

## 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.

<b>TITLE OF THE INITIATIVE</b>	Access to justice in environmental matters
<b>LEAD DG – RESPONSIBLE UNIT</b>	DG ENV, E4 - Compliance & Better Regulation
<b>LIKELY TYPE OF INITIATIVE</b>	Legislative initiative
<b>INDICATIVE PLANNING</b>	Q3 2020
<b>ADDITIONAL INFORMATION</b>	<a href="http://ec.europa.eu/environment/aarhus">http://ec.europa.eu/environment/aarhus</a>

This Roadmap is provided for information purposes only and its content might change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Roadmap, including its timing, are subject to change.

### A. Context, Problem definition and Subsidiarity Check

#### **Context**

In the [European Green Deal Communication](#), the Commission committed to ‘consider revising 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 with effects on the environment’ and to ‘take action to improve their access to justice before national courts in all Member States.’<sup>1</sup>

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 Convention). The [Aarhus Regulation](#) 1367/2006 contributes to the implementation of the obligations arising under the Convention in EU institutions and bodies.

The Convention body competent to examine the compliance of the parties found (in case ACCC/C/2008/32) that the EU does not fully comply with the requirements of the Convention on access to justice. The Meeting of the Parties to the Convention will discuss these [findings](#) in 2021 in order to decide whether to endorse them.<sup>2</sup>

The Council<sup>3</sup> requested the Commission to submit by 30 September 2020, a proposal for amending the Aarhus Regulation, or to inform the Council on other measures. The European Parliament<sup>4</sup> called on the Commission to ensure EU compliance with the Convention and welcomed a revision of the Aarhus Regulation. The European Economic and Social Committee called on the Commission to work on improving access to justice for civil society before the EU courts.<sup>5</sup>

#### **Problem the initiative aims to tackle**

Following the Commission [Report on EU implementation of the Aarhus Convention \(October 2019\)](#),<sup>6</sup> and after assessing how to ensure compliance with the Aarhus Convention in a way that is compatible with EU primary law, in particular the new provisions under the Treaty on the Functioning of the EU (TFEU), introduced by the Lisbon Treaty on Article 263(4), two possible modifications of the Aarhus Regulation have been identified:

<sup>1</sup> COM(2019)640.

<sup>2</sup> See previous Roadmap on access to justice:  
[https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2432060\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-2432060_en)

<sup>3</sup> Council Decision (EU) 2018/881.

<sup>4</sup> European Parliament resolution of 15 January 2020 on the European Green Deal (2019/2956(RSP)).

<sup>5</sup> [A more constructive role for civil society in implementing environmental law](#) (Exploratory opinion at the request of the European Commission, 30/10/2019).

<sup>6</sup> See in particular Section 1.3 and Sections 4 and 5 of the [Report](#).

- The Aarhus Regulation currently covers only administrative acts of individual scope (as opposed to acts of general scope).

Based on experience with administrative and judicial review at EU level, this has been the main limitation for environmental NGOs seeking internal review of administrative acts at EU level.

- The Regulation covers acts ‘under’ environmental law.

The formulation, ‘*which contravene provisions of (...) law relating to the environment*’, provided under Article 9(3) of the Aarhus Convention, covers review of acts that ‘*contravene*’ law ‘*relating to the environment*’. Thus, it will be relevant to clarify that the reviewable act does not itself have to have an environmental purpose. In line with the Aarhus Convention, an act may be subject to review under the Aarhus Regulation if it contravenes the provisions relating to the environment that apply to it.

Based on experience with the current internal procedures in the Commission, the existing deadlines are too short for the review procedure under the Aarhus Regulation.

Access to justice in the field of the environment remains also an issue of concern at national level in many Member States. In particular, there are problems with standing required under national law in order to seek a validity reference from a national court to the Court of Justice of the EU under Article 267 TFEU.

#### **Basis for EU intervention (legal basis and subsidiarity check)**

The legal basis for action is Article 192(1) TFEU. The action at EU level is necessary since the EU is a Party to the Convention and, under Article 216 TFEU, agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. The initiative concerns the application of the provisions of the Convention concerning administrative or judicial review to certain categories of EU acts.

Subsidiarity plays an important role insofar 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 preliminary references on validity and interpretation as ordinary courts of EU law under Article 267 TFEU.

#### **B. What does the initiative aim to achieve and how**

The present initiative aims to remedy the identified shortcomings regarding access to justice in environmental matters in the EU by measures aimed both at the EU and at the national levels. As regards access to justice and the interplay between the EU and the national level, the present initiative takes into account in particular that the EU is an integrated legal and judicial order where those EU non-legislative acts that do not require implementing measures at national level can be challenged only at EU level, but those that require national implementing measures can be challenged in national courts of the Member States. The initiative would consist of the following elements that will be presented as a package:

- A targeted revision of the Aarhus Regulation with amendments to:
  - broaden the scope of the review mechanism to include non-legislative regulatory acts, reflecting also the changes to the TFEU brought by the Lisbon Treaty (see Article 263(4) TFEU);<sup>7</sup>
  - specify that the administrative acts and omissions covered by the internal review mechanism are those that contravene provisions of environmental law in line with the Aarhus Convention;<sup>8</sup>
  - improve the quality of decision-making and the functioning of the review, in particular by allowing more time for the procedural steps for NGOs and the European Union Institutions

<sup>7</sup>Based on case-law of the Court of Justice of the European Union, see in particular Joined Cases C-622/16P to C-624/16P, *Montessori*, ECLI:EU:C:2018:873,

<sup>8</sup>Based on case-law of the Court of Justice of the European Union, see in particular Case T-33/16, paragraphs 44 to 46, ECLI:EU:T:2018:135.

handling the reviews.

- A new Commission Communication on access to justice in environmental matters:

Access to justice in environmental matters in the Member States' national courts, including against national implementing measures of the relevant EU non-legislative acts of general scope, is an essential requirement in order to ensure access to justice in environmental matters. The Communication will outline a number of initiatives the Commission will pursue to improve the current situation.

## C. Better regulation

### Consultation of citizens and stakeholders

The EU implementation of the Convention in the area of access to justice in environmental matters was subject to the following consultations:

- The initial roadmap on the topic of EU implementation of the Convention in the area of access to justice in environmental matters was published for feedback between 8 May 2018 and 5 June 2018; results are available [online](#);
- a 12-week public consultation, between 20 December 2018 and 14 March 2019, to support the Study. [Results](#) are available online;
- two stakeholder focus group meetings on 22 January 2019, with industry and NGO representatives. Minutes available under Annex 6 of the Study;
- three meetings with the Commission's Expert Group on Aarhus implementation (15 October 2018, 11 March 2019, 12 April 2019);
- two Stakeholder meetings under the Environmental Compliance and Governance Forum (30 November 2018 and 29 May 2019) with NGOs, industry and Member States;
- *ad hoc* meeting between Commission and national judges concerning Article 267 TFEU in relation to access to justice in environmental matters (29 January 2019).

Therefore, apart from publication of this Roadmap, further consultation is not deemed necessary.

### Evidence base and data collection

- [Study](#) on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters, Final report, September 2019.
- Commission Staff Working Document: [Report](#) on European Union implementation of the Aarhus Convention in the area of access to justice in environmental matters, SWD(2019) 378 final.