

The Austrian Federal Economic Chamber, Wiedner Hauptstraße 63, 1045 Vienna, Austria, is registered with the number 10405322962-08 in the Transparency Register of the European Parliament and the European Commission.



Views on the

Legislative proposal to amend the Aarhus Regulation COM(2020) 642 final

December 9, 2020

The Austrian Federal Economic Chamber is the legal representative of the entire Austrian business community and represents all Austrian companies - some 517,000 businesses drawn from the areas of Crafts and Trade, Industry, Commerce, Banking and Insurance, Information and Consultancy, Tourism and Leisure, Transportation and Communication. 99,6% of our members are SME with less than ten employees.

I) Main issues

The proposal of the European Commission to amend the existing EU Aarhus Regulation (1367/EC/2006) aims at extending the rights to seek administrative review of administrative acts of EU institutions (delegated acts, implementing acts and decisions) for environmental NGOs. Two main amendments to the existing Aarhus Regulation were put forward:

- **Extension to "general acts":** While currently a review procedure can only be requested for acts of "individual scope" (this means for acts directly addressed to a legal person), in the future environmental NGOs could challenge administrative acts of "general interest".
- **Extension beyond environmental law:** While currently only administrative acts adopted under environmental law can be challenged, now any administrative act, regardless of its political objective or its legal basis, may be challenged by environmental NGOs. It will be sufficient if the respective acts are likely to contravene "environmental law" of the EU in a very broad sense, on the basis of general EU environmental objectives. This includes all EU rules that contribute to the pursuit of the objectives of EU environmental policy, such as "*preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional and worldwide environmental problems*". Such an extension will likely lead to legal uncertainty the rights of appeal very far-reaching and also unclear.

II) Main impacts:

Such an extension of the law is likely to have far-reaching consequences: important EU decisions in various policy areas could be delayed or even blocked. This may affect areas such as **transport or energy policy, product registrations for various industrial branches, or research projects, the social sector** (e.g. measures to combat energy poverty), the **health sector or agriculture**. Moreover, general authorizations of products, articles, and substances may be affected as well. Until now, only decisions which individually concerned certain companies can be challenged. Requests for review were inadmissible if decisions were addressed to entire sectors. The proposed amendment would lead to a loss of legal certainty regarding decisions on authorization, which are often the basis for a production process and thus the "basis of existence" of a company. Examples of such decisions would be authorizations for fertilizers, seeds, and plant protection products. Importantly, the authorization of vaccines could be challenged and thereby delayed considerably as well. Moreover, impacts on national law will follow.

Expertise of environmental NGOs in all policy areas: In the explanatory statement to the proposal, the European Commission argues that environmental NGOs "*are often best positioned to effectively represent public interest and civil society concerns in this area with professional, well-founded and substantiated argumentation*". While this may be true for environmental law, this may not be the case for other policies. Therefore, the question remains why giving privileged access to a single group of stakeholders that may lack technical expertise beyond environmental policy.

III) Key aspects for a balanced amendment of the law:

- **It is of utter importance to ensure a clear reference to environmental law.** Only administrative acts adopted under environmental law should be covered. The existing

reference to environmental law as in the current Art 10 of the Aarhus Regulation should be maintained.

- **Include a de-minimis-threshold**

By broadening the scope of the review procedure, litigation may increase. This is why, it is important to include a de-minimis-threshold. Accordingly, the right of appeal should be limited to "*substantial*" violations of environmental law.

- **Ensure fair proceedings**

In order to protect their interests and rights, it must be ensured that the companies concerned are as well involved as parties in the review procedure.

- **Fast proceedings are important for the European economy**

Delaying important decisions results in major disadvantages for the European economy. This is why, the existing deadlines for the internal review procedure should not be extended.

Questions to

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