

Illustrative examples of acts entailing implementing measures under the [legislative proposal to amend the Aarhus Regulation](#)

As requested by the Aarhus Convention Compliance Committee, at the meeting on 25 November 2020, the objective of this non-paper is to provide illustrative examples of administrative acts entailing implementing measures under the draft Aarhus Regulation. The examples do not, in any way, pre-empt the assessment of each future internal review request on its merits.

1. How will the proposal improve the current system of review?

- The system currently in place allows NGOs to challenge only individual decisions, for example, marketing authorizations for specific GMO products, addressed to a single company. However, the general, systemic decisions on which the individual decisions are based cannot be challenged. The legislative proposal is significantly broadening these opportunities and will also allow NGOs to challenge general decisions.
- The proposal is also opening up for review decisions under any policy area, be it environment, transport, energy or health. What matters is that the NGO has evidence and reasoned concerns that a decision undermines the achievement of EU environmental policy objectives.

2. Examples of provisions of acts which require implementing measures at national or EU level

The proposal does not provide an exception for the entirety of an act entailing implementing measures. It allows for the administrative review of all provisions of an administrative act, except for those provisions requiring implementing measures. Furthermore, Union law must be explicit on the fact that a particular provision requires implementing measures. This leaves no room for unjustified broadening of the exception.

- **Fishing activities:** the Council adopted a [Regulation](#) on fishing opportunities to ensure Member States keep fishing at sustainable levels.
 - This is a non-legislative act of general scope, falls within the scope of the new definition of ‘administrative act’ and its provisions can therefore be subject of administrative review.
 - Article 6(1) requires Member States to determine the total allowable catch (TAC) for each species included in a list of stocks defined in Annex I.
 - There are two severable provisions from the perspective of review: while the list of stocks defined by Annex I can be challenged at EU level (before the Council), the determination of TACs by each Member State can be challenged at national level depending on the consequences of that determination.
 - There are also provisions of the same [Regulation](#) that entail EU-level implementing measures (see under Annex II.B of the Regulation, points 7.5, 11.4, etc.). In these instances, under the new rules, NGOs will be able to request the review after the implementing measures are adopted by the Commission. At this

point, they can challenge both the Council Regulation and the Commission implementing measures.

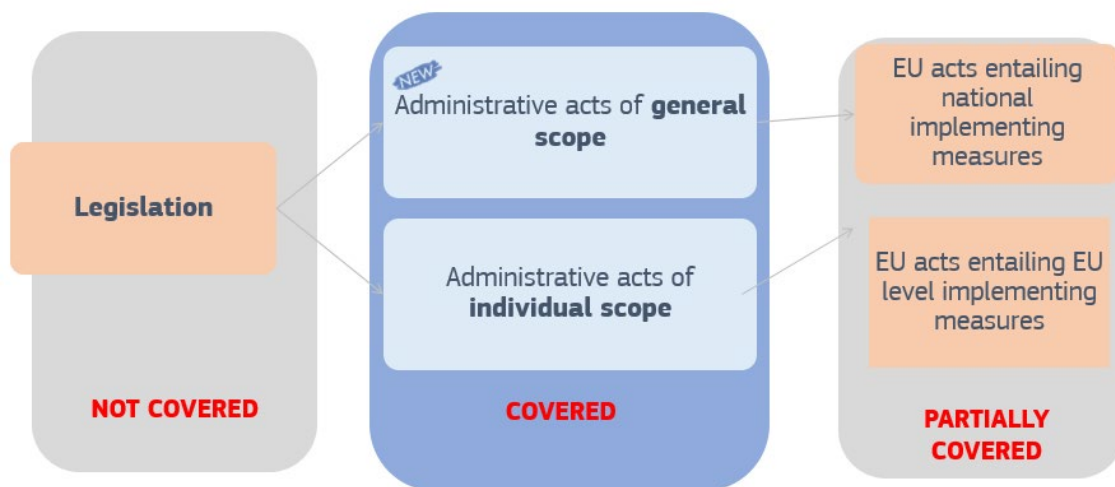
- **Climate:** [2011/278/EU](#): Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council.
 - Article 4(1) referring to national implementing measures is an example of provisions that cannot be challenged under the Aarhus Regulation. However, it can be challenged in a preliminary ruling procedure following up on an application brought before national courts against these implementing measures.

3. Other types of administrative (non-legislative) acts that can be challenged under the new rules

The proposal continues to cover only non-legislative acts. The requirement for these non-legislative acts to have legally binding and external effects also remains the same as before.

In practice, a large number of these acts are Commission decisions or Commission regulations/directives (implementing or delegated acts). As the example above on the Fishing opportunities Regulation adopted by the Council shows, however, other EU institutions and bodies may also adopt non-legislative acts that can be challenged under the draft Regulation.

Illustrative table 1: types of acts covered under the draft Regulation.



Illustrative table 2: examples of the types of acts covered under the draft Regulation.

<p>Directive 2010/75/EU of the European Parliament and the Council on industrial emissions</p> <p>NOT COVERED</p>	<p>NEW Commission delegated Regulation to amend the Waste Regulation (C/2020/7091)</p> <p>Commission decision C(2015)363 recognising a monitoring organisation (Timber)</p> <p>COVERED</p>	<p>Council Regulation on fishing opportunities - Article 6 on total allowable catch (TAC)</p> <p>Council Regulation on fishing opportunities entailing EU level implementing measures (Annex II.B)</p> <p>PARTIALLY COVERED</p>
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