The revision of Regulation (EC) No 1367/2006 is intended to improve access to administrative and judicial review at EU level for citizens and environmental non-governmental organisations who have specific doubts about the compatibility with environmental law of administrative acts with an impact on the environment.

Members clarified that the concept of administrative act should include any non-legislative act adopted by a Union institution or body, having legal and external effect and containing provisions which may contravene environmental law. Acts adopted by public authorities of the Member States would not be included in administrative acts.

No later than 18 months after the date of adoption of this Regulation, the Commission should 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.

### Collection and dissemination of environmental information

Members consider that documents relating to the positions of Member States expressed in decision-making procedures leading to the adoption of EU legislation and administrative acts relating to the environment should be included in databases or registers as soon as they are made available.

### Request for internal review of administrative acts

Members proposed that the Aarhus Regulation should allow members of the public other than NGOs to request an internal review.

### Criteria for entitlement at Community level

No later than 18 months after the adoption of the regulation, the Commission should adopt a delegated act specifying the criteria that members of the public must meet. These criteria would be reviewed at least every three years.

The criteria established by the delegated act should:

- ensure effective access to justice, in line with the overall objectives of the Aarhus Convention;
- require that a request be submitted by members of the public from different Member States when it concerns an act or omission of the Union affecting the public in more than one Member State
- avoid legal actions in defence of the common interest, in particular by ensuring that members of the public who have a sufficient interest in a right or who can demonstrate a breach of a right are required to prove that they are directly affected in contrast to the rest of the public;
- minimise the administrative burden on the Union institutions and bodies.

### Public register of requests for internal review

The EU institutions and bodies should establish, by 31 December 2021 at the latest, a regularly updated register of all requests that meet the admissibility criteria, as well as of the applicants who meet these requirements and have submitted the requests.

### Proceedings before the Court of Justice

Without prejudice to the Court's prerogative to apportion costs, Members believe that it should be ensured that court proceedings brought by NGOs applying for internal review are not prohibitively expensive.

## Environment: access to information and justice, public participation, application of the Aarhus Convention

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The European Parliament adopted a 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 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.

The proposed revision of the Aarhus Regulation aims to improve the implementation of the Aarhus Convention. The EU and its 27 Member States are parties to the 1998 Aarhus Convention, which gives members of the public the right of access to information and participation in environmental decision-making, as well as the right to seek redress if these rights are not respected.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows

#### Improving access to justice in environmental matters in the European Union and its Member States

The amended text stresses that access to justice in environmental matters, both via the Court of Justice of the European Union (CJEU) and the national courts as Union courts, is an important support measure to help deliver the European Green Deal transition and a means of strengthening the role which civil society can play as watchdog in the democratic space.

#### Clarification of the definitions of administrative acts and administrative omissions

The revision of Regulation (EC) No 1367/2006 is intended to improve access to administrative and judicial review at EU level for citizens and environmental non-governmental organisations who have specific doubts about the compatibility with environmental law of administrative acts with an impact on the environment.

Members clarified that the term administrative act should include any non-legislative act adopted by an institution or body of the Union, having legal and external effect and containing provisions which may conflict with environmental law. The definition of administrative omission was also introduced, namely any failure of a Union institution or body to adopt a non-legislative act which has legal and external effects, where such failure may contravene environmental law.

#### Request for internal review of administrative acts

Environmental non-governmental organisations as well as members of the public would have the right to request an internal review of acts and omissions of an administrative nature by the institutions and bodies of the Union.

However, members of the public would have to:

- show that the alleged breach of Union environmental law infringes their rights and that, unlike the rest of the public, they are directly affected by the impairment, for example in the case of an imminent threat to their health and safety;

- demonstrate that there is a sufficient public interest and that the request is supported by at least 4000 members of the public who are resident or established in at least five Member States and that at least 250 members of the public come from each of these Member States.

In order to ensure the effectiveness of internal review procedures, members of the public should be represented either by an environmental non-governmental organisation meeting the criteria set out in the revised Regulation (EC) No 1367/2006 or by a lawyer qualified to practise before the courts of a Member State.

In the event that a Union institution or body receives multiple requests for review of the same administrative act or administrative omission, the institution or body could combine the requests and treat them as one. The Union institution or body should state its reasons in a written reply as soon as possible.

#### Publication of requests and final decisions, and online systems for receipt of requests

Union institutions and bodies should publish all requests for internal review as soon as possible after their receipt, as well as all final decisions on those requests as soon as possible after their adoption. They could establish online systems for receipt of requests for internal review and may require that all requests for internal review be submitted via their online systems.

Where the Union institution or body fails to act, the non-governmental organisation or other members of the public that made the request for internal review could institute proceedings before the Court of Justice.

In a statement annexed to the legislative resolution, the Commission noted the concerns expressed and the conclusions adopted by the Aarhus State Aid Compliance Committee.

These conclusions call on the EU to take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on state aid measures taken by the European Commission which contravene EU law relating to the environment.

The Commission is currently analysing the implications of these findings and will publish an assessment by the end of 2022. If appropriate, by the end of 2023, it will come forward with measures to address this issue.