Access to justice in environmental matters

During the May plenary session, Parliament is due to vote on a report adopted by its Environment Committee, on a proposal aimed at ensuring EU compliance with its obligations as a party to the 1998 Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

Background
Parties to the Aarhus Convention are required to provide members of the public with access to administrative or judicial procedures to challenge acts and omissions by private persons or public authorities which breach laws relating to the environment. The Aarhus Regulation (EC) No 1367/2006 applies the convention provisions to EU institutions and bodies. It allows qualified non-governmental organisations (NGOs) to submit a request for ‘internal review’, i.e. ask an EU institution or body to consider whether an administrative act it has adopted is contrary to EU environmental law; or whether it should have adopted an act, the lack of action being an administrative omission. An administrative act is understood as any measure of individual scope adopted under environmental law and having legally binding and external effects. NGOs may go to the EU Court of Justice to appeal a negative decision adopted in reply to their review request. In 2017, the Aarhus Convention Compliance Committee (ACCC) found that the EU does not fully comply with its obligations concerning access to justice by members of the public. In its view, the Aarhus Regulation should not only cover acts of individual scope. It should be possible to challenge administrative acts ‘relating to’ the environment, not only those taken ‘under’ environmental law. The review mechanism should not be limited to NGOs, but open to other members of the public. Acts that do not have legally binding and external effects should also be open to review.

European Commission proposal
In the European Green Deal communication, the Commission committed to consider revising the Aarhus Regulation. In October 2020, it adopted a proposal broadening the scope of the review procedure to include non-legislative acts of general scope (excepting those provisions of such acts for which EU law explicitly requires implementing measures at EU or national level), aligning references to environmental law with the convention’s requirements, and extending the time-frame for the administrative review process.

European Parliament position
Taking into account the ACCC advice from early 2021 on the Commission proposal, the report adopted on 23 April 2021 by Parliament’s Committee on the Environment, Public Health and Food Safety (ENVI) would open up the review mechanism to members of the public other than NGOs demonstrating sufficient interest or impairment of a right in accordance with the regulation. The Commission would specify by delegated act the criteria they need to fulfil. During the consideration of a request for review, third parties directly affected by the request (e.g. companies or public authorities) would be able to submit comments to the EU institution or body concerned. The report requires the Commission to adopt guidelines to facilitate the assessment of the compatibility of state aid with relevant provisions of EU law relating to the environment. To limit court proceedings costs, it insists that EU institutions and bodies make reasonable cost reimbursement requests when successful in litigation. It awaits a vote at the May plenary session. The vote would set Parliament’s position for negotiations with Council, which adopted its position in December 2020.

First-reading report: 2020/0289 (COD); Committee responsible: ENVI; Rapporteur: Christian Doleschal (EPP, Germany). For further information see our ‘EU Legislation in progress’ briefing.