

State aid rules – Access to justice for environment-related State aid decisions

Targeted consultation Aarhus & State aid

Fields marked with * are mandatory.

1. General presentation

1. Introduction

The EU and its Member States are parties to [the Aarhus Convention](#) on access to information, public participation in decision-making, and access to justice in environmental matters (the 'Aarhus Convention'). The EU has implemented its provisions for the EU institutions through [Regulation \(EC\) No 1367/2006](#) [1] (the 'Aarhus Regulation').

According to the Aarhus Regulation, certain acts (or omissions) of the Commission or other EU institutions or bodies acting as a review body are exempted from the internal review mechanism. These include acts (or omissions) adopted (i) under Articles 101, 102, 106, and 107 of the Treaty on the functioning of the European Union (TFEU) (competition and State aid rules); (ii) in infringement proceedings; (iii) in Ombudsman proceedings; and (iv) in OLAF proceedings. Thus, State aid decisions, are currently exempt from the scope of the Aarhus Regulation.

However, the Compliance Committee under the Aarhus Convention ('ACCC') found that the EU fails to comply with Articles 9(3) and 9(4) of the Aarhus Convention ('ACCC findings[2]'). The ACCC indicated that members of the public do not have access to administrative or judicial procedures to challenge Commission decisions on State aid measures adopted under Article 108(2) TFEU if these contravene EU law relating to the environment.

Decisions under Article 108(2) TFEU are adopted after the Commission opens a State aid formal (in-depth) investigation into the compatibility of a State aid with the Internal Market, authorising the aid (in full or in part) or finding the aid incompatible with the Internal Market. The Commission is under a duty to open the formal investigation whenever it has doubts on the compatibility of the aid with the Internal Market.

A. Procedure under the Aarhus Regulation

(i) Administrative phase before the Commission

Under the current Aarhus Regulation, environmental non-governmental organisations ('NGOs') and other members of the public, meeting certain criteria, may **file a request** for internal review ('review request') with

an EU institution within **8 weeks** from the adoption, publication or notification of an administrative act (e.g., a Commission decision), arguing that such an act (or the EU institution's omission to adopt an administrative act) contravenes EU environmental law.

The EU institution or body publishes the review request as soon as possible and needs to **reply** to the entities that lodged the review request **within 16 to maximum 22 weeks (if justified)**. In its reply, the EU institution will assess the admissibility and the substance of the review request. It can find that the request for internal review is inadmissible, or, if admissible, whether the administrative act is in breach of EU environmental law. So far, since the revision of the Aarhus Regulation in 2021, the Commission has received 47 requests for internal review. In none of these reviews the Commission found a breach of environmental law.[3]

(ii) Judicial review phase before the EU Courts

The entities who lodged the review request can appeal the EU institution's reply before the EU Courts, in accordance with the TFEU.[4] The EU Courts may decide to uphold or annul the EU institution's reply to the internal review request. In case the Commission decision is appealed by the requesting party before the EU Courts, the judicial review may add several months or years to the review process. So far, since the revision of the Aarhus Regulation in 2021, 14 Commission decisions taken after a review request have been challenged before the Court. None has so far been annulled by the Court.

(iii) Consequences

During the entire review procedure, the initial administrative act of the EU institution (e.g., a Commission decision) remains in force, neither the review request, nor the proceedings before the EU Courts have a suspensive effect. However, the Commission would need to follow-up (i) in case of a finding of a violation of EU environmental law at administrative level; (ii) in case the EU Court annuls the EU institution's reply. The choice of measures to be adopted following an internal review is entirely discretionary, provided the Commission draws the appropriate consequences. These could be, but are not limited to, amending the underlying administrative act, suspending its effects or withdrawing it completely.

Summary overview: Aarhus Milestones and Deadlines

[Summary overview Aarhus Milestones and Deadlines.pdf](#)

B. Follow-up to the ACCC findings in a State aid case

In 2021, the Commission committed to follow up on the ACCC findings by carrying out an analysis of their implications and assessing the options available, taking into account the rules of Union law concerning State aid. In 2022, the Commission carried out consultations of stakeholders and in 2023 adopted a Communication (the 'Communication[5]'), identifying three options to follow up on the ACCC findings with the aim of creating a new procedure.

1. Option 1: Amending the Aarhus Regulation to include State aid decisions within its scope. Under this option, the State aid exemption would be removed from the Aarhus Regulation. The Commission would propose to the co-legislators that final State aid decision under Article 108(2) TFEU would be fully integrated into the already established internal review proceedings (please see above, for milestones and deadlines).

2. Option 2: Amending the State aid Code of Best Practices [6] ('BPC') to introduce a new procedure, similar to the one applicable under the Aarhus Regulation (see above) but adapted to State aid specificities. The new procedure would be considering in particular, (i) the **type of decisions** that could be subject to internal review and (ii) the **appropriate deadlines**, with a view to preserving the effectiveness of the State aid procedure, which is crucial for the implementation of projects. As regards the type of decisions, the ACCC findings refer to final State aid decisions under Article 108 (2) TFEU after the Commission opens the formal investigation procedure. Thus, the amendment will concern final decisions declaring the aid (fully, partially or conditionally) compatible following an in-depth investigation. 'No aid' and 'incompatible aid' decisions would be excluded, as well as soft law and omissions, as they do not seem to be covered by the ACCC findings (see Introduction above). In addition, under this option, it could be conceived to exclude from the scope of the internal review the following categories of decisions:

- (i) **decisions based on Art. 107(2)(b) TFEU** concerning aid to make good the damage caused by natural disasters or exceptional occurrences, as the Commission has no discretion when declaring such aid compatible;
- (ii) **decisions based on Art. 107(3)(b) TFEU** concerning aid to remedy a serious disturbance in the economy of a Member State, where there is particular urgency to approve State aid and implement measures.

This amendment of the BPC would be combined with a review of the State aid **Implementing Regulation**[7] ('Implementing Regulation') concerning State aid notifications. The Implementing Regulation would be amended to **ask Member States for a commitment** that they have verified compliance of the notified project with EU environmental law **intrinsically linked** to the aid measure (in line with case law like Case C-225/91 *Matra*, Case C-594/18 P *Hinkley Point C* or Case C-284/21 P *Braesch*)[8]. This would reinforce the compliance checks, and ensure consistency of the measure with EU law relating to the environment.

3. Option 3: Amending the State aid Procedural Regulation to introduce a new procedure, similar to the one under the Aarhus Regulation, but adapted to State aid specificities. This option would have similar parameters to Option 2 (amendment of the BPC), in so far as it would include a **limited scope of decisions** subject to internal review, with **adapted deadlines** for review requests and replies by the Commission.

The Communication showed that the views on the matter are split (environmental NGOs and most of the environmental authorities would be in favour of Option 1, while State aid/granting authorities and businesses would be in favour of preserving the status quo, or if not possible Option 2).

In terms of **consequences** of an internal review request, the Commission will need – **under each of the three options above** – to:

- (i) Investigate, if it receives a review request;
- (ii) Follow-up, at the administrative level, in case of a finding of an EU environmental law violation that is *intrinsically* linked to the object of the State aid;
- (iii) Follow up in case the EU Courts annul its reply to the requesting party.

The Commission can do so by, among others, **amending, suspending or withdrawing the initial Commission State aid decision**.

On 30 May 2024, the Commission published a [Call for evidence](#) following up to the Communication. The Call for Evidence together with the current targeted consultation will inform the Commission's further assessment, to be published in the form of a **Staff Working Document**.

2. Objective of the targeted consultation

This consultation is designed to collect information missing information on the impact of a new procedure on:

- (i) the successful implementation of EU policies, in particular in relation to the EU's global competitiveness and achievement of Green Deal objectives (including necessary financing from public resources to support the Green Transition across different sectors);
- (ii) investment decisions and implementation of projects by the business community;
- (iii) cost implications for the stakeholders, including red tape/administrative burden, costs of compliance, costs of financing, including costs associated with increased risk of litigation and/or impacts on the speed of the approvals and other social and economic costs.

3. The consultation process

The Commission invites the following stakeholders to comment:

- Undertakings of different sizes and sectors;
- Business associations of different sizes and sectors, including but not limited to those covering the energy, transport, digital and electronic communications and the agriculture sector;
- Public authorities dealing with State aid and environmental matters.

The Commission will analyse all your responses, which will be published on the [Directorate-General for Competition website](#).

Nothing in this questionnaire may be interpreted as stating an official position of the Commission.

4. Next steps

The Commission is planning to publish a Staff Working Document and an accompanying Synopsis report summarizing the consultation activities in the second quarter of 2025.

Submitting your answers

To help us analyse your replies, please keep your answers **concise** and **to the point**.

You can save your questionnaire as a 'draft' and finalise your response afterwards. To do this:

- click on '**Save as Draft**'

- **save the new link** that you will receive from the EUSurvey tool on your computer.

Reminder: without this new link you cannot access the draft again.

For this questionnaire, you can respond **in any EU language**.

[1] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1767> (Regulation (EU) 2021/1767)

[2] https://unece.org/env/pp/cc/accc.c.2015.128_european-union

[3] https://environment.ec.europa.eu/law-and-governance/aarhus/requests-internal-review_en

[4] This can be done according to Article 263 TFEU, within a period of two months. This period begins either from the date of publication of the measure, or of its notification to the plaintiff, or of the day on which it came to the knowledge of the latter. The action can be based on the grounds of lack of competence, infringement of essential procedural requirements, infringement of the Treaties or of any rule of law relating to their application or misuse of powers against the decision rejecting the request for internal review as unfounded (see Judgements in Case T-536/22, para 39 and Case T-177/13, para 56).

[5] [Commission communication on the findings adopted by the Aarhus Convention Compliance Committee in case ACCC/C/2015/128 as regards state aid: Analysing the implications of the findings and assessing the options available, COM\(2023\)307 final](#), dated 17.5.2023.

[6] Available at: [Code of Best Practices for the conduct of State aid control procedures](#)

[7] [Commission Regulation \(EU\) 2015/2282 of 27 November 2015 amending Regulation \(EC\) No 794/2004 as regards the notification forms and information sheets](#), OJ L 325, 10.12.2015, p. 1–180.

[8] The EU Court have noted that only where the modalities of an aid measure are so indissolubly linked to the object of the aid that it is impossible to evaluate them separately, their effect on the compatibility or incompatibility of the aid viewed as a whole must of necessity be determined in the light of the procedure prescribed in Article 108 TFEU (in line with case law like Case C-225/91 *Matra*, Case C-594/18 P *Hinkley Point C* or Case C-284/21 P *Braesch*).

2. About you

* Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian

- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

* First name

Interdepartementaal Staatssteun Overleg (ISO)

* Surname

Interdepartementaal Staatssteun Overleg (ISO)

* Email (this won't be published)

[Redacted]

* Organisation represented

The Interdepartementaal Staatssteun Overleg (ISO) is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities. The Minister of Economic Affairs is responsible for competition policy in the Netherlands and in that context chairs the ISO. The Minister of Infrastructure and Water Management is responsible for environmental policy and for the implementation of the Aarhus Convention is in the Netherlands. This response therefore reflects the position of the Dutch authorities as a whole, from a State aid perspective as well as from an environmental perspective.

* Country

The Netherlands

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent ('business', 'business association', 'investor', 'public authority'), and organisation name are always published. Your e-mail address will never be published.**

Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.



Anonymous

Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.



Public

Organisation details and respondent details are published. Your name will also be published.



I agree with the [personal data protection provisions](#)

3. Respondent category

* Which category your organisation belongs to?



Undertaking



Business association



Investor



Public authority

* Organisation size



Micro (1 to 9 employees)



Small (10 to 49 employees)



Medium (50 to 249 employees)



Large (250 or more)



Not applicable

Transparency register number

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

250 character(s) maximum

/

Please specify your area of activity and main responsibilities

500 character(s) maximum

The Interdepartementaal Staatssteun Overleg (ISO) is a central State aid coordination body composed of all Dutch ministries and representatives of the regional and local authorities. The Minister of Economic Affairs is responsible for competition policy in the Netherlands and in that context chairs the ISO. The Minister of Infrastructure and Water Management is responsible for environmental policy and for the implementation of the Aarhus Convention is in the Netherlands.

4. Impacts of a new procedure for public authorities

1. How would a new administrative review procedure as described in the introduction impact your decisions on whether to grant public support to investment projects?



I do not know



It would play no role at all



It would play a minor role

- ☒ It would play a significant role, as it would de facto suspend the implementation of an aid measure in view of legal uncertainty, even if such a challenge legally does not have a suspensive effect
- ☐ It would play a very significant role, as de facto, the projects might not go ahead anymore because of legal uncertainty
- ☐ Other

Please explain your answer

1500 character(s) maximum

A new administrative review procedure would, in principle, not impact decisions of public authorities on whether to grant public support to certain activities, as public support would not be given to measures that contravene (EU) environmental law. Besides, in the Netherlands, granting aid (and consequently a State aid approval decision) as such is not the (environmental) permission to carry out a certain activity that impact the environment, for which specific national procedures and/ or legislation apply. It is important to note that although a new administrative review procedure (and follow-up proceedings) might not have suspensive effect, we cannot exclude delays and legal uncertainty caused by the new administrative review procedure. The actual effects depend on the further details of a new administrative review procedure.

2. If the Commission were to require a commitment from Member States in the State aid notification forms to verify and confirm compliance with environmental law provisions would such a requirement have an effect on the length and complexity of your administrative procedures?

- ☐ I do not know
- ☐ It would play no role at all
- ☐ It would play a minor role
- ☒ It would play a significant role

Please explain your answer

1500 character(s) maximum

The Dutch authorities consider it important to reduce the administrative burden for both businesses and public authorities. The requirement would have an effect on the length and complexity of the State aid notification procedure, while verification and confirmation of compliance with (EU) environmental law provisions is redundant. Furthermore, a verification/confirmation leads to duplication of national obligations based on the Aarhus Convention and could lead to complicated coordination between public authorities within a Member State with their own responsibilities, e.g. the granting authority and the public authority responsible for permitting and/ or monitoring compliance with (EU) environmental law. This would lead to a disproportional impact on the length and complexity of the national procedures.

3. Would a new procedure entail an increased administrative burden and/or cost for the State aid granting authority, in terms of e.g., transaction costs, resources, compliance etc.)

- ☒ Yes
- ☐ No

Please explain your answer

1500 character(s) maximum

A new administrative review procedure within the State aid notification process entails additional administrative burdens and costs for the State aid granting authority, the extent and amount of which, however, depends on the further details of a new administrative review procedure. The Dutch authorities consider it important to reduce the administrative burden for both businesses and public authorities.

4. In your view, are there ways to reduce the above mentioned consequences related to administrative burden and/or costs as well as possibly the legal uncertainty (e.g., limit the duration of the new procedure, etc.)

- ☒ Yes
☐ No

Please explain your answer

1500 character(s) maximum

The administrative burden and/or costs as well as the legal uncertainty should be reduced by excluding certain categories of decisions from the scope of review. The Dutch authorities welcome the proposal to exclude State aid decisions based on Article 107(2)(b) and Article 107(3)(b) TFEU. In addition, decisions that approve State aid for activities that require a national permit should be excluded from the scope of the internal review, because the environmental impacts are already taken into account in the national permit granting procedure. A clear demarcation of the categories of decisions that fall under the new administrative review procedure is desirable. Furthermore, the Dutch authorities prefer a procedure that has the least impact on the State aid notification procedure. This appears to be option 2 (Amending the State aid Code of Best Practices) or option 3 (Amending the State aid Procedural Regulation to introduce a new procedure, similar to the one under the Aarhus Regulation, but adapted to State aid specificities.

5. Which would be the sectors that would be particularly concerned by the new procedure, as far as your authority is concerned?

Please explain and if possible provide the NACE codes

1500 character(s) maximum

The sectors particularly concerned cannot be predicted, however, according to the Dutch authorities, any new administrative review procedure should focus on projects that have an impact on the environment but for which no national permit procedure applies, because the environmental impacts are already taken into account in the national permit granting procedure.

6. Would there be ways, in your view, to shield small and medium enterprises or midcaps in particular from the extra costs related to the new procedure?

- ☐ Yes
☒ No

Please explain your answer

1500 character(s) maximum

Please see the response to questions 4 and 5. The Dutch authorities consider it important to reduce the administrative burden small and medium enterprises or midcaps. However, also activities by small and medium enterprises or midcaps can have impact on the environment.

7. To what extent do you think this new procedure would impact EU competitiveness?

Please explain your answer

1500 character(s) maximum

A lengthy notification process is already a common concern for EU competitiveness, compared to aid measures in other jurisdictions such as the United States with the Inflation Reduction Act.

Although the actual effect on EU competitiveness depends on the further details of a new administrative review procedure, we foresee delays and legal uncertainty caused by this new administrative review procedure. We cannot assess the extent to which this will affect companies' investment decisions but it is likely that the uncertainty of a new administrative review procedure at the EU level will cause companies to reconsider investments.

8. To what extent do you think this new procedure would impact the Green Transition?

Please explain your answer

1500 character(s) maximum

A new administrative review procedure seems not to directly affect decision-making on national aid measures. A new procedure at the EU level would be superfluous and create delays and uncertainty for both public authorities and businesses. This will have a negative impact on investments made in projects that contribute to the Green Transition in the EU and therefore could jeopardize both the political and legally binding climate goals of the EU. A new administrative review procedure therefore seems disproportionate. Aid measures aimed at the achievement of the Green Deal objectives, already have to comply with EU environmental and climate law. Moreover, the State aid frameworks such as the CEEAG guidelines ensure compliance with EU environmental law. The actual impact depends on the further details of the new administrative review procedure in the notification process of a State aid measure.

9. To what extent would the new procedure increase compliance with EU environmental law considering also the existing environmental legal requirements?

Please explain your answer

1500 character(s) maximum

State aid measures that breach provisions or general provisions of EU law cannot be declared compatible with the internal market. To ensure conformity with EU environmental law, there are mechanisms in place such as the CEEAG guidelines. At the national level, State aid for climate, environmental protection and energy is also reviewed for compliance with (EU) environmental law. National authorities have to ensure that the aid measure, the conditions attached to it, the procedures for adopting it and the supported activity do not contravene EU environmental law. A new procedure would thus not increase compliance with environmental

law. In addition, if State aid is granted for an activity for which a permit is needed, environmental impacts and consequently compliance with EU environmental law are taken into account in the national permit granting procedure. In those situations, a new procedure only leads to a complicated duplication of the permitting procedure and any other obligations a project must comply with.

State aid measures that do not entail the exploitation of an activity that requires a permit and that do not concern aid for climate, environmental protection and energy still need to comply with EU environmental law. Subsequently, compliance with (EU) environmental law can be challenged in a national review or judicial procedure. Therefore a new administrative review procedure will not increase compliance with EU environmental law

10. To what extent would in your view the new procedure duplicate existing procedures in place to ensure compliance with EU environmental law? If yes, which ones?

Please explain your answer

1500 character(s) maximum

The EU Member States themselves are already responsible to fulfill the obligations under the Aarhus Convention. A new administrative review procedures duplicates existing procedures at national level, due to the fact that a State aid approval decision concern the same activities for which already national obligations apply.

11. In your view, would the new procedure have added value with respect to access to justice in view of the protection of environment?

☐ Yes

☒ No

If yes, please describe how?

1500 character(s) maximum

Not applicable.

If not, please describe why not?

1500 character(s) maximum

The added value with respect to access of justice in view of the protection on environment depends on the further details of the administrative review procedure. It is important to fulfill the obligations under the Aarhus convention. A new administrative review procedure can ensure that the Commission takes environmental effects of State aid measures fully into account when it approves national State aid measures. However, this has already been ensured because the EU Member States themselves are already responsible to fulfill the obligations under the Aarhus Convention. A new administrative review procedures duplicates existing procedures at national level, due to the fact that a State aid approval decision concern the same activities for which already national obligations (national permit granting procedure and/ or legislation) apply

12. Any other relevant comments

1500 character(s) maximum

Contact

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