

REPORTING ON THE MONITORING OF EU ADMINISTRATIVE ACTS ELIGIBLE FOR RIR IN 2024



Conclusions
Justice and Environment 2024

CONCLUSIONS

2024 was the second consecutive year in which J&E resumed one of its activities that started in 2011 originally: the so-called monthly RIR-monitoring. Within this action, we monitor the content of all the Official Journals (OJ) of the European Union (EU) in a given year and identify those administrative acts that are eligible for a Request for Internal Review (RIR) according to the Aarhus Regulation.

The OJ of the EU was systematically searched after the end of each month and all documents relating to environment, nature conservation, energy and related topics were included in the monthly monitoring report.

Subsequently, the acts were sorted into three categories:

1. acts for which it is formally clear that they can be subject to a RIR (e.g. Commission Implementing Regulations, Council decisions)
2. acts for which it is unclear whether they can be subject to a RIR, since there is no corresponding decision/practice/jurisprudence yet (e.g. Council Regulations, Commission Notice)
3. authorizations for state aid, which are not yet eligible for a RIR, since the EU has not yet amended the Aarhus Regulation according to the findings and recommendations of the Aarhus Convention Compliance Committee Case ACCC/2015/128

The monitoring results comprised between 50 and 100 documents monthly, with noticeably less relevant documents during the summer and around Christmas. Around 15% of the documents were categorized as "unclear" as to whether they can be formally subject to an RIR. Around a third of the documents were authorizations for state aid which were included in the monitoring report for statistical purposes but are under current EU law not yet subject to a RIR.

The unclear acts included: Communications from the Commission relating to a variety of different topics (e.g. threshold values set under the Marine Strategy Framework), catalogues of species/plants, information requests, Commission Implementing Regulations, statements of revenue, voluntary partnership agreements, decisions of the specialized committee on energy under the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, Council Regulations, Commission Notices, Resolutions of the European Parliament, Communications from the Commission on the Strategic Framework for International Cooperation Engagement etc.

The majority of acts included in the RIR monitoring are very specific to certain environment related issues and are mostly of a technical nature. Especially in the field of chemicals, GMOs and fisheries, the documents are of such a technical nature that their analysis requires detailed technical or even scientific background knowledge. Many documents also concern issues of disease control, with specific measures against outbreaks of animal diseases.

As a conclusion, we find that the application of the Request for Internal Review - while open to a number of administrative acts of EU institutions - is still a limited legal tool that either can be used against a very low number of acts that are of general interest or can be used against a large number of extremely specific legal acts belonging to the field of chemicals, GMOs and fisheries. A much broader application of the legal instrument would be possible if - after the suggested amendment of the applicable legal regulations - state aid decisions would be eligible for RIR, thereby making it possible to challenge those decisions of the Commission that endorse state subsidies for environmentally controversial projects.

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Funded by the European Union.



The Work Plan of J&E has received funding from the European Union through its LIFE NGO Grant funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.