

JOINT STATEMENT

Call for an Aarhus Regulation amendment that delivers the European Green Deal

A fundamental tenet of the European project is that public authorities must respect the law and answer to a judge where they fail to do so. In times where these principles are under attack in numerous countries both within the EU and beyond, it is crucial that the institutions of the EU remain strong defenders of these values. We therefore welcome the [Commission's proposal](#) to amend the [Aarhus Regulation to create stronger rights for representatives of the public to challenge the actions and omissions of the EU institutions](#). However, the proposal falls short of minimum standards of access to justice required by international law. To ensure that the EU institutions, like other public authorities, can be held accountable where they fail to comply with EU law - the proposal needs to be significantly improved.

The internal review mechanism set out in the Aarhus Regulation allows environmental NGOs to ask EU bodies and institutions to review their own non-legislative decisions, with a right to appeal to the EU courts. However, the mechanism does not work: since its adoption, the vast majority of the almost 50 NGO requests for internal review brought to the Commission [were rejected as inadmissible](#) and therefore never assessed by the EU courts. For instance, the following Commission decisions are excluded from internal review:

- Decision to approve active substances that can be used in pesticides, such as glyphosate, which has been labelled as "[probably carcinogenic](#)";
- Decision to approve the list of new fossil fuel energy infrastructure projects (the so-called [PCI list](#) – see refusal by the Commission to review [here](#));
- State aid decisions that [fuel climate change](#);
- Decisions regulating [real time emissions tests](#) for motor vehicles.

The Commission proposal is phrased in such a way that it is unclear whether the amendment would remedy or maintain this situation. This is unacceptable. Where the Commission and other EU bodies do not respect the laws that the European Parliament and the Council adopt, it must be unequivocally clear that the public can hold them to account.

Therefore, contrary to its stated intention, the proposal also fails to ensure that the EU complies with its international law obligations under the Aarhus Convention. The United Nations body responsible for compliance with the Aarhus Convention has [found the EU to be in violation of the access to justice provisions in the Convention](#). As Commission President von der Leyen recently made clear in another context, international treaties ratified by the EU cannot be "*unilaterally changed, disregarded or dis-applied. This is a matter of law, trust and good faith.*" Continuous disregard of the EU's international obligations would send a disastrous signal. It would also fundamentally undermine the Union's credibility as a climate leader and champion of the Paris Agreement.

Delivery of the European Green Deal depends on the implementation and enforcement of EU environmental law by Member States and EU institutions alike. As the [European Parliament has previously emphasized](#), "*implementation of EU environmental legislation could save the EU economy EUR 50 billion each year in, above all, health costs and direct costs to the*

environment.” The Commission has furthermore proposed that the Union should commit to become the world’s first climate neutral continent and unlock the competitive advantages of doing so. If done right, the amendment of the Aarhus Regulation would save some of these costs and realize the true potential of EU environmental legislation. It could also play a decisive role in ensuring that all EU acts contribute to emissions targets, as required in the EU Climate Law proposal.

For these reasons, the undersigned organizations call on the Council and the European Parliament to agree upon amendments to the proposal which:

1. Make acts that entail “implementing measures” and all acts producing legal effects subject to internal review (Art 2.1g).

The proposal’s definition of what constitutes an “administrative act” contains unjustified and unclear exclusions which could insulate many, if not most, acts of the EU bodies which violate environmental law from review. This would undermine the benefit of the amendment. At the very least, all acts that produce legal effects that contravene EU environmental law should be susceptible to internal review.

2. Make State aid decisions subject to internal review (Art 2.2). The CJEU has explicitly confirmed that the Commission needs to ensure that its State aid decisions only authorise projects that comply with EU environmental law. NGOs must therefore be able to request an internal review if there is evidence that the Commission may have approved state aid that does not meet that requirement.

3. Introduce cost protection and effective court review (Art 12). The proposal does not give NGOs cost protection when they lose in front of the Court, nor does it ensure that the Court will look at all of the substantive and procedural claims that an NGO may bring forward. Both of these issues are barriers to obtaining effective court remedies that need to be addressed in this amendment process.

4. Make it clear in the Recitals that the Aarhus Regulation has been adopted to implement the Aarhus Convention in so far as the EU institutions are concerned. A crystal clear statement to this effect in the Recital will mean that the European Courts will interpret the Regulation so as to ensure compliance with international law and resolve any residual uncertainty about the meaning of the Regulation in a way that ensures EU compliance with international law.

Signatories (see also next page)

EU level





France & Germany:



Spain & Portugal:



Slovenia:



Hungary & Sweden:



Ireland:

