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IMPROVING OPENNESS AND ACCOUNTABILITY IN THE FIELD OF ENVIRONMENTAL PROTECTION IN THE EU: THE AMENDMENT OF THE AARHUS REGULATION

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ABSTRACT
The recently proposed amendment of the so-called Aarhus Regulation aims to widen the possibility of access to justice in environmental matters. At the same time it further develops the EU-level implementation of the Aarhus Convention also reflecting to the concerns formulated by the UNECE Aarhus Compliance Committee. The current paper aims to introduce the factors that have led to the elaboration of this Proposal, describe its main regulatory innovations of and evaluate its potential consequences. Through the combination of the descriptive-analytical and the case-based approach, the findings of the current research can contribute to the better understanding of the role of public participation in environmental matters and to a more efficient implementation of the most basic elements of environmental protection by means of a broader access to justice.

KEYWORDS
Access to justice, environmental protection, public participation, Aarhus Regulation, European Green Deal

Introduction

"*The involvement and commitment of the public and of all stakeholders is crucial to the success of the European Green Deal. Recent political events show that game-changing policies only work if citizens are fully involved in designing them. People are concerned about jobs, heating their homes and making ends meet, and EU institutions should engage with them if the Green Deal is to succeed and deliver lasting change. Citizens are and should remain a driving force of the transition.*"
The goals[2] defined in the European Green Deal[3] are enshrined in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental

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[2] The wording of Principle 10 of the Rio Declaration and Article 12 of the Paris Agreement prove the same approach. "*Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided*."
UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT. *Rio Declaration on Environment and Development*, 1992. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

"*Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.*" Paris Agreement adopted at the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, 2015. Available at: https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf

Matters done at Aarhus, Denmark, on 25 June 1998 (hereinafter: Aarhus Convention or Convention)[4] at a normative level. The European Union concluded the Aarhus Convention by its decision of 17 February 2005[5] and is a Party to the Aarhus Convention since May 2005.
"*[B]y becoming a party to the Aarhus Convention, the European Union undertook to ensure, within the scope of European Union law a general principle of access to environmental information*"[6], including in EU law at the same time the right to participate in environmental decision-making and the right to review procedures to challenge public decisions alleged to violate environmental law. In latter context, significant difficulties have arisen, especially with regard the role of non-governmental organizations: "*Across Europe, environmental non-governmental organizations (NGOs) play a crucial advocacy role for the environment. This implies that, under certain conditions, they should have the right to seek the review of decisions taken by public authorities on the grounds that these contravene environmental laws.*"[7]
In October 2020, the European Commission presented a legislative proposal on the amendment of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (hereinafter: Proposal) as part of a wider effort to improve access to justice in environmental matters. 23rd July 2021, EU ambassadors approved a provisional political agreement reached with the European Parliament on 12 July.
The current paper aims to introduce the factors that have led to the elaboration of this Proposal, describe the main regulatory innovations of the Proposal and evaluate its potential consequences on the efficient enforcement of claims relating to sustainability and environmental protection.

Background and methodology
The question of public participation in democratic processes is a thoroughly examined topic in the relevant literature.[8] In the field of environmental matters, the provisions of Aarhus

[3] EUROPEAN COMMISSION. *Communication from the Commission on the European Green Deal*, COM(2019) 640 final, Brussels, 11.12.2019. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=HU
[4] UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE). *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* done at Aarhus, Denmark, on 25 June 1998. Available at: https://unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf
[5] Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters. OJ L 124, 17.5.2005.
[6] Case C-204/09, *Flachglas Torgau GmbH v. Bundesrepublik Deutschland*, judgment of 14 February 2012. [ECLI:EU:C:2012:71] para 30.
[7] EUROPEAN COMMISSION. *Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.* COM(2020) 642 final, Brussels, 14.10.2020. Available at: https://ec.europa.eu/environment/aarhus/pdf/legislative_proposal_amending_aarhus_regulation.pdf
[8] FRAENKEL-HAEBERLE, Cristina, KROPP, Sabine, PALERMO, Francesco, SOMMERMANN, Karl-Peter. *Citizen Participation in Multi-level Democracies*. Leiden-Boston: Brill Nijhoff, 2015. ISBN 9789004287938. OECD. *Evaluating Public Participation in Policy Making*. Paris, 2005. ISBN 9789264008946. QUICK, Kathryn, BRYSON, John. Theories of public participation in governance. In: TORFING, Jacob, ANSELL, Christopher (eds.). *Handbook in Theories of Governance*. Cheltenham: Edward Elgar Press, 2016. ISBN 9781

Convention also stand in center of attention[9], with special regard to administrative cases and access to justice rights.[10] The current paper aims contribute to this scientific discourse by providing an overall assessment of a new legislative proposal, including its background, detailed description and potential effects.

Such a comprehensive and systematic analysis can give useful insights into the implementation and enforcement of rights related to access to justice in environmental matters and can contribute to the more efficient application of the regulatory framework. A special focus is laid on the presentation of the relevant case-law of the European Court of Justice (hereinafter: CJEU) and of the statements, contributions of stakeholders. The analysis is completed by the reference to the findings of the relevant secondary literature. This way, the paper also offers a synthesis of the requirements elaborated by the theory and jurisprudence. Through the combination of the descriptive-analytical and the case-based approach, the findings of the current research can contribute to the better understanding of the role of public participation in environmental matters and to a more efficient implementation of the most basic elements of environmental protection by means of a broader access to justice.

The implementation of the Aarhus Convention in EU law

In line with the objectives of the Convention, the EU "*has already adopted a comprehensive set of legislation which is evolving and contributes to the achievement of the objective of the Convention (...)*".[11]

In line with Article 216 Paragraph (2) of the Treaty on the Functioning of the European Union (hereinafter: TFEU) "*[a]greements concluded by the Union are binding upon the institutions of the Union and on its Member States.*" In order to implement the rights and obligations stemming from the Convention, the EU law contains a differentiated set of measures in accordance with the three pillars of the Convention.

The first pillar of the Aarhus Convention is access to information: the obligations stemming from the first pillar have been transposed into the EU legal order by Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

The second pillar of the Convention is the public participation in decision-making, more precisely at three fields: a.) participation by the public that may be affected by or is otherwise interested in decision-making on a specific activity; b.) the participation of the public in the

782548492. EDWARDS, Vickie L. A theory of participation for 21st century governance. *International Journal of Organization Theory & Behavior*, 2013, Vol. 16 No. 1, pp. 1-28. ISSN 10934537.

[9] [9] KINGSTON, Suzanne (ed.). *European Perspectives on Environmental Law and Governance,* Abingdon: Routledge, 2013. ISBN 9781138809680; HOLDER, Jane, LEE, Maria. *Environmental Protection, Law and Policy: Text and Materials*. Cambridge: Cambridge University Press, 2007, 85-134. ISBN 9780521690263; LEE, Maria. *EU Environmental Law, Governance and Decision-Making*. Oxford-Portland: Hart Publishing, 2014, 182-202. ISBN 9781849467490; DE SADELEER, Nicolas, ROLLER, Gerhard, DROSS, Miriam, BÉLIER, Sandrine. *Access to Justice in Environmental Matters and the Role of NGOs: Empirical Findings and Legal Appraisal.* Zutphen: Europa Law Publishing, 2005. ISBN 9076871280; BÁNDI, Gyula. (ed.). *Environmental Democracy and Law.* Zutphen: Europa Law Publishing, 2014. ISBN 9089521496.

[10] MENDES, Joana. *Participation in EU Rule-making: A Rights-Based Approach*. Oxford: Oxford University Press, 2011. ISBN 9780199599769; HARLOW, Carol, LEINO, Päivi, DELLA CANANEA, Giacinto. *Research Handbook on EU Administrative Law*. Cheltenham: Edward Elgar Publishing, 2017. 551-557. ISBN 9781784710675; HARDING, Andrew. *Access to Environmental Justice: A Comparative Study*. Leiden – Boston: Martinus Nijhoff Publishers, 2007. ISBN 9789004157835; HEDEMANN-ROBINSON, Martin. EU Implementation of the Aarhus Convention's Third Pillar: Back to the Future over Access to Environmental Justice? – Part 1. *European Energy and Environmental Law Review.* Volume 23, Issue 3 (2014) pp. 102 – 114. ISSN 1879-3886.

[11] Council Decision 2005/370/EC Recital (7)

development of plans, programmes and policies relating to the environment; c.) participation of the public in the preparation of laws, rules and legally binding norms. The implementation of the second pillar into EU law has been carried out through Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment. This cannot be separated from the Environmental Impact Assessment (EIA) Directive, the Strategic Environmental Assessment Directive (SEAD) and the Water Framework Directive (WFD) either. However, the EU has failed to take similar measures in order to ensure the effective implementation of the third pillar of the Convention at national level.

The third pillar of the Convention is the access to justice pillar. This should safeguard the rights stemming from the two above mentioned pillars and establishes a third autonomous right. It is the Aarhus Regulation that contains implementing norms in relation to this pillar in EU legal order. However, as even the title suggests, the scope of this regulation is limited: it only applies to "*Community institutions or bodies*" meaning "*any public institution, body, office or agency established by, or on the basis of, the Treaty except when acting in a judicial or legislative capacity*" [Article 2 Paragraph 1 Point c)].

Furthermore, the scope of acts and omissions covered by the Regulation is also limited. According to the text currently in force, an administrative act that can be challenged on the basis of the Aarhus Regulation means any measure of individual scope under environmental law, taken by a Community (EU) institution or body[12], and having legally binding and external effects. Any non-governmental organisation which meets the criteria set out in Article 11 of the Aarhus Regulation is entitled to make a request for internal review to the Community (EU) institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act. The non-governmental organisation which made the request for internal review pursuant to Article 10 may institute proceedings before the CJEU in accordance with the relevant provisions of the Treaty. Article 263 Paragraph (4) of the TFEU, however, makes litigation only possible against an act addressed to the natural or legal person instituting the proceedings or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Nevertheless, in case of public participation it is exactly the individual concern that can be a problematic point. Even if, with regard to a certain environmental measure (e.g. measures concerning Natura 2000 territories), it is possible to determine more or less precisely the number, or even the identity, of the persons to whom a measure applies, according to the case-law of the CJEU, this does not imply by no means that that measure must be regarded as being of individual concern.[13]

The situation is more complex in case of NGOs because in their case not even a direct concern can be identified: the basis for this kind of litigation is a public or quasi-public interest. Therefore, the indirect connection of the litigants with the subject of the claim usually results

[12] The Proposal also carries out a necessary update in the terminology of the Regulation in its Article 1 Paragraphs (2) and (3). It states that throughout the text of the Regulation, references to provisions of the Treaty establishing the European Community (EC Treaty) are replaced by references to the corresponding provisions of the Treaty on the Functioning of the European Union (TFEU) and any necessary grammatical changes are made. Throughout the text of the Regulation, including in the title, the word 'Community' is replaced by the word 'Union' and any necessary grammatical changes are made.

[13] Case C-362/06 P, *Markku Sahlstedt and Others v. Commission of the European Communities*, judgment of 23 April 2009 [ECLI:EU:C:2009:243], para 31.

in the entire denial of process capability. Based on the case-law of the CJEU a striving for *actio popularis* in environmental matters cannot be perceived either.[14]

This is the point, where the difficulties of ensuring an efficient access to justice for the public in environmental matters at EU level have become evident in recent years.

The most explicit summary for these difficulties is offered by the UNECE Aarhus Compliance Committee (hereinafter: Compliance Committee), which concluded in the case ACCC/C/2008/32 that EU law does not comply with the requirement of access to justice of the public under the Convention; neither the relevant legal provisions, nor the case law of the CJEU ensure the implementation of or compliance with the relevant provisions of the Convention[15].

More precisely, it concluded that the Aarhus Regulation fails to implement Article 9 Paragraphs 3 and 4 of the Convention[16] on the following grounds: a) it covers only administrative acts, or omissions to adopt such acts, that have legally binding and external effects; b.) it covers only laws relating to the environment "adopted" under environmental law under the Convention instead of any that act may contravene environmental law; c.) it covers only acts of individual scope; d.) it limits as regards access to justice public participation to NGOs meeting the criteria of its Article 11.

By contrast, the institutions of the European Union stressed the specific features of EU law. The explanatory memorandum to the Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention[17] contained a statement that "*[t]he findings of the Compliance Committee case (ACCC/C/2008/32) are problematic for the EU because the findings do not recognise the EU's special legal order.*" The adopted version contains a softer formulation as follows: "*The Union should 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.*" At the same time, however, the EU position stressed that the

[14] REESE, Moritz, JENDROŚKA, Jerzy. The Courts as Guardians of the Environment – New Developments in Access to Justice and Environmental Litigation. In: ISTED, Jonathan. *Environment & Climate Change Law 2019*. London: Global Legal Group, 2019. pp. 5-10. ISBN 9781912509553.

[14] EUROPEAN PARLIAMENT, *Implementing the Aarhus Convention Access to justice in environmental matters.* (Briefing October 2017). Available at: http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608753/EPRS_BRI(2017)608753_EN.pdf

[14] EPINEY, Astrid, PIRKER, Benedikt. The Case Law of the European Court of Justice on Access to Justice in the Aarhus Convention and Its Implications for Switzerland, *Journal for European Environmental & Planning Law*, 2014/4, pp. 348-366. ISSN 16137272.

[15] UNECE. *Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) concerning compliance by the European Union. Adopted by the Compliance Committee on 17 March 2017*, ECE/MP.PP/C.1/2017/7.
Available at: https://unece.org/fileadmin/DAM/env/pp/compliance/CC-57/ece.mp.pp.c.1.2017.7.e.pdf, para 123.

[16] Article 9 Paragraph (3) of the Aarhus Convention states that "*each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.*" Paragraph (4) of the same Article contains that "*[i]n addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible*".

[17] EUROPEAN COMMISSION. *Proposal for a Council Decision on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention regarding compliance case ACCC/C/2008/32*. COM(2017) 366 final, Brussels, 29 June 2017. Available at: https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2017)366&lang=en

Council cannot give instructions or make recommendations to the CJEU concerning its judicial activities.[18]
The current proposal – three years later – shows a change of approach, primarily due to the high commitment of the current Commission to promote sustainability and foster environmental protection as enshrined in the European Green Deal – and intends to remedy the shortcomings identified by the Compliance Committee.

The regulatory innovations of the proposed amendment
The major innovation of the Proposal can be summarized as follows: "*[w]hereas currently an administrative review can only be requested for acts of 'individual scope' (acts which are directly addressed to a person or where the person affected can be distinguished individually), in the future NGOs will also be able to request review of administrative acts of 'general scope'. (...) The amendment removes the phrase 'under environmental law' from the definition of administrative act. (...) It provides clarity and legal certainty on the fact that any administrative act that contains provisions which may contravene EU environmental law may be challenged, irrespective of the act's legal basis or policy objective, as it is required under Article 9(3) of the Convention."*
In this sense, according to the Proposal, 'administrative act' will cover any non-legislative act adopted by a Union institution or body, which has legally binding and external effects and contains provisions that may, because of their effects, contravene environmental law within the meaning of point (f) of Article 2(1), excepting those provisions of this act for which Union law explicitly requires implementing measures at Union or national level.
This solution reacts to two problems identified by the Compliance Committee, but raises also new questions.
One problematic aspect stems from the exception of those provisions of the act concerned for which Union law explicitly requires implementing measures at Union or national level.
As far as EU-level implementing measures are concerned, the Commission justifies the exception by arguing that those provisions of the regulatory acts that entail EU-level implementing measures would not be directly challengeable before the CJEU. In case of national level implementing measures, the exception might be lead back to the case-law of the CJEU, which recalled concerning the relevance of the Aarhus Convention in the EU legal order, that judicial and administrative procedures concerning access to justice in environmental law currently fall 'primarily' within the scope of national law and reiterated that its provisions "*do not contain any clear and precise obligation capable of directly regulating the legal position of individuals*"[19] thus excluding direct applicability.[20] This interpretation is also in line with the reservation made by the EU at the time joining the Convention (Council Decision 2005/370/EC), namely, on the Member States having the primary obligation to fulfil the obligations arising from the Convention until the Community (EU) decides to adopt provisions of Community (EU) law covering the implementation of these obligations.
Some authors argue that the exclusion clause "*does not appear to be limited to provisions for which the decision under review explicitly requires implementing measures*" and therefore, "*there is a substantial risk that the exclusion clause would eventually be interpreted broad-*

[18] Council Decision (EU) 2017/1346 of 17 July 2017 on the position to be adopted, on behalf of the European Union, at the sixth session of the Meeting of the Parties to the Aarhus Convention as regards compliance case ACCC/C/2008/32, OJ L 186. 19.7.2017.
[19] Case C-240/09, *Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky,* judgment 8 March 2011 [ECLI:EU:C:2011:125], para 45.
[20] Case T-600/15, *Pesticide Action Network Europe (PAN Europe) and Others v. European Commission,* Order of 28 September 2016 [ECLI:EU:T:2016:601], paras 53-61.

ly".[21] Not denying the existence of such a risk, it shall be recalled that a very important principle of interpretation of the Convention[22] is the presumption for public participation, which is strongly related to the aims of the Convention, namely to the efficient protection of the environment.[23] Consequently, the provisions restricting public participation shall be interpreted narrowly, while other provisions ensuring the right of public involvement cannot be interpreted in a restrictive way.

As regards national laws, the CJEU concluded: "*although the national legislature is entitled, inter alia, to confine the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 11 of Directive 2011/92 to individual public-law rights, that is to say, individual rights which, under national law, can be categorised as individual public-law rights (see, to that effect, judgment in Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, C-115/09, EU:C:2011:289, paragraphs 36 and 45), the provisions of that article relating to the rights to bring actions of members of the public concerned by the decisions, acts or omissions which fall within that directive's scope cannot be interpreted restrictively.*"[24] This general principle might be a point of reference to avoid an excessively broad interpretation of the exception clause and foster the efficient access to justice.

Another concern stems from the fact that in case of administrative acts defined by the Regulation an internal review is possible in line with Article 10 of the Regulation and, by virtue of Article 12 of the Regulation, this may result in proceedings before the CJEU in accordance with the relevant provisions of the Treaty.

A possible consequence of this solution is that it might not allow challenging the initial act adopted by the institution and forming the object of the internal review. If the internal review request has been considered inadmissible, the measure that will be the subject of the judicial proceedings established under Article 12 of the Regulation will be the "written reply" from the institution not the original act. Therefore, it might be questionable whether the internal review procedure provides for adequate and effective remedies in accordance with Article 9 Paragraph (4) of the Aarhus Convention.[25]

As the Compliance Committee examined this question in 2017, it came to the conclusion that it is possible for the CJEU to interpret Article 12 of the Aarhus Regulation in a way that would allow it both to consider failure to comply with Article 10, Paragraphs 2 and 3, and also the substance of an act falling within Article 10, Paragraph 1. On that basis, it did not

[21] PALONIITTY, Tiina, LEINO-SANDBERG, Päivi. Watering down the Aarhus Regulation – time to deliver an 'adequate and effective remedy. *European Law Blog*, 11 March 2021. Available at: https://europeanlawblog.eu/2021/03/11/watering-down-the-aarhus-regulation-time-to-deliver-an-adequate-and-effective-remedy/
Similarly: CLIENTEARTH: *Amending the Aarhus Regulation: an internal review mechanism that complies with international law.*
Available at: https://www.clientearth.org/media/luppotkx/position-paper_clientearth-eeb-je_aarhus-regulation_2021-02-23_final_clean.pdf

[22] VÁRADI, Ágnes. Defining the Role of the Aarhus Convention as Part of National, International and EU Law: Conclusions of a Case-law Analysis. In: SZABÓ, Marcel, GYENEY, Laura, LÁNCOS, Petra Lea (eds.). *Hungarian Yearbook of International Law and European Law (2019),* Den Haag: Eleven International Publishing, 2020. pp. 121-138. ISBN 9789462369795.

[23] Case 470/16, *North East Pylon Pressure Campaign Limited and Maura Sheehy v. An Bord Pleanála and Others,* judgement of 15 March 2018 [ECLI:EU:C:2018:185] para 53.

[24] Case 570/13*, Karoline Gruber v. Unabhängiger Verwaltungssenat für Kärnten and Others,* judgement of 16 April 2015 [ECLI:EU:C:2015:231] para 40.

[25] FRIEL, Anne. *The Aarhus Regulation Amendment: Cause for cautious celebration*, 2020. Available at: https://www.clientearth.org/projects/access-to-justice-for-a-greener-europe/updates/the-aarhus-regulation-amendment-cause-for-cautious-celebration/

find that the Regulation – primarily its Article 12 – would be inconsistent with the requirements of the Convention. However, two years later, in a specific case the CJEU came to a rather narrow interpretation of this system. It stated that that "*in order to state in the manner required the grounds for conducting the review, a party requesting the internal review of an administrative act under environmental law is required to put forward the facts or legal arguments of sufficient substance to give rise to serious doubts as to the assessment made in that act by the EU institution or body*". The proceedings before the CJEU "*cannot be founded on new grounds or on evidence not appearing in the request for review, as otherwise the requirement, in Article 10(1) of Regulation No 1367/2006, relating to the statement of grounds for such a request would be made redundant and the object of the procedure initiated by the request would be altered*".[26] This interpretation, if maintained, could actually reduce the positive effects caused by the extension of the concept of administrative acts.
It follows from the CJEU case-law that Member States are required by EU law to ensure effective judicial protection to natural or legal persons who are unable, by reason of the conditions for admissibility laid down in Article 263 Paragraph (4) TFEU, to challenge directly EU measures by interpreting and applying national procedural rules in a way that enables those persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of an EU act.[27] However, this alternative interpretation does not seem to be applicable to cases where public interest is represented, without direct and individual concern.
Therefore, it cannot be excluded that based on the Proposal and the developments of the CJEU case-law further clarification might be needed in the system of internal and judicial review in order to enhance the efficiency of access to justice in environmental matters. According to CJEU the national rules established must ensure 'wide access to justice' and render effective the provisions on judicial remedies.[28] Applying these principles consistently, a broad interpretation of the review procedures under the Aarhus Regulation would be justified.

Concluding remarks

The topic of public participation in environmental matters, with special regard to the provisions of the Aarhus Convention, is an equally substantial question at the level of legal regulation and political cooperation. In case of parties who have a sufficient interest to challenge a project and those whose rights it impairs, the entitlement to bring actions before the competent courts is sufficiently safeguarded. However, in case of the representation of public interest in broader sense, further steps might be necessary to ensure the same level of protection.
In order to extend the legal basis for the litigation in environmental matters based on the Aarhus Regulation, the Proposal broadens the concept of challengeable administrative acts. It seems to be a compromise to broaden the access to justice rights of NGOs without provoking any modification in the standard case-law of the CJEU. As, however, concerns and unclarified questions remain, it cannot be seen as a definite solution for problems related to the efficiency of public participation and access to justice in environmental matters at EU level. It might provoke the need for further amendments, and until then, the general principles of the Aarhus Convention might play a crucial role in improving openness and accountability in the field of environmental protection in the EU.

[26] Case C-82/17 P, *TestBioTech eV and Others v. European Commission*, judgment of 12 September 2019 [ECLI:EU:C:2019:719], paras 39 and 69.
[27] Case C-263/02, *Commission v. Jégo-Quéré & Cie SA*, judgment of 1 April 2004 [ECLI:EU:C:2004:210], paras 30-35.
[28] C-263/08, *Djurgården-Lilla Värtans Miljöskyddsförening v. Stockholms kommun genom dess marknämnd*, judgment of 15 October 2009 [ECLI:EU:C:2009:631], para 45.