— The applicant further claims that the Commission's impugned decision has infringed secondary EU legislation including Articles 9 and 10 of the Aarhus Regulation (as amended). The applicant claims that the Commission's decision violates the applicant's right of access to justice in environmental matters under the Aarhus Convention and Aarhus Regulation (as amended). The applicant further contends that the Commission's administrative act as defined in the Aarhus Regulation as amended constitutes an infringement of the Treaties.

2. Second plea in law, alleging further, or in the alternative to the first plea, that the Commission has failed to act within the meaning of Article 265 TFEU in relation to the NECPs assessed, adopted and publicised by the Commission including, in particular, the Dutch NECP.

— In failing to act on foot of the applicant's request for internal review submitted in accordance with Article 265 TFEU, the Commission breached its positive obligations under the Treaties, including in particular Article 3 TEU and Article 191 TFEU. This infringement also reflects a flagrant breach of the international and European customary and treaty law, including Articles 3, 6 and 7 of the Aarhus Convention, Articles 9 and 10 of the Aarhus Regulation (as amended), and Decision VII/8f (as amended), adopted on 21 October 2021.

3. Third plea in law, alleging an objection of illegality pursuant to Article 277 TFEU in respect of the Commission's assessment and/or adoption and/or publication of the Dutch NECP, and the Commission's failure to ensure its compliance with the Aarhus Convention.

4. Fourth plea in law, alleging an objection of illegality pursuant to Article 277 TFEU in respect of the Governance Regulation. (1)
— Further/or in the alternative, declare that the Commission has unlawfully failed to act under Article 265 TFEU;

— Declare that, in circumstances wherein the Dutch NECP is non-compliant with the Aarhus Convention, it has been unlawfully assessed and/or adopted and/or published by the Commission, and is therefore in breach of EU and international law and/or is illegal;

— Declare that the Commission failed in its positive obligations under EU and international law to take such measures as were necessary and appropriate in order to address and/or remedy the Dutch NECP’s non-compliance with the Aarhus Convention;

— Declare that Regulation (EU) 2018/1999 of the European Parliament and of the Council (1) does not give effect to the provisions of the Aarhus Convention, including Article 7 thereof, and as such is non-compliant with EU and international environmental law, and is therefore illegal;

— Having regard to the NCEPs’ and, in particular, the Dutch NECP’s non-compliance with the Aarhus Convention, declare that the Commission’s failure to fulfil its obligations pursuant to Regulation (EU) 2018/1999 constitutes a breach of the said Regulation, a violation of the Convention and, moreover, constitutes an infringement of the Treaties;

— Order the Commission to pay the applicant’s costs.

**Pleas in law and main arguments**

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that the Commission’s decision communicated to the applicant by way of letter dated 1 April 2022 should be annulled as it constitutes an infringement of the Treaties and environmental law. In December 2021, the applicant submitted a request to the Commission asking it to conduct an internal review in respect of the matters set out therein concerning environmental law. In response to the applicant’s request for internal review the Commission deemed the applicant’s request inadmissible. The applicant contends that the Commission’s decision in that regard is fundamentally flawed, amounts to a breach of EU and international environmental law, and constitutes an infringement of the Treaties. The applicant contends that the Commission is in breach of its positive and negative obligations under the Treaties and international law, including Articles 3, 6 and 7 of the Convention on Access to information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). The applicant further claims that the Commission’s impugned decision has infringed secondary EU legislation including, Articles 9 and 10 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council (2), and/or its obligations under Regulation (EU) 2018/1999. The applicant further claims that the Commission’s decision violates the applicant’s right of access to justice under the Aarhus Convention and Aarhus Regulation (as amended).

2. Second plea in law, alleging that the Commission has failed to act within the meaning of Article 265 TFEU in relation to the NECPs assessed, adopted and published by the Commission including, in particular, the impugned Dutch NECP. In failing to act, the Commission is in breach of its obligations under the Treaties and international law, including Articles 3, 6 and 7 of the Aarhus Convention. The applicant further claims that the Commission’s omission has infringed secondary EU legislation including, inter alia, Articles 9 and 10 of Regulation (EC) No 1367/2006 (as amended).

3. Third plea in law, alleging that the Commission’s failure to ensure the Dutch NECP’s full compliance with the Aarhus Convention means that the said NECP is, and has been at all material times, assessed, adopted and published in manifest breach of EU and international law and is therefore illegal. In that regard, the applicant further contends that the Commission’s failure to adopt and/or take appropriate measures to address and remedy the foregoing constitutes an omission on the part of the Commission in breach of Article 265 TFEU.
4. Fourth plea in law, alleging Regulation (EU) 2018/1999 does not give effect to the provisions of the Aarhus Convention, including Article 7 thereof, and as such is non-compliant with EU and international environmental law. Further or in the alternative, the applicant contends that Regulation (EU) 2018/1999 infringes the Treaties. Accordingly, the applicant contends that Regulation (EU) 2018/1999 ought to be declared illegal.


Action brought on 3 June 2022 — Föreningen Svenskt Landskapsskydd v Commission
(Case T-346/22)
(2022/C 311/18)
Language of the case: English

Parties
Applicant: Föreningen Svenskt Landskapsskydd (Höganäs, Sweden) (represented by: G. Byrne, Barrister-at-Law)
Defendant: European Commission

Form of order sought
The applicant claims that the Court should:

— Order the annulment of the Commission’s decision rejecting as inadmissible the applicant’s request to conduct an internal review, notified to the applicant by letter dated 1 April 2022, on grounds that it infringes the Treaties;

— Further/or in the alternative, declare that the Commission has unlawfully failed to act under Article 265 TFEU;

— Declare that, in circumstances wherein the Swedish NECP is non-compliant with the Aarhus Convention, it has been unlawfully assessed and/or adopted and/or published by the Commission, and is therefore in breach of EU and international law and/or is illegal;

— Declare that the Commission failed in its positive obligations under EU and international law to take such measures as were necessary and appropriate in order to address and/or remedy the Swedish NECP’s non-compliance with the Aarhus Convention;

— Declare that Regulation (EU) 2018/1999 of the European Parliament and of the Council (1) does not give effect to the provisions of the Aarhus Convention, including Article 7 thereof, and as such is non-compliant with EU and international environmental law, and is therefore illegal;

— Having regard to the NCEPs’ and, in particular, the Swedish NECP’s non-compliance with the Aarhus Convention, declare that the Commission’s failure to fulfil its obligations pursuant to Regulation (EU) 2018/1999 constitutes a breach of the said Regulation, a violation of the Convention and, moreover, constitutes an infringement of the Treaties;

— Order the Commission to pay the applicant’s costs.