COMMISSION DECISION (EU) 2023/748

of 11 April 2023

laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council as regards requests for the internal review of administrative acts or omissions

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Union institutions and bodies ([1]) and in particular Articles 11(2) and 11a(2) thereof,

Whereas:

(1) Regulation (EC) No 1367/2006 lays down rules to apply the provisions of the Aarhus Convention within Union institutions and bodies.

(2) Title IV of that Regulation sets out provisions on internal review of administrative acts and omissions.

(3) Article 11(1) and 11(1a) of Regulation (EC) No 1367/2006 set out criteria and conditions for the entitlement at Union level of non-governmental organisations and other members of the public to make a request for internal review in accordance with Article 10 thereof, the transparent and consistent application of which requires detailed rules on the evidence to be provided with the requests, the calculation of time limits for reply to requests and cooperation between Union institutions and bodies.

(4) Pursuant to Article 11a paragraph (2) of Regulation (EC) No 1367/2006, for the sake of transparency and effective case handling, the Commission has established an online system with the objective that all requests addressed to the Commission are submitted through this system. This is without prejudice to any future decision by other Union institutions and bodies who may also establish online systems for receipt of requests for internal review in the future.

(5) Regulation (EU) 2018/1725 of the European Parliament and of the Council ([2]) applies to the processing of personal data carried out by the Commission in application of this Decision. It is appropriate to clarify that the Commission is to be considered the data controller within the meaning of Regulation (EU) 2018/1725 in relation to the processing of personal data in the online platform.

(6) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered his formal comments on 17 February 2023.

(7) Regulation (EC) No 1367/2006 is amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council ([3]). Amendments to Article 11(1) of Regulation (EC) No 1367/2006 apply from 29 April 2023. This Decision should therefore apply from the same date.

([1]) OJ L 264, 25.9.2006, p. 13.

([2]) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

([3]) Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 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 (OJ L 356, 8.10.2021, p. 1).

(8) Since this Decision is laying down new provisions to ensure the effective application of Regulation (EC) No 1367/2006 as amended by Regulation (EU) 2021/1767, Commission Decision 2008/50/EC ([4]) should be repealed with effects on the same date.

HAS ADOPTED THIS DECISION:

Article 1

Contents of a request for internal review

1. The request for internal review of an administrative act or omission in accordance with Article 10 of Regulation (EC) No 1367/2006 shall:

(a) specify the administrative act or administrative omission whose review is sought and the provisions of environmental law that are alleged to have been breached;

(b) state the grounds on which the request is made;

(c) provide relevant information and documentation supporting those grounds, putting forward facts or legal arguments of sufficient substance to give rise to serious doubts as to the assessment made by the Union institution or body;

(d) specify the name and contact details of the person empowered to represent the requesting party vis-à-vis third parties for the purpose of the internal review in the case at issue;

(e) provide evidence of the requesting party's entitlement to make the request in accordance with the criteria and conditions set out in Article 11(1) and (1a) of Regulation (EC) No 1367/2006.

2. The request for internal review shall not exceed 50 pages (not including documents to evidence meeting the criteria for eligibility under Article 11 of Regulation (EC) No 1367/2006 and other annexes to support the request), unless due to the complexity of the issues raised in the request an exceedance of that limit is considered as justified by the Commission services.

3. For purpose of point (d) of the first paragraph, where a joint request is made by several non-governmental organisations or other members of the public, a single contact point shall be designated.

Article 2

Criteria for the entitlement of non-governmental organisations to request internal review

1. Any non-governmental organisation that submits a request for internal review of an administrative act or omission in accordance with Article 10 of Regulation (EC) No 1367/2006 shall provide evidence that it meets the criteria set out in Article 11(1) of that Regulation, in form of the documents listed in paragraph 5 to this Article.

2. Where any of those documents cannot be provided for reasons not attributable to the non-governmental organisation, that organisation may provide evidence in form of any other equivalent document.

3. Where it does not clearly appear from the documents that the non-governmental organisation is independent and non-profit making, that organisation shall submit a declaration to that effect, signed by a person empowered to do so within the non-governmental organisation.

4. Where it does not clearly appear from the documents that the non-governmental organisation has the primary stated objective of promoting environmental protection in the context of environmental law, that it has existed for more than two years and is actively pursuing this objective, or that the subject matter in respect of which the request for internal review is made is covered by the objectives and activities of the non-governmental organisation, that organisation shall submit any other document providing evidence that this criterion is met.

([4]) Commission Decision 2008/50/EC of 13 December 2007 laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and of the Council on the Aarhus Convention as regards requests for the internal review of administrative acts (OJ L 13, 16.1.2008, p. 24).

5. List of documents to be provided under paragraph 1:

(a) statute or by-laws of the non-governmental organisation, or any other document fulfilling the same role under national practice, in respect of those EU Member States where national law does not require or provide for a non-governmental organisation to adopt statute or by-laws;

(b) annual activity reports of the non-governmental organisation of the last two years;

(c) in respect of non-governmental organisations established in countries where the fulfilment of such procedures is a prerequisite for a non-governmental organisation to obtain legal personality, copy of the legal registration with the national authorities;

(d) where relevant, information and documentation that the non-governmental organisation has previously been acknowledged by a Union institution or body as being entitled to make a request for internal review of an administrative act or omission in accordance with Article 10 of Regulation (EC) No 1367/2006; and a declaration by the non-governmental organisation that the conditions for eligibility continue to be met.

Article 3

Conditions set out under Article 11(1a), first subparagraph, point b, of Regulation (EC) No 1367/2006

1. Members of the public that are entitled to submit a request for internal review of an administrative act or omission in accordance with Article 10 of Regulation (EC) No 1367/2006, shall provide the list of documents under paragraph (2) in support of fulfilling the criteria and conditions set out in Article 11(1a), first subparagraph, point b, of that Regulation.

2. List of documents to be provided:

(a) a summary description of the sufficient public interest at stake;

(b) a description of the method by which the public support was collected. In case of a campaign to collect signatures online, the details of the platform and the methods to ensure that the results are genuine, shall be provided. Any collection method shall ensure that duplicative or fake entries are excluded, data from members of the public who are not residing or established in the EU are excluded, and a breakdown per Member State is provided. The description shall also explain what evidence was considered to demonstrate the authenticity of the documents and the data submitted;

(c) a summary description of the magnitude of the public support for the request, including, specifically, the number of persons supporting it, with a breakdown by Member State, demonstrating that the request is supported by at least 4 000 members of the public residing or established in at least five Member States, with at least 250 members of the public coming from each of those Member States.

3. The following information shall be provided for each signatory who is a natural person:

(a) proof of signature;

(b) first name and family name;

(c) address and Member State of residence;

(d) confirmation of meeting the minimal age requirement (depending on the requirements of the Member State of residence for the exercise of voting rights at the European Parliamentary elections).

4. The following information shall be provided for each signatory who is an organisation:

(a) proof of signature;

(b) name of the organisation;

(c) address and Member State of establishment;

(d) national registry number;

(e) first name and family name of the representative and their title.

5. The Union institution and body to whom the request has been submitted shall use personal data provided under paragraphs 3 and 4 only to verify whether the requesting parties meet the criteria and conditions set out in Article 11(1a), first subparagraph, point b, of Regulation (EC) No 1367/2006, and shall delete these data one year after the submission of the request, unless meeting the eligibility criteria is disputed, in which case the personal data may be retained until such dispute has been resolved.

Article 4

Representation by a non-governmental organisation or a lawyer

1. Where non-governmental organisations or other members of the public are represented by a non-governmental organisation, Article 2 of this Decision applies.

2. Where non-governmental organisations or other members of the public are represented by a lawyer, the request shall include documents and data proving that the lawyer is authorised to practise before a court of a Member State. Those documents may include a certificate issued by a bar association in a Member State or any other document fulfilling the same role under national practice. The lawyer shall also provide a power-of-attorney evidencing that it is entitled to represent his or her client.

Article 5

Assessment of the entitlement to request internal review

1. The Union institution or body concerned shall verify that the persons who submitted the request and their representatives meet the criteria or conditions set out in Article 11(1) and 11(1a) of Regulation (EC) No 1367/2006 by assessing the information provided in accordance with this Decision.

2. Where, on the basis of the information provided in accordance with this Decision, it is not possible for the Union institution or body concerned to fully assess whether the criteria/and or conditions are met, it shall request additional documentation or information from the requesting party, within a reasonable period to be specified by the Union institution or body concerned, which shall not exceed 30 days. During that period, the time limits laid down in Article 10 of Regulation (EC) No 1367/2006 shall be suspended.

3. Where relevant, the Union institution or body concerned may consult the relevant national authorities in any Union Member State to verify and assess the information provided by the non-governmental organisation or lawyer concerned regarding the eligibility criteria set out in Article 11 of Regulation (EC) No 1367/2006. During this period of consultation, which shall not exceed 30 days, the time limits laid down in Article 10 of Regulation (EC) No 1367/2006 shall be suspended.

Article 6

Administrative cooperation

Union institutions and bodies shall cooperate among themselves to ensure a transparent and consistent application of this Decision.

Article 7

Submission of internal review requests to the Commission

1. Requests for internal review of an administrative act or omission in accordance with Article 10 of Regulation (EC) No 1367/2006 addressed to the Commission shall be submitted only via the online system for receipt of requests for internal review, which is publicly accessible on the website of the Commission.

2. For review requests to be submitted to the Commission under Article 11(1a), first subparagraph, point b, of that Regulation, the signatures shall be collected via an online-system provided by the Commission (EU-Survey), following the guidance and methodology provided by the Commission. This is without prejudice to the possibility for the requesting party to collect handwritten signatures. In that case, the requesting party shall digitalise the information required under Article 3, third and fourth paragraphs of this Decision and shall submit these via the online system for receipt of requests for internal review.

Article 8

Repeal

Decision 2008/50/EC is repealed.

Article 9

Entry into force and application

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 29 April 2023.

Done at Brussels, 11 April 2023.

For the Commission
The President
Ursula VON DER LEYEN