

ROADMAP	
Roadmaps aim to inform citizens and stakeholders about the Commission's work in order to allow them to provide feedback and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have.	
TITLE OF THE INITIATIVE	EU implementation of the Aarhus Convention in the area of access to justice in environmental matters
LEAD DG – RESPONSIBLE UNIT	DG ENV.E4 – Compliance and Better Regulation Unit
LIKELY TYPE OF INITIATIVE	Staff Working Document
INDICATIVE PLANNING	Q2 2019
ADDITIONAL INFORMATION	http://ec.europa.eu/environment/aarhus
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A. Context, problem definition and subsidiarity check
Context
<p>The EU is a party to the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters. The Aarhus Regulation 1367/2006 is one of the EU laws that give effect to it.</p> <p>In the case ACCC/C/2008/32, the Aarhus Convention Compliance Committee (the Committee) found that neither the Treaty on the Functioning of the European Union (TFEU), as interpreted by the Court of Justice of the European Union (CJEU), nor the Aarhus Regulation grant sufficient administrative or judicial redress as required by the Convention.</p> <p>At the Meeting of the Parties (MOP) at Budva (Montenegro) in September 2017, no agreement was reached on the findings, and the adoption of a decision was postponed to the next MOP in 2021. In order to avoid the adoption of a MOP decision declaring a violation of the Convention and to allow time for a proper deliberation, the EU declared that it will <i>"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"</i>.</p>
Problem the initiative aims to tackle
<p>In relation to the Aarhus Regulation, the Committee found a breach of the Convention on the following points:</p> <ul style="list-style-type: none"> • the Aarhus review mechanism should be opened up beyond NGOs to members of the public; • review should encompass general acts and not only acts of individual scope (as set out in Article 10 in conjunction with Article 2(1)(g) of the Aarhus Regulation); • every administrative act that is simply "relating" to the environment should be challengeable, not only acts "under" environmental law; • acts that do not have legally binding and external effects should also be open to review. <p>The Committee recommended that the CJEU modifies its case-law on standing before the EU Courts or, in the alternative, that the EU amends the Aarhus Regulation or adopts new legislation.</p> <p>The findings do not recognise that the EU system of remedies is already complete, consisting of the EU courts and the national courts, which are linked as ordinary courts of EU law to the Court of Justice of the EU within the system of preliminary references under Article 267 of the Treaty on the Functioning of the European Union (TFEU).¹ Preliminary references can be used to examine the validity as well as the interpretation of EU acts. Moreover, the Committee suggested a broadening of the administrative review provided for in the Aarhus Regulation, Title IV in order to compensate a lack of proper access to justice.²</p>

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E267:EN:HTML>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:264:0013:0019:EN:PDF>

However, this would have as consequence that the legality control of environmental measures, which is in many cases exercised indirectly via references from national courts, would in practice become a direct one, with potentially significant consequences for the judicial system of the EU.

In absence of action, the fundamental legal conflict will persist. If not resolved prior to the next MOP in 2021, the EU would remain to be challenged on the question of whether it complies with international rules. The European Parliament has previously expressed preference for amending the Aarhus Regulation³ and on-going discussions in the Council suggest a similar direction.

Basis for EU intervention (legal basis and subsidiarity check)

The EU is a Party to the Convention and must adhere to its obligations. The initiative concerns the application of the provisions of the Aarhus Convention concerning administrative or judicial review to certain categories of EU acts. Subsidiarity plays an important role in so far as the EU's legal order builds on the understanding that Member States' national courts are linked to the Court of Justice of the EU within the system of the preliminary references as ordinary courts of EU law.

B. What does the initiative aim to achieve and how

The objective of the initiative is to enable the EU to fulfil its above-mentioned commitment made at the Budva MOP of the Aarhus Convention to continue to explore ways and means of compliance.

Given the complex nature of the issues at stake, it is important to examine how the Convention is currently applied in the EU with regard to legal challenges to EU acts. This assessment should build on an accurate understanding of how access to justice works, both via Member States' courts (through the preliminary reference mechanism) and via direct challenges at EU level. Furthermore, the assessment should include the legal, institutional, administrative aspects, including consequences and costs on EU institutions and the EU courts, as well as social, economic and environmental implications of possible ways forward. Based on this knowledge, different alternatives will be defined and analysed and possible consequences outlined.

The problem described above is limited in scope, namely compliance with an international agreement on a procedural matter (the administrative or judicial review of certain categories of EU acts). Hence, the assessment will rest upon a mapping of all available administrative and judicial means of redress against EU acts (initiated in national courts or initiated at EU level) and of the categories of natural and legal persons having access to them. This exercise is meant to identify possible gaps and, where these are identified, to examine comparatively the possible options for addressing them in the light of these options' legal and institutional impacts. The examination – meant to enable the Commission to decide on how best to move forward – should include forecasts of the number, areas and frequencies of requests for review and actions brought to the EU institutions and to the General Court. It will also assess, in a proportionate manner, the economic, social and environmental impacts of the options. More specifically:

- economic impacts are related to the expected number, coverage and frequency of review requests/actions reaching the European court level and the costs arising from this (e.g. case-handling costs).
- social impacts are related to the extent to which individuals and NGOs are more likely to be effective actors in EU decision-making processes. For example, enlarging the scope of the Aarhus Regulation would give private entities more possibilities to ask for review of EU acts in the environmental area and a broader choice of courts to address.
- environmental impacts are related to the extent to which more reviews and actions are likely to lead to improved environmental decision-making, for example successfully challenged acts, decisions and omissions being replaced by acts and decisions which deliver improved environmental protection.

C. Better regulation

Consultation of citizens and stakeholders

A consultation strategy will be prepared, including

- 1) Targeted consultations with relevant public authorities and experts in the Member States - the Commission follows up on the Communication on Access to Justice in environmental matters of 28 April 2017⁴ also by way of working with the Member States through existing expert groups (on access to justice and the newly established Environmental Compliance and Governance Forum)
- 2) Public consultation – all stakeholders will be invited to contribute to the public consultation, open to all

³ European Parliament resolution of 15 November 2017 on an Action Plan for nature, people and economy (2017/2819(RSP)) <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0441&format=XML&language=EN>

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2017:275:TOC>

stakeholders, to be launched in second term of 2018 for 12 weeks (available in EN) A synopsis report will summarise the input received and explain how the input has been taken into account.

Evidence base and data collection

With regard to the Aarhus Regulation, the Commission has data on requests for internal review and subsequent court cases, based on the current criteria for submitting requests.

An external study will be launched in order to gain an overview of the different categories of EU acts of relevance and of the administrative and judicial means of redress via national courts and via direct application to the General Court and the categories of natural and legal persons which have access to them. The study will garner facts and figures allowing an assessment of the possible shortcomings and a forecast of the possible options and of the impacts which can be expected under each of them. Specific data collection from EU institutions and bodies as well as Member States relating to the economic, social and environment impacts as well as the impacts on administrative burden will be needed. The study, on the basis of the options it will examine, will enable the Commission to revert to the issue and decide on how best to go forward.